

DIRECT EB-5 BUSINESS PLANS

February 2017

1.0 Business Plan Requirements

[6 USCIS-PM G \(November 30, 2016\) Chapter 2\(D\)](#) specifies that any petitioner who has not already met the EB-5 employment-creation requirement must submit a business plan with his or her I-526 Immigrant Petition by Alien Entrepreneur.

5. Evidence of Job Creation

To show that a new commercial enterprise will create not fewer than 10 full-time positions for qualifying employees, an immigrant investor must submit the following evidence:

- Documentation consisting of photocopies of relevant tax records, Employment Eligibility Verification (Form I-9), or other similar documents for 10 qualifying employees, if such employees have already been hired; or
- A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than 10 qualifying employees will result within the next 2 years and the approximate dates employees will be hired.

The 2-year period is deemed to begin 6 months after adjudication of Form I-526. The business plan filed with the immigrant petition should reasonably demonstrate that the requisite number of jobs will be created by the end of this 2-year period.

In the case of a troubled business, a comprehensive business plan must accompany the other required evidentiary documents.

Quoting from the precedent decision [Matter of Ho, 6 USCIS-PM G Chapter 2\(B\)](#) lays out the requirements for a comprehensive business plan.

B. Comprehensive Business Plan

A comprehensive business plan should contain, at a minimum, a description of the business, its products or services (or both), and its objectives. The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market and prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the basis of such projections.

Most importantly, the business plan must be credible.

USCIS reviews business plans in their totality. An officer must determine if it is more likely than not that the business plan is comprehensive and credible. A business plan is not required to contain all of the detailed elements, but the more details the business plan contains, the more likely it is that the plan will be considered comprehensive and credible.

2.0 Program Requirements

The EB-5 business plan functions to help show that the petitioner satisfies EB-5 program requirements. As stated in [6 USCIS-PM G](#), “the immigrant investor category requires three main elements: (1) an investment of capital, (2) in a new commercial enterprise, (3) which creates jobs.”

Table 2-1. Direct EB-5 Requirements and Business Plan Content

Core EB-5 requirement	EB-5 requirement detail	Business plan content to help demonstrate eligibility
<i>Investment of capital</i>	<ul style="list-style-type: none"> The investment is a contribution of capital (capital can mean cash or other contributions of financial value, but cannot be a loan to the enterprise) The capital is “at risk” in the enterprise, viz. deployed in an active business with a risk of loss and chance of gain, and with no guaranteed return The full amount of the investment is made available to the business most closely responsible for creating employment The investment amount is at least \$1,000,000, or at least \$500,000 in a Targeted Employment Area 	<ul style="list-style-type: none"> Describe the amount and terms of EB-5 investment Illustrate the flow of capital from the EB-5 investor to the enterprise Provide a budget that projects how the full amount of investment will be used by the enterprise Emphasize evidence of business activity Identify the location of business activity
<i>New commercial enterprise</i>	<ul style="list-style-type: none"> The enterprise (1) was established at some time after November 29, 1990; or (2) has been restructured or reorganized such that a new enterprise results; or (3) is being substantially expanded, with new investment resulting in at least a 40% increase to the net worth or number of employees The enterprise is engaged in on-going, lawful, for-profit, commercial activity The enterprise comprises a single entity or a holding company and its wholly-owned subsidiaries each of which is engaged in for-profit activity 	<ul style="list-style-type: none"> Identify the “new commercial enterprise” and show how it qualifies as “new” Explain the for-profit commercial activity in which the enterprise is engaged If the investment involves a portfolio, identify the entities involved and their relationship to each other
<i>Creates jobs</i>	<ul style="list-style-type: none"> The enterprise creates at least 10 full-time positions for qualifying employees per EB-5 investment A qualifying employee is legally authorized for employment and is not the immigrant investor or the investor’s family members A full-time position requires a minimum of 35 working hours per week Job creation means creation of new positions, unless the enterprise qualifies as a troubled business, which can also count preserved jobs Job creation occurs within 2.5 years of I-526 approval 	<ul style="list-style-type: none"> List and define the jobs to be created by the enterprise Identify the full-time positions Explain the timing of job creation Illustrate the need for job creation and how employment follows naturally from the nature of the business

3.0 Business Plan Content

A successful EB-5 business plan has content that helps to support EB-5 eligibility and to satisfy the definition of a “comprehensive business plan” from the precedent decision *Matter of Ho*.

