

OPINION



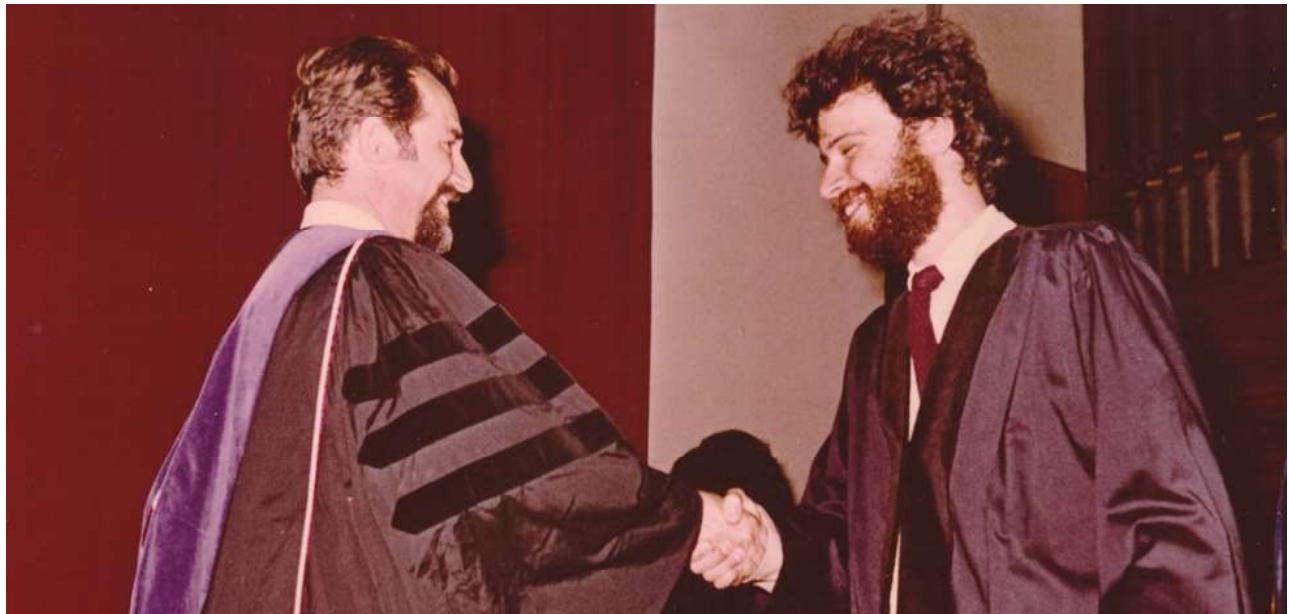
WHY INTERNATIONAL STUDENTS IN U.S. COLLEGES SHOULD CONSIDER EB-5

With a degree from a top school, Marko Issever thought he would have no challenges in finding his dream job after graduation. But he was wrong. Here, he shares his green card journey as a Middle Eastern graduate in the United States and why it's important for international students to explore the EB-5 option early on for best job opportunities.

By Marko Issever

I am an immigrant. I came to the United States as a student in the fall of 1981 for graduate studies. Even though I was on an F-1 visa, which technically means that I had no intention to immigrate, I surely had the same aspiration that most international students have: to find a well-paying job and settle in the United States. I thought that my target would be easy as I had

just gotten into the PhD program at The Wharton School of University of Pennsylvania. Yet, since I was not totally sure that I would be able to finish my thesis and actually obtain the PhD degree, as a backup during my second year of the PhD program, I co-enrolled into the MBA program of the same school. I remember saying to myself, now that I will be able to obtain an MBA degree from one of



the top schools in the United States, I will surely have no difficulty in landing my dream job. But I was wrong. Though I had almost no issues getting interviews and advancing to second and third rounds, I would then be asked the dreaded question: whether or not I had a permit to work in the United States. I would answer that I did not have a work permit and expected that my prospective employer would sponsor me. I remember how the face of the interviewer would change at that moment. I would not hear from them again until the rejection letter would arrive in my mailbox. They usually would let me know that, even though they thought I was talented and would most likely be an asset for their firm, the position they were interviewing for would necessitate a different skillset. Deep down, I knew what that skillset was called: “a green card.”

CHANGING OF THE TIMES

Let’s not forget, that was the mid-eighties, and, unlike today, there were no quotas for the H-1B visa. All that the employers had to do was to accept me to work on the OPT, otherwise known as Optional Practical Training and switch my status to H-1B as soon as possible.¹ Then, they would move toward the labor certification procedure by collecting data of unique abilities that I had – abilities that were not immediately available with other potential employees who already had work authorization. I remember interviewing in one of the big American banks on Wall Street. The interviewer noticed that I was a foreign student from the Middle East. He told me that they would be delighted to hire me, send me back to my home country, and in 10 years there would be a chance, greater than zero percent, that I could come back and work in New York in the same firm. I was polite and did not answer him.

