



A Layman's Guide to the INVEST Visa:

Subtitle H of the Border Security, Economic Opportunity, and Immigration Modernization Act, creates an INVEST visa under which entrepreneurs can start companies here in the U.S. Subtitle H Section 4801 describes rules for nonimmigrant INVEST visas; Section 4802 lays out the parameters for immigrant INVEST visas. What follows below is a layman's guide to the criteria around both types of INVEST visas.

First, a basic point: the nonimmigrant visas are for entrepreneurs who are either already here (for example on an H-1B or an F visa) or want to come here from abroad; the second part of Subtitle H dealing with immigrant visas is the section for those who want to convert to stay here permanently.

Nonimmigrant INVEST Visa:

An entrepreneur can petition for a nonimmigrant INVEST visa if:

- During the previous 3 years the entrepreneur meets 1 of 2 criteria:
 - He/she has received an investment into their business of \$100k from a qualified VC, a qualified super angel, a qualified community development financial institution, a qualified startup accelerator or other set of investors as determined by the Secretary of Homeland Security or any combination of the listed entities or investors; OR
 - The business entity has created at least 3 qualified jobs and during the previous 2 years generated at least \$250k in annual revenue.
- The INVEST Visa authorizes status for 3 years;
- Can be renewed for another 3 years if:
 - The entrepreneur's business entity has created at least 3 qualified jobs AND has received a qualified investment from a QVC (or others on the list as noted above) of at least **\$250k****; OR
 - The entrepreneur's business has created at least 3 qualified jobs AND during the prior 2 years generated at least \$200k in annual revenue.
- The renewal requirements can be waived if the Secretary of HS determines that the entrepreneur has made substantial progress in meeting the criteria and such renewal is in the economic interests of the US.

**** Technical Note:** The bill language is not clear as to whether this would be \$250k in ADDITIONAL investment or whether the \$250k would be TOTAL investment, i.e. counting the original \$100k raised. The \$250k again can be from a combination of any of the qualified entities or investors.

IMMIGRANT INVEST Visa:

There are 10,000 INVEST Immigrant visas available each fiscal year.

An entrepreneur can petition for an INVEST Immigrant Visa if the entrepreneur meets certain eligibility requirements. The eligibility requirements can be met in 2 ways:

Path 1:

- The entrepreneur meets the definition of a qualified entrepreneur.
- The entrepreneur has had valid nonimmigrant status for at least 2 years prior to the petition to convert to immigrant status;
- During the 3 year period prior to the petition the entrepreneur:
 - Has significant ownership interest in a US entity that has created at least 5 jobs; AND
 - The entity has received investment of at least \$500k from any combination of of the listed investors – Qualified VC, etc. OR
 - Has significant ownership interest in a US entity that has created at least 5 qualified jobs; AND
 - During the previous 2 years the entity has generated annual revenue of at least \$750k.

Path 2:

An entrepreneur can meet the qualifications if:

- The entrepreneur meets the definition of a qualified entrepreneur.
- The entrepreneur has had valid nonimmigrant status for at least 3 years;
- The entrepreneur holds an advanced degree in a field of science, technology, engineering or math; AND.
- During the 3 years prior to the petition:
 - Has significant ownership interest in an business entity that has created at least 4 jobs; AND
 - The entity has received a qualified investment (from QVC or list) of at least \$500k; OR
 - The entrepreneur has significant ownership interest in an entity and has created 3 qualified jobs; AND
 - The entity has annual revenue of at least \$500k over the last 2 years.

Definitions: Some of the important definitions in this section are as follows:

Qualified Entrepreneur:

The term qualified entrepreneur means an individual who:

- Has a significant ownership interest (which does not have to be a majority interest) in a U.S. business entity;
- Is employed in a senior executive position of such U.S. entity;
- Submits a business plan to U.S. Citizenship and Immigration Services; and
- Had a substantial role in the founding or early-stage growth and development of such U.S. business entity.

Qualified Job:

The jobs created by the entrepreneur to fulfill the INVEST visa qualifications must be “qualified jobs.” The bill defines qualified jobs as a full time position with the entrepreneur’s business entity that:

- Is located in the U.S.
- Has been filled by an individual who is not the entrepreneur, or the spouse, son or daughter or the entrepreneur (for at least 2 years); and
- Pays a wage that is not less than 250 percent ** of the Federal minimum wage.

**** Technical Note:** A rough, back-of-the-envelope calculation means that the job created would have to pay roughly \$37,710.40 per year. This is based on 250% of a minimum wage of \$7.25, with 2080 hours worked (which is generally the number of full-time hours.)

Qualified Venture Capitalist

The term ‘qualified venture capitalist’ means an entity—

- that—
 - is a venture capital operating company, as defined in section 2510.3-110(d) of title 29, Code of Federal Regulations (or any successor thereto); or
 - has management rights, as defined in, and to the extent required by, such section 2510.3-110 (d) (or successor thereto), in its portfolio companies;
(Technical note: This means it would be only those management rights required of a VCOC if it had been able to qualify as a VCOC.)
- that has capital commitments of not less than \$10,000,000; and
- for which the investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2),—
 - has its primary office location in the United States;
 - is owned, directly or indirectly, by individuals, the majority of whom are citizens of the United States or aliens lawfully admitted for permanent residence in the United States;
 - has been advising such entity or other similar funds or entities for at least 2 years; and
 - has advised such entity or a similar fund or entity with respect to at least 2 investments of not less than \$500,000 made by such entity or similar fund or entity during each of the most recent 2 years.

Qualified Startup Accelerator

The term ‘qualified startup accelerator’ means a corporation, company, association, firm, partnership, society, or joint stock company that:

- Is organized under the laws of the U.S. or any State, and conducts business in the U.S.
- In the ordinary course of business, provides a program of training, mentorship, and logistical support to assist entrepreneurs in growing their businesses;
- Is managed by individuals, the majority of whom are US citizens or permanent residents;
- (a) Regularly acquires an equity interest in companies that participate in its programs, where the majority of the capital so invested is committed from individuals who are US citizens or permanent residents, or from entities organized under the laws of the U.S. or any State; OR
- (b) Is an entity that has received not less than \$250,000 in funding from a qualified government entity or entities during the previous 5 years, and regularly makes grants to companies that participate in its programs;

- During the previous 5 years, has acquired an equity interest in, or, in the case of an entity described above in point (b) regularly made grants to, not fewer than 10 US business entities that have participated in its programs and that have:
 - Each secured at least \$100k in initial investments; OR
 - During any 2 year period following the date of such acquisition, generated not less than \$500k in aggregate annual revenue within the U.S.

Qualified Super Angel

The term 'qualified super angel' means an individual or organized group of individuals investing directly or through a legal entity:

- Each of whom is an accredited investor investing the funds owned by the individual or organized group into a qualified entrepreneur's US business entity
 - Accredited investor is used as defined in section 230.501a of title 17 CFR or any successor regulation
- (a) if an individual, is a US citizen or permanent resident
- (b) if a group then the majority of individuals in the group must be US citizens or permanent residents; and
- Each of whom in the previous 3 years has made qualified investments not less than \$50k in US business entities that are less than 5 years old.