BUSINESS MIGRATION TO THE U.S.A.

Foreign national business persons and companies may enter the United States either on a temporary (non-immigrant) or permanent immigrant basis.

Non-immigrant visas are available for those individuals or corporation who intend to stay for a temporary fixed period of time in the U.S. and then return to their home countries. Immigrant visas are for those individuals or foreign nationals who intend to stay permanently in the U.S. without time limitation with the basis on what is formally known as the Green Card or Permanent Residency.

Non-Immigrant Visas

There are a number of non-immigrant visas available to the foreign nationals to enter the U.S. Briefly, they include the following:

1. Business Visitor Visa:
   a. Foreign national may obtain a B1 Business Visitor Visa or if they are part of the Visa Waiver Program without a B1 Visa stamp in their passport, they may enter the U.S., attend business meetings, board of director meetings, and conduct permissible business activities with clients and/or customers (e.g. meeting clients at trade shows in the U.S.). The B1 Visa does not allow the foreign national to conduct employment activities in the U.S.

2. The Intra-Company Transferee Visa (L1 Visa):
   a. Multinational corporations may set up U.S. operations. The U.S. operation may be a new office set up or merger acquisition of an existing U.S. business. The U.S. business may request the transfer from the foreign business operation of executors, managers, or individuals with specialized knowledge. The total length of temporary stay for an L1 Visa holder will be up to seven years.

3. Treaty Investor and Treaty Trader Visas
   a. Foreign nationals who are citizens of countries that have an international treaty with the U.S. may take advantage of the E1 or E2 Visas to enter the U.S. Please find attached a list of E1 and E2 treaty countries.

   b. The E2 Visa refers to the foreign national investor who makes a substantial investment in a new or existing U.S. business. There is no immigration rule which states a minimum USD dollar amount. However, the substantial investment may be calculated by answering the question of what dollar amount it would take to set up a new U.S. business or to acquire an existing U.S. business. Substantial investments have been as low as $40,000-50,000. However, we believe the higher the amount of personal investment from the foreign national will be more favorable for the investor to obtain the E2 Visa. The E2 Visa is granted initially for a 2-5 year period with no limitation on extensions or stay. The U.S. business
has to be an active business. The spouses of the E2 Visa holders may obtain employment authorization in the U.S.

c. E1 Visa refers to foreign national persons or businesses involved in trade in goods and services between the U.S. and the foreign national’s country. That is, the majority of the trade must be between those two countries. The U.S. business has to be involved in continuous trade. This means that several transactions regularly during the year are more approvable than one or two transactions during the year. The U.S. business may petition for executives, managers, or persons with specialized knowledge to be employed by the U.S. operation.

The E1 or E2 employees have to be of the same nationality as the treaty country. However, the spouses and minor children do not.

4. The foreign national professional H1B Visa
   a. The U.S. business or corporation may petition a request for a foreign national professional to be employed for a temporary basis. The temporary period is up to six years. The foreign national professional needs to possess, as a minimum, a U.S. Bachelors degree or the equivalent of a U.S. Bachelors degree. The job offered has to require a minimum of a Bachelors degree and the requirement has to realistically relate to the actual business activities of the U.S. operation. The equivalency of a U.S. Bachelors degree will take into account the foreign national’s foreign education or related work experience. Spouses and minor children may accompany the foreign national professional to the U.S.

5. The Extra-ordinary Ability Foreign National: O-1 Visa
   a. A foreign national who may have extra-ordinary abilities may obtain an O-1 Visa to enter the U.S. A U.S. corporation may petition for a foreign national to be employed for a temporary period of time under the O-1 Visa. The requirements in determining whether the foreign national has extra-ordinary ability take a deal of time and require a strict analysis and supply of relevant and supporting documentation.

Immigrant Visas

There are a number of ways or processes that the foreign national business person may obtain a Green Card, permanent residency, or immigrant visa to be able to enter the U.S. and live or work permanently in the U.S. The following categories relate to the foreign national person and act as a foundation for pursuing U.S. permanent residency.

1. Employment Based Category One
   a. Extra-ordinary Ability of a Foreign National
      i. Similar, but not quite the same as the O-1 Visa referred to above. The foreign national business person may have extra-ordinary abilities and on this basis may self-petition for approval of an immigrant visa to the U.S.
The self-petition means there is no need to have a U.S. employer or company petitioning for their U.S. status.

b. Researchers and Professors
   i. Foreign national researchers and professionals who have national or international acclaim may obtain an immigrant visa. The U.S. research company or university may request the foreign national to be employed as an immigrant employee.

c. Multinational Corporation
   i. The foreign national executive or manager may obtain an immigrant visa at the request of the U.S. business operation. This category is very similar to the L-1 Intra-Company Transferee requirements as stated above. The difference is that the U.S. operation must be existing and in business operations for a minimum of one year.