Back then there was no EB-5 program. Even if I had had the financial means, I would not have been able to take advantage of this wonderful program that exists today. Thankfully, in the end, I did find an employer who believed in my talent and was willing to sponsor me from the H-1B all the way to the green card. Because of my rare success story, I’ve become very passionate about this topic. I think about all the international students

“**Aside from family-based immigration, EB-5 is most likely the fastest option of getting U.S. permanent residence status.**”

who, upon graduation, do not have green cards. Even if they graduate from one of the best universities in the United States, they are often forced to return to their home country before having a chance to get practical training for a job in their area of specialization. Foreign students with green cards, on the other hand, have a much greater advantage over those who do not. OPT is very limited in terms of its duration. Companies also do not typically want to hire and train recent graduates only to see them leave after a year or two.

Students desperate to get a job in order to utilize their OPT option oftentimes settle for jobs that are not appropriate with their academic experience and the area of expertise in which they are seeking to be trained in. Green card holders can choose from among job offers they receive in their field in line with their career development goals and academic standing. This will enable them to make decisions based on their desired position, salary and geographic location. Students who do not have green cards unfortunately do not have this option. Even innovative ideas such as the Obama Era’s “start-up visas” to encourage foreign entrepreneurship was cancelled by the Trump Administration.^{2,3}

PRACTICAL SUGGESTIONS HOW INTERNATIONAL STUDENTS CAN EMBARK ON THEIR VISA JOURNEY & AVOID PITFALLS ALONG THE WAY

Why is EB-5 a better choice than trying to obtain an H-1B or E-2 visa? H-1B denials and request for evidence (RFEs), delays in processing times have all increased in an alarming rate in the current political climate and resulting immigration regime.⁴ Aside from family-based immigration, EB-5 is most likely the fastest option of getting U.S. permanent residence status.⁵ Each country can send 700 applications annually before retrogression, also called quota backlogs, could become a problem. Unfortunately, that is exactly what happened with applicants born in mainland China and, to some extent, to those born in Vietnam. There has recently been some talk, that applicants born in India may potentially face retrogression soon. Candidates from other countries, however, have no such worries at the moment.

“**...applying for the EB-5 early on so that adjustment of status can be achieved before any unlawful days are accrued is of utmost importance today.**”



There is a tremendous misconception that E-2 visa is an alternative to EB-5.

Some of the key benefits of EB-5 are:

- Students do not need any particular company to sponsor them or give them a job offer.
- EB-5 leads to a green card and ultimately U.S. citizenship. OPT, however, expires after a defined period of 12 months. STEM students can get an additional 24-month extension.⁶
- EB-5 provides the main applicant and his/her derivative applicants such as a spouse, and unmarried children under 21, the freedom to study with potentially reduced “in-state” tuition, work and live in the United States without additional immigration requirements.^{7,8,9}
- Unlike EB-5, H-1B is subject to lottery once a year. Generally, there are 250,000 applicants a year for 65,000 to 85,000 spots. Effective Aug. 9, 2018, any student with an F, J or M visa would begin unlawful presence the day after his coursework or OPT terminates. This could have devastating results if the student accrues more than 180 days of unlawful presence in the United States. He would be barred from entering the United States for three years. If the violation is more than 365 days, then he would be barred for ten years. Therefore, applying for the EB-5 early on so that adjustment of status can be achieved before any unlawful days are accrued is of utmost importance today.¹⁰

The limited duration of OPT and the low chance of approval feature of H1-B discourages prospective employers to extend job offers commensurate with the international students’ education. They opt to hire potentially a less qualified candidate who is authorized to work in the United States. As a result, there is an increased number of EB-5 applicants from countries such as India, South Korea, Vietnam and Brazil.¹¹

There is a tremendous misconception that E-2 visa is an alternative to EB-5.¹² The E-2 is a nonimmigrant visa, while the EB-5 is an immigrant visa. This means that the E-2 visa has a definite expiration date. It may be renewed or extended but the immigration authorities’ expectation is that the applicant will leave the U.S. when their purpose of being in the U.S. is no



longer valid.¹³ Typically, a student who applies early for the EB-5 does not have any need to consider the E-2 visa. It is an additional expense that is not necessary. If the student does not have any time left in his current F-1 visa and OPT combined to allow him to stay in the United States any longer, then E-2 should be considered since this visa typically can be obtained in less than six months and in some cases even faster than that. Once the applicant has secured the E-2, he can now apply for the EB-5. This could be done either by expanding the mandate of the E-2 enterprise or making a separate investment into a Regional Center sponsored project. While it might be difficult to change from E-2 to an EB-5 direct investment, it is feasible.¹⁴ In order to successfully organize the transition, and ensure that the EB-5 visa requirements are met, a Matter of Home-compliant business plan will be necessary.¹⁵



Unlike the Regional Center model, one benefit of the EB-5 direct investment program is that there is no sunset date for it. Since the investor would have already made an investment on the E-2, in order to qualify the business now for the EB-5, they would only be required to make up the difference. If they could get the location of the project certified as a targeted employment area, commonly known as TEA, then they would need to round up the investment to \$500,000 as opposed to the standard \$ 1 million requirement. Of course, they will most likely need to hire additional employees due to the requirement of creating at least 10 full time positions.

