

FOREIGN INVESTOR FAIRNESS PROTECTION ACT

Summary

This bill protects job-creating foreign investors from loss of immigration benefits under the EB-5 Program due to expiration of temporary legislation or from future amendments to statute.

Congress has repeatedly authorized temporary programs, as enhancements to permanent legislation at 8 U.S.C. § 1153(b)(5) and 1186b, to induce foreign investment for the explicit purpose of creating new jobs for American workers. Specifically, through Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended several times¹ and renewed more than twenty times since enactment, Congress provided special rules for foreign investors to qualify for immigration benefits crediting indirect job creation under sponsorship of a regional center.

Relevant agencies have interpreted the expiration of such legislation on previous occasions not only to prevent use of the expired provisions for new investors but also to eliminate the basis for completion of the often lengthy, multi-step immigration process already begun by foreign nationals who invested at risk and made their initial immigrant petition under 8 U.S.C. § 1153(b)(5) before such expiration.

Such result undermines the reliance needed to incentivize future investment and is unfair to investors who relied on temporary legislation in making risky investments to benefit American workers. This bill changes that result by grandfathering for all relevant purposes such investors under the eligibility rules in effect as of the time they file their initial immigrant petition, having already committed their investment.

The multi-step process to obtain conditional permanent residence and then remove conditions from permanent residence also gives rise to potential confusion if Congress otherwise changes the rules of eligibility after the foreign national invests and files the initial immigrant petition. This bill clarifies that in adjudicating initial petitions, adjustments of status, immigrant visa applications, or petitions to remove conditions, the standards that will apply are those in effect at the time the initial immigrant petition was filed.

¹ As amended by Pub. L. 105–119, title I, §116(a), Nov. 26, 1997, 111 Stat. 2467 ; Pub. L. 106–396, §402, Oct. 30, 2000, 114 Stat. 1647 ; Pub. L. 107–273, div. C, title I, §11037(a), Nov. 2, 2002, 116 Stat. 1847 ; Pub. L. 108–156, §4, Dec. 3, 2003, 117 Stat. 1945 ; Pub. L. 111–83, title V, §548, Oct. 28, 2009, 123 Stat. 2177 ; Pub. L. 112–176, §1, Sept. 28, 2012, 126 Stat. 1325.

Text

An Act

To ensure that foreign investors who risk their capital to create jobs for American workers under the EB-5 program, including temporary legislation, be protected from the expiration of any relevant legislation that occurs after they invest.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the “Foreign Investor Fairness Protection Act”

SEC. 2. PROTECTION FROM EXPIRING LEGISLATION

(a) Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) is amended—

(1) By adding after subsection (D) the following:

“(E) Protection from expiration of temporary legislation—Eligibility under subsection (b)(5) made possible through laws and temporary legislation in effect at the time an immigrant files a petition under section 204(a)(1)(H) shall remain governed by such laws and legislation even after their expiration, but without regard to special visa set asides or priority provisions that have expired.

(b) Section 216A(d) of the Immigration and Nationality Act (8 U.S.C. § 1186b(d)(1)) is amended—

(1) By amending subsection (B) to read as follows:

“is otherwise conforming to the requirements of section 203(b)(5) in effect at the time the alien filed the qualifying petition under section 204(a)(1)(H).”

SEC. 3. EFFECTIVE DATE

(a) The amendments made by this Act shall apply to petitions filed before, on, or after the date of the enactment of this Act.