

Citizenship Requirements for Business Acquisitions

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"May Qualify for Visa" is a label occasionally utilized for businesses actively listed for sale. The intent of this label is to attract foreign buyers that seek conditional authorization granted by the United States through the issuance of a visa, which allows the buyer to enter, leave and/or remain within the US for a specified period of time. The following information helps navigate what a potential buyer or seller may or may not be able to do.

SBA financing is available to businesses that are a majority owned (51%) by US citizens and/or Lawful Permanent Residents (LPR). LPR is provided to people who may live and work in the US for life unless their status is revoked. The US Citizenship and Immigration Services (USCIS) Form I-551, LPR card, commonly referred to as the "Green Card," is evidence of LPR Status.

Since 1997, USCIS has issued the I-551 or LPR Card with a 10-year validity, at which time it expires and must be renewed. The expiration of the I-551 does not affect the LPR status of the immigrant. However, an expired I-551 does not make your buyer ineligible for SBA financing.

New immigrants to the US may also be eligible for SBA financing prior to obtaining a LPR (I-551). It can take up to one year for a newly arrived immigrant to receive a I-551; new immigrants are issued an immigrant visa with a Customs Border Protection (CBP) Stamp evidencing their lawful permanent residence. The visa with CBP stamp evidences LPR Status, so long as the visa is not expired.

SBA financing may also be available to non-citizens and non-LPRs provided the business meets additional eligibility requirements established by the SBA. The paramount question remains whether SBA financing can be used to facilitate a business acquisition for foreign buyers (non-citizens or non-LPRs) interested in purchasing a business to obtain a visa.

In order for a non-citizen or non-LPR to be eligible for SBA financing, the applicant must have managed the operations of the business for one year prior to the date of the SBA application. This requirement precludes SBA financing for start-ups, which includes business acquisitions, if the businesses will be majority owned (51%) by non-citizens or non-LPRs.

A potential solution for a non-citizen interested in utilizing SBA financing for a business acquisition would be partnering with a US citizen or LPR who will be a majority owner of the business (at least 51%). Partnering with a current non-owner manager or key employee of the business to be acquired would be ideal as this partner would be familiar with the operations of the business. To potentially meet the "substantial investment" requirement for certain visas, it may be in the best interest of the non-citizen minority owner applicant to provide all of the required equity injection for the SBA business acquisition loan.

SBA financing of business acquisitions for non-citizens is indeed possible with the proper structuring of the ownership of the business. SBA loans can be dually advantageous to your buyer as the non-citizen applicant may be able to obtain the desired visa and benefit from the minimal equity injection requirements for business acquisition loans.



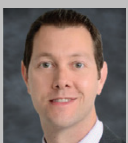
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