WHO CAN BENEFIT MOST FROM EB-5?

EB-5 is obviously not a logical choice for students

born in countries such as mainland China and Vietnam that are subject to retrogression.¹⁶ On the other hand, EB-5 could be the only legitimate choice for immigration for students born in countries that are subject to retrogression in other visa categories such as EB-2 and EB-3 such as India.¹⁷ For Indian citizens, who would like to avoid the retrogression in the other popular visa categories such as EB-2 and EB-3, should definitely consider EB-5 as their best option.

WHEN IS A GOOD TIME FOR A STUDENT TO APPLY FOR THE EB-5 VISA?

If a first-year student applies in their first or second semester, then they could get a green card by their junior year that would help opening up



opportunities of being able to be hired for their dream summer job. Summer jobs during the junior year typically turn into permanent positions as students get offers at the end of the summer in most cases.

Applying in the sophomore year is also a great option since students in most cases could get their green card before graduation. In their senior year, when applying for a permanent position, letting interviewers know that they have a green card, could be the deciding factor between an offer and a rejection.

The same is true if they apply in their junior year in college. If the conditional green card does not arrive by the time they need to start their new job following graduation, they could always use OPT to fill the gap while waiting for their green card. Employers will be much more receptive to hire them on a permanent basis if they are convinced that the student would be using the OPT as a bridge until labor certification following the initial step of the EB-5 process, that is I-526 approval.

Lastly, seniors could also apply for EB-5 despite being what some may call “late,” since they could add the months of the senior year to the OPT months and there is usually enough time to be able to remain in the United States while the application for the EB-5 is pending.

EB-5 is certainly not for everyone. Students coming from countries that experience retrogression should be thinking twice before getting their parents excited about the prospects of immigration, only to find that they need to wait so long for the green card that it was not really worth the investment of time and money. On the other hand, for citizens of other countries, like India, it might be the only viable option. *



MARKO ISSEVER is CEO of America EB5 Visa whose mission is to connect international investors with EB-5 issuers. He is also a managing director at Riverside Management Group, where he leads the firm's EB-5 capital-related activities via its wholly owned subsidiary, BCW Securities. Previously, Issever was a managing director at BNY Mellon, leading the firm's financial institutions derivative sales business globally. Issever earned his MBA in finance from the Wharton School of University of Pennsylvania. He is also a graduate of Bogazici University and Robert College, located in Istanbul.

Sources

- ¹ <https://www.hccmis.com/blog/study-abroad/4-ways-to-work-in-the-us-with-a-student-visa/>
- ² <https://www.geekwire.com/2016/obama-creating-startup-visas-encourage-foreign-entrepreneurs-start-companies-u-s/>
- ³ <https://www.bloomberg.com/news/articles/2018-10-01/trump-booted-foreign-startup-founders-other-countries-embraced-them>
- ⁴ <https://economictimes.indiatimes.com/nri/visa-and-immigration/uscis-sought-additional-information-for-60-h-1b-applications-last-quarter/articleshow/68163232.cms>
- ⁵ <https://www.voanews.com/a/international-students-can-use-us-investor-visa-to-gain-green-card/4609136.html>
- ⁶ <https://www.theatlantic.com/business/archive/2018/09/stem-majors-jobs/568624/>
- ⁷ <https://www.lccrcapital.com/blog/eb5-best-option-for-studying-in-us/>
- ⁸ <https://www.eb5daily.com/eb5-to-attend-top-us-colleges/>
- ⁹ <https://www.christiantylerproperties.com/en/eb5studentbenefitsblog/>
- ¹⁰ <https://www.eb5insights.com/2018/09/11/maintaining-eligibility-for-permanent-residence-for-eb-5-investors-nonimmigrant-status/>
- ¹¹ <https://www.studyinternational.com/news/eb5-h1b-work-study-visa-us/>
- ¹² <https://www.uscis.gov/working-united-states/temporary-workers/e-2-treaty-investors>
- ¹³ <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html>
- ¹⁴ <http://www.immigrationlawgroup.net/eb-5-direct-investment>
- ¹⁵ <https://www.joorney.com/the-eb-5-business-plan-what-is-matter-of-ho/>
- ¹⁶ <https://behringcompanies.zendesk.com/hc/en-us/articles/360002678414-What-EB-5-Investors-Need-to-Know-About-Retrogression>
- ¹⁷ <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-january-2019.html>