

Successfully petitioning for an EB-5 Visa (part five)

A cup of "TEA" can save you \$500,000

by Jeffrey C.P. Wang and John Frederick ("Rick") Karch

* This article first appeared in Inside Counsel Magazine on December 18, 2013: <http://bit.ly/1BAAT93>

The EB-5 Program is very appealing to many prospective immigrants, especially those who do not qualify for any other visa. The \$1,000,000 minimum investment, however, makes an EB-5 visa prohibitively expensive for most foreign nationals. Fortunately, there is an alternative that may make this program more affordable. By investing in a Targeted Employment Area (TEA), the minimum EB-5 investment amount can be lowered to \$500,000. This is a huge savings, and it can open up the EB-5 Program to many more potential investors. But in order to take advantage of this reduced investment option, petitioners and project administrators need to understand what a TEA is and, more importantly, how a TEA designation is to be obtained.

A TEA is simply an area that is, at the time of the investment, either a rural area or an area that is experiencing an unemployment rate that is 150% of the national average. Petitioners typically requests that the U.S. Citizenship and Immigration Services designate an area as a TEA at the time they file their I-526 (EB-5) Petition. The documentation that should be included with the request includes: (1) evidence that the area is rural; (2) unemployment data for the relevant MSA or (3) a letter from the state government designating a geographic or political subdivision located outside a rural area but within its own boundaries as a high unemployment area.

A state government may also designate an area as a TEA based on high-unemployment (note: there are no provisions for a state to designate an area as a TEA based on it being rural). State designation requires that an authorized body within the state government issue an official letter to the USCIS certifying that the area qualifies as a TEA. And while the USCIS defers to state designations, it still considers each TEA request individually in order in order to ensure the state's methodology complies with the statutory requirements.

Some states, such as California, New York and Florida, maintain a list of pre-qualified TEAs. California, for example, has posted a list of [High Unemployment Metropolitan Statistical Areas \(MSA\)](#) and a list of qualifying individual [census tracts](#) within its borders. But California does not consider individual TEA requests, so if a location is not listed as a qualified TEA, it will not receive certification from the State. Investors can, however, still seek TEA designation from the USCIS on their own by providing documentation from sources that are acceptable for calculating unemployment, such as U.S. Census Bureau data (including data from the American Community Survey) and data from the Bureau of Labor Statistics (including data from the Local Area Unemployment Statistics).

As mentioned above, TEA designations are generally adjudicated at the time the investor submits their I-526 (EB-5) petition. A change in population or unemployment that causes an

area to lose its TEA designation *after* the submission of the I-526 will not adversely affect the petition (i.e. require an additional \$500,000 investment). However, if a Regional Center receives a TEA designation but then loses it prior to the filing of the petitioner's I-526, the reduced investment provision will not apply and the petitioner will need to make the full \$1 million investment. Petitioners would be wise, therefore, to request that the Regional Center provide its most current TEA designation letter.

Clearly, the purpose of TEAs is to encourage foreign investment in areas that are in greatest economic need. Investors must consider, however, that investing in an economically depressed location may entail a heightened level of risk. EB-5 petitioners should therefore conduct a thorough cost/risk/benefit analysis, and seek guidance from objective counsel, before deciding on whether or not to "have a cup of TEA" with their EB-5 investment.

About the Author

Jeffrey Wang



Jeffrey C.P. Wang is the managing partner and founder of WHGC, P.L.C. Mr. Wang's practice focuses on handling the legal concerns of international and domestic corporations. In addition to his J.D., Mr. Wang has two advanced Masters of Law Degrees from the University of Washington and the Southern Methodist University School of Law. JeffreyWang@WHGCLaw.com

About the Author

John Frederick (Rick) Karch



John Frederick (Rick) Karch is a partner at WHGC, PLC and a member of the International Corporate Transaction Group. His practice focuses on financial and tax concerns for individual and corporate clients. In addition to his J.D., Mr. Karch is a California CPA, holds an M.B.A. in Finance from Harvard Business School and Masters of Law in Taxation from the University of San Diego. RickKarch@WHGCLaw.com