Table 3-1. Sample Business Plan Outline (Direct EB-5)

Business plan section	Key business plan content and objectives
<i>Business Description</i>	<ul style="list-style-type: none"> • Identify the “new commercial enterprise” and show how it qualifies as “new” • Describe the business and its products, services, and objectives • Identify the business location(s)
<i>Structure and Management</i>	<ul style="list-style-type: none"> • Describe the structure, formation, and ownership of the enterprise (and, if the investment involves a portfolio of businesses, identify all entities involved and their relationship to each other) • Illustrate the flow of capital from the EB-5 investor to the enterprise • Set forth the business’s organizational structure and its personnel’s experience
<i>Development and Operations</i>	<ul style="list-style-type: none"> • Provide a business development schedule, which sets milestones and estimates the time before operations may commence • List the approvals, licenses, and permits required and received • If applicable, describe the manufacturing or production process, the materials required, and the supply sources • Identify any contracts executed for the supply of materials or the distribution of products
<i>Staffing Requirements</i>	<ul style="list-style-type: none"> • List and define the jobs to be created by the enterprise • Identify the full-time positions • Explain the timing of job creation and provide a timetable for hiring • Illustrate the need for job creation and how employment follows naturally from the nature of the business • Provide job descriptions for all positions
<i>Market Analysis</i>	<ul style="list-style-type: none"> • Describe the target market/prospective customers of the enterprise • Provide verifiable demographic and economic data for the market area • Provide verifiable industry data • Discuss demand drivers and trends • Name competing businesses and assess their relative strengths and weaknesses • Discuss the enterprise’s pricing strategy and compare its products and pricing with those of competitors • Discuss the marketing strategy of the business, including pricing, advertising, and servicing
<i>Development Costs and Capital Sources</i>	<ul style="list-style-type: none"> • Provide a budget that details the enterprise’s development costs, as well as evidence that the cost estimates are reasonable • Identify the amount, sources, and terms of capital to cover the development budget, and provide evidence of capital commitments
<i>Financial Projections</i>	<ul style="list-style-type: none"> • Provide income projections and explain income statement assumptions • Support projections with reference to verifiable third-party evidence, market analysis, and industry standards • Illustrate profit potential

4.0 Business Plan Standards

A successful EB-5 business plan demonstrates the job-creation potential of the new commercial enterprise. It is comprehensive, detailed, and credible.

Shows Job Creation Potential

- *Need for job creation:* The plan demonstrates that the business is likely to generate the qualifying employment necessary for the petitioner to meet the EB-5 job-creation requirement. The plan does not simply assert that jobs will be created, but explains the need for those jobs and how employment follows naturally from the nature of the business. The staffing plan is consistent with the business description, development schedule, and financial projections.
- *Timing and Nexus:* The plan discusses the business timeline in such a way as to show (1) that the plan is mature and job creation is likely to occur in a timely and predictable manner (with the necessary number of positions created within two and a half years of I-526 approval), and (2) that EB-5 investment has a causal link to job creation.

Comprehensive and Detailed

- *Business detail:* The plan provides the kind of detail that a typical investor or lender would want to see before making an investment decision, including a description of the business, a market analysis, a description of the organization and staffing requirements, and financial projections.
- *EB-5 compliance detail:* The plan is sufficiently detailed to allow readers to draw reasonable inferences about the proposal's compliance with EB-5 requirements.

Credible

- *Credibility from evidence:* The plan does not just make assertions, but supports claims with reference to objective evidence. The plan is supported throughout (particularly in the market and financial sections) by verifiable citations to reliable and up-to-date data sources and probative evidence.
- *Credibility from consistency:* The plan is internally consistent and, as much as possible, helps to reconcile (1) information presented in other parts of the petition, (2) information that readers may find when investigating the petition, and (3) actual subsequent performance of the business.
- *Credibility from presentation:* The plan is professionally written and attractively presented.