

# SHOULD CHINESE INVESTORS STILL APPLY FOR EB-5 WITH A 10-YEAR VISITOR'S VISA AVAILABLE?

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President Obama announced that effective from November 12, 2014 Chinese applicants applying for a business, tourist or student visas to the United States, would now be eligible for 10-year business and tourist visas and 5-year student visas. However, with this news came a flurry of articles and opinions leading to a number of misconceptions, most notably that a 10-year visa is an equivalent of a 10-year green card. This certainly is not true. A business and tourist visa is a non-immigrant visa, with many limitations. The applicant who is granted a 10-year visa is still not allowed to live continuously or work in the U.S.

## Visa Validity is Not Duration of Stay

When a visitor or a student arrives at the port of entry in the United States, he or she is inspected by the US Customs and Border Protection (CBP) officers. The officer asks several questions, such as the purpose of the trip, how long the visitor intends to stay in the US, where the visitor will stay, income and occupation, etc. Once satisfied, the officer will stamp the passport showing the date of arrival in the United States and the "admitted until" date or the date when the authorized period of stay expires.

Here it must be noted, that even if a person has a 10 year visa, this does not mean that 10 years is the permitted duration of stay for the B1/B2 business and tourist visa holder. Instead, the CBP officer will write a date on the stamp signifying the latest date the person is allowed to remain in the US. The duration of stay for business and tourist visas is usually 3 to 6 months, and can even be less. If the applicant wants to extend a stay in the United States, it is advisable to contact a lawyer as additional paperwork will be required. Any default will render the visa holder to a period of unlawful stay.

## Consequences of Overstaying a Visa

Prolonged stay beyond the "admitted until" date will result in unlawful presence. There are significant legal consequences for overstaying a visa. The applicant may face a 3-year or even a 10-year bar from entering the U.S. If a person has accumulated 180 days or more unlawful presence in the U.S. and has then left the country, that person cannot return to the U.S. for 3 years. If the person's unlawful presence is

one year or more and has left the country, the person cannot return to the U.S. for 10 years. It is advised that a visitor contact an experienced attorney, if unsure of the latest date of allowable stay .

Many investors are confused between the nonimmigrant visa validity date (10 years) and the permitted duration the applicant can legally stay in the United States. The visa stamp is just the first step to enter the United States, it does not indicate how long a visitor is allowed to stay in the United States. a visitor can enter the U.S. at any period before the business and tourist visa expires. The applicant would not know how long he or she is permitted to stay on each visit until the CBP officer determines the duration period at the port of entry. the CBP officer retains the power to refuse entry to the visitor, even if the visitor holds a 10 year visa.

#### Limited Rights as a Visitor to the U.S.

The applicant who is granted a 10-year business visa would still be treated under the law as a foreign visitor. The rights or benefits of a permanent resident are not conferred to the visitor. The visitor's children and a student visa holder would still be treated as "international students" who cannot benefit from the local resident tuition rate in public schools. The visitor would not be entitled to medical benefits under the Obama Healthcare program.

#### The Necessity of EB-5 Visas

The applicant with a business and tourist visa is not allowed to work in the United States. With the cap on H1B applicants, obtaining desirable employment for college graduates would be a challenge. EB-5 investment is still the fastest way for Chinese applicants to obtain the U.S. permanent residence and be able to live and work in the US.

The 10-year business visa and the 5-year student visa certainly helps to alleviate issues arising from the prolonged processing time for EB-5 cases. For example, before the 10-year business visa became available, if an EB-5 investor had filed the I-526 petition, he or she would be assumed to have the immigrant intent when applying for the non-immigrant visa. Now it is advised that investors obtain a long-term 10-year business visa which will enable them to travel to the U.S. as they choose, without risking a visa denial. However, the 10-year visa does not enable to live in the U.S. for 10 years continuously.

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Mona has over 17 years of legal experience, with more than 13 years concentrated in U.S. immigration and family law and litigation. Mona's extensive knowledge of all facets of U.S. immigration law, and her practical expertise ranges from specialist business petitions to complicated, multi-issue deportation and removal litigation. Her firm, Mona Shah and Associates, represents individual, high profile and corporate clients from all over the world.

Mona is highly proficient and experienced in EB-5 law and practice, and is the author of a published book for investors on the EB-5 laws and procedures (EB5 for the Chinese Investor, available on Amazon). The second updated edition is scheduled to be published shortly. Mona is voted Top 25 EB-5 Attorneys by eb5investors.com and Top 10 EB-5 Attorneys by eb5info.com. She is also an adjunct professor at the Zicklin School of Business at Baruch University.

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Yi Song, Esq. is an attorney at Mona Shah & Associates in New York City. She is also licensed to practice law in People's Republic of China. Before joining Mona Shah & Associates, she worked at a securities litigation firm in Manhattan. She clerked at China's high court – the Supreme Court of People's Republic of China. At Mona Shah & Associates, Yi practices EB-5 law and securities law and works on many successful EB-5 capital raising projects. She obtained her LL.B. degree from Beijing Foreign Studies University and she is a graduate from Georgetown University Law Center in Washington, DC. Her articles on EB-5 and securities law are published by LexisNexis, AILA, eb5info.com, ILW. Yi is a native speaker of mandarin Chinese. She speaks fluent English and basic French.

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