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EB-5 VISA BLOG (/BLOG)

What are exemplar projects and how can they benefit EB-5 investors?

EB5Investors.com Staff

October 20th, 2023



By Anayat Durrani

EB-5 investors contemplating a potential investment in a project could come across the term “exemplar” or pre-approved projects. Exemplars are projects that have been reviewed to meet specific criteria and approved by the United States Citizenship and Immigration Services (USCIS) for complying with EB-5 regulations (<https://www.eb5investors.com/eb5-basics/eb-5-visa-requirements>).

“An exemplar describes an ‘example’ of an I-526 filing (<https://www.eb5investors.com/eb5-forms/i-526-petition>) that includes project-specific documentation, such as the comprehensive business plan, economic analysis, and organizational and transactional documents,” says Fredrick W. Voigtmann (<https://www.eb5investors.com/directories/immigration-attorneys/frederick-w-voigtmann>), the Law Office of Fred Voigtmann, P.C. in Woodland Hills, Calif. “But is missing investor-specific documentation, such as the EB-5 investor’s personal identity documents and source/path of funds proof that is normally required for an I-526 approval.”

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Under the EB-5 Reform and Integrity Act of 2022 (RIA) (<https://www.eb5investors.com/blog/eb5-visa-program-attractive-to-apply>), an I-956F must be filed before any EB-5 offering is taken to market, explains **Phuong Le** (<https://www.eb5investors.com/directories/immigration-attorneys/phuong-le>), partner at KLD LLP in Los Angeles, Calif.

“This is critical for the issuer because it's a requirement before they sign investors and provides a certain level of protection for investors,” says Le.

For the EB-5 investor, exemplar projects can lower the risk involved with investing and give investors peace of mind for having an already approved project and potentially faster processing times.

Exemplar approved projects can provide investors “assurance that USCIS has reviewed and confirmed the reasonableness of certain important issues such as the project's job creation methodology,” says Le.

Regarding project selection, the attorney says it “gives comfort and greatly lessens anxieties during the due diligence process.”

In terms of adjudication, he adds, “the benefit is if USCIS has already signed off on a project's business plan and offering documents, they will generally not re-adjudicate those issues later on, which should lead to speedier and more consistent processing.”

Finding out if an I-956F (<https://www.eb5investors.com/eb5-forms/eb5-i-956-application>) has been filed can easily be determined by requesting a copy of the receipt notice from the regional center, he says.

EB-5 exemplar projects before and after RIA

Before RIA 2022, exemplars were optional. EB-5 regional centers (<https://www.eb5investors.com/eb5-basics/eb-5-regional-center>) submitted them to USCIS using Form I-924 to rely upon an agency pre-approval of the project-specific documents.

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"This pre-approval afforded deference from USCIS to those project documents," says Voightmann. "If USCIS vetted and approved an investor's source of funds in a subsequent I-526 filing for that project, then the exemplar approval meant that USCIS would approve the actual EB-5 investor's I-526 petition."

Voightmann notes that exemplars were not required to be filed until the RIA was passed in March 2022.

Since then, EB-5 regional centers must file Form I-956F, "which includes essentially the same project-specific documents as the pre-RIA I-924 exemplars," Voightmann says. He adds that the I-956F must be filed with USCIS "before any I-526E petitions for that EB-5 project may be filed—the I-956F need not be approved at the time of I-526E filing."

Voightmann says an exemplar approval afforded USCIS deference in favor of an EB-5 regional center's project documents and that an EB-5 investor in that project "was assured of USCIS approval if the source and path of funds evidence met the evidentiary standard, assuming no fraud or material changes occurred in the regional center and the exemplar approval was not legally deficient."

Meanwhile, exemplars that received approval before the new law are still valid and accepted and can benefit investors.

"Pre-RIA approved exemplars probably have some advantage, just because USCIS has already vetted/approved most of the project documents," says Voightmann.

But, he cautions, even pre-RIA approved exemplar projects are still required to file I-956F packages in order to sign up post-RIA investors.

"From an underwriting standpoint, savvy investors may realize that there are only a handful of I-924 exemplar-approved projects remaining in the market," says Le.

He explains that until there are more I-956F approved projects, investing in an I-924 exemplar-approved project "would be the only way to ensure that the



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project was EB-5 compliant, and the job creation methodology is reasonable.”

He says while a New Commercial Enterprise (NCE) is required to file an I-956F to accept investors, it doesn't have to wait for I-956F approval.

“Thus, there is that backend uncertainty an investor may face if they invest into a questionable project that simply has an I-956F because it may be months if not years before they learn the outcome,” says Le.

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