



# MUST INVESTMENTS BE PUT AT RISK TO GET AN INVESTMENT VISA?



Recently, there have been some advertisements or promises a “no-risk” E-2 or EB-5 investment, but they are misleading.

Foreign investors can gain immigration status in the United States with an E-2 temporary nonimmigrant visa and an EB-5 permanent immigrant visa (what is commonly known as a “green card”). However, one of the required elements to get an E-2 investor visa or an EB-5 investor green card is to show that your invested funds are “at risk.”

## WHAT DOES “AT RISK” MEAN?

The common meaning of “at risk” is “the chance that an investment will lose value,” however, immigration laws further define funds “at risk” and tell us more about what it means for immigration purposes.

## HOW IMMIGRATION LAWS DEFINE “AT RISK”

Most E-2 visas are processed at overseas consular posts by officers of the U.S. State Department using a document called the Foreign Affairs Manual (FAM). The FAM states, “The concept of investment connotes the placing of funds or other capital assets at risk, in the commercial sense, in the hope of generating a financial return ... **If the funds are not subject to partial or total loss if business fortunes reverse, then it is not an ‘investment’ for E-2 purposes.**”

And the U.S. Department of Homeland Security’s E-2 regulations say, “An investment is the treaty investor’s placing of capital, including funds and other assets ... **at risk in the commercial sense with the objective of generating a profit... The capital must be subject to partial or total loss if investment fortunes reverse.**”

The EB-5 regulations contain two basic requirements for a legitimate qualifying investment: **a contribution of capital must be unprohibited to qualify as an investment and it must be placed at risk for the purpose of generating a return.**

The EB-5 rules state that the immigrant investor must place the required amount of capital at risk for the purpose of generating a return and is required to invest his or her own capital. “To invest means to contribute capital. A loan from the immigrant investor to the new commercial enterprise does not count as a contribution of capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the immigrant investor and the new commercial enterprise is not a capital investment.

**To qualify as an investment, the immigrant investor must actually place his or her capital at risk. Guaranteed returns are not allowed; for the capital to be at risk there must be a risk of loss and a chance for gain.”**

## CONCLUSION

You must put your investment at risk to qualify for an E-2 visa or an EB-5 visa. The law is clear. Participating in a “no-risk” E-2 or EB-5 scheme could jeopardize both your investment and your immigration status.

**If you have questions regarding your case, we encourage you to contact our office at The Dutta Law Firm at (212) 495-9089.**