

Non-EB-5 Sources of Capital Invested in NCE



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“.....The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur even though there are several owners of the enterprise, including persons who are not seeking classification under section 203(b)(5) of the Act and non-natural persons, both foreign and domestic, *provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means.*” 8 CFR 204.6(g)(1) (emphasis added).

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- ❑ **Standalone context:** A petitioner in a standalone case must demonstrate the lawful source of funds for all non-EB5 capital that is invested in the NCE.
- ❑ **Regional-Center context:** A petitioner in a regional center case must demonstrate the lawful source of funds for all non-EB5 capital that is invested in the NCE. If the non-EB5 capital is invested in the JCE and not the NCE, then 204.6(g)(1) does not apply.
 - In some cases, the NCE and the JCE are the same entity. If the NCE and the JCE are the same entity, then the petitioner must demonstrate the lawful source of funds for non-EB5 investments into the NCE/JCE.

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- ❑ General considerations for both standalone and regional center cases:
 - 204.6(g)(1) only applies to investments made by owners of the enterprise, because 204.6(g)(1) states “. . . provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means” (emphasis added).
 - Note the language in the regulation, “. . .and non-natural persons, both foreign and domestic. . .”

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- ❑ Example: A petitioner is investing \$500k in a standalone NCE that is operating a restaurant. The petitioner claims that a non-EB-5 investor is investing \$200k for 50% of the shares in the NCE. Although the partner is not seeking EB-5 classification, the petitioner is still required to provide evidence to demonstrate the lawful source of the partner's \$200k investment.

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- ❑ Example: A petitioner is investing \$500K in a regional center NCE that is a limited partnership. The NCE is pooling funds from 10 EB-5 investors who will be limited partners in exchange for their investment. The general partner of the NCE, who is not an EB-5 investor, has also invested in the NCE. The petitioner must provide evidence to demonstrate that capital invested by the general partner has been derived by lawful means.