2. Employment Based Category Two

   a. Foreign Nationals who have advanced degrees (Masters or Doctors Degree) may be petitioned by a U.S. employer to obtain an immigrant status. In certain circumstances, the foreign national with a Bachelors degree plus five years of related experience may come under this category.

   b. National Interest Waiver
      i. Foreign nationals who have the education and/or experience may be petitioned for by U.S. corporations in those circumstances where it would be in the national interest of the U.S. for these foreign nationals to obtain employment in the U.S. The requirements for the National Interest Waiver include the following:
         1. Employment in an area of substantial intrinsic merit
         2. Benefit of the employment will be national in scope

3. Employment Based Category Five

   a. The foreign national investor who invests their personal funds in their own U.S. business operations or in a designated United States Citizenship and Immigration Service (USCIS) Regional Center may obtain an immigrant visa. The immigrant visa is issued for an initial period of two years, known as Conditional Permanent Residency. At the end of the two year period, the foreign national investor has to file a petition with the USCIS to remove the conditions in order to obtain a full unconditional immigrant status.

   b. The amount of investment depends on the location of the U.S. business operations or regional center. Certain geographical locations known as TEA (Targeted Employment Areas) refer to areas of high unemployment. In these areas the foreign national investor must invest a minimum of USD $500,000. Otherwise, the foreign national investor will have to invest a minimum of USD $1 million in
geographical areas not designated as TEA’s. The foreign national investor will have to show their lawful and authentic source of personal funds which they are investing the U.S. operations.

c. In regard to the foreign national investor investing in their own U.S. operations the operation will usually have to be a new U.S. company or set up. The U.S. operations will have to be involved in active, not passive, business operations. For instance, passive activities will involve the foreign national investor investing in land or buildings only. An active business operation will involve the foreign national investor investing in land and buildings as well as the development, construction, and sale or lease of the buildings which may be residential or commercial. A major requirement of the foreign national investor investing in their own U.S. operation will be the need to directly hire ten U.S. workers on a full-time basis during their Conditional Permanent Residency two year period. Hence, the foreign national investor, after the two year period, will file a petition to remove the conditional status and showing how the personal funds have been invested and committed to the U.S. operation and showing proof of the direct hiring of ten U.S. workers on a full-time basis.

d. In regard to the foreign national investor who will be investing their own personal funds in a Regional Center, the following needs to be noted. The USCIS has designated certain corporations as Regional Centers. The Regional Centers are not usually operated by a U.S. government agency and are not exclusive to a geographical location. That is, a private U.S. corporation may apply for designation as a Regional Center. For instance, the private corporation may be a U.S. developer of residential and/or commercial properties. These corporations will prepare an application showing how their operations will accumulate foreign national investment dollars which will support their real estate projects and as a result, there will be a hiring of U.S. workers.

An example of a Regional Center project may be that the U.S. Corporation, which is a Regional Center, forms a limited partnership. The Regional Center will also have a general partnership set up which will include the managers of a particular project. The project may require an investment contribution of USD $20 million. If the Regional Center is in a Targeted Employment Area, then the number of foreign national investors required for this project will be forty. The foreign national investors will transfer their funds to an escrow or trust account of the Regional Center. The immigrant petition will be filed with the USCIS with supporting documentation showing the lawful source of investment funds and the details of the project. Once the immigrant petition is approved, then usually the Regional Center will invest the foreign national’s funds in the limited partnership. The limited partnership will use the investment funds for the financial support of the particular project. The foreign national investor will pursue the obtaining of the Conditional Permanent Residency through a U.S. Consulate or if they are in the U.S. through the USCIS.
At the end of the two year period of CPR, the foreign national investor will have to file another petition with the USCIS to obtain full immigrant status. Again, the foreign national investor must show how the investment dollars have been committed to the project and show the hiring of ten U.S. workers.

Under the Regional Center Program, one may show the hiring of ten U.S. full-time workers either directly and/or indirectly. Each Regional Center should have an economic analysis completed showing how the ten full-time workers have been hired directly and indirectly.

Please note the foreign national investor, spouse and minor children all obtain the immigrant status together.

Once the project has been completed and all the foreign nationals who invested in the project have obtained permanent residency, they may pursue an exit strategy from the project. Every Regional Center has an exit strategy procedure. As an example, the foreign national investor may sell their part of the limited partnership back to the Regional Center and may obtain a USD dollar amount for their sale. Depending on the circumstances, it may be USD $500,000 or USD $1 million. The exit strategy is a discussion point between the foreign national investor and the Regional Center.

The EB5 Category is an area of U.S. Immigration procedure that is complicated and currently involving many misrepresentations by inexperienced proponents of the program. It is strongly advised that if a foreign national investor is seeking to pursue the EB5 approach, that they obtain competent and experienced representation without question.

4. Family Migration
   a. Non-Immigrant Process
      i. Family member (spouse and minor children under 21 years of age) of the Foreign National who has obtained a primary non-immigrant visa may obtain an accompanying family member visa (for instance, H-4 for H-1B; E-2 and E-1 for E-2 and E-1; E-3 for E-3; L-2 for L-1).

      Family members usually apply for their accompanying visas at the same time or concurrently with the foreign national’s application for a primary Non-Immigrant Visa. The issuance of the Non-Immigrant Visas for the primary foreign national, spouse and minor children usually occur at the same time.

   b. Immigration Process
      i. The foreign national has filed their Immigrant Petition or a U.S. employer has filed its Immigrant Petition for the foreign national to become an
immigrant employee, the spouse and minor children can also apply for an Immigrant status.

The foreign national who is the beneficiary of an Immigrant Petition I-140, except I-526, may also at the same time or concurrently file their Application for Permanent Residency, and the spouse and minor children (under 21 years of age) may also file their individual Applications for Permanent Residency. In addition to the Application for Permanent Residency being filed, the Foreign Nationals may also file their Applications for Employment Authorization and permission to travel and return to the U.S.

In regard to employment based categories, most Applications for immigrant status are decided by USCIS without the need for an in-person adjustment interview in order to obtain immigrant status.

c. Family migration based upon foreign nationals being related to U.S. citizens of U.S. Permanent Residents. The foreign national business person as stated above may pursue a number of approaches to either obtain immigrant or non-immigrant status in the U.S. Before they pursue the above approaches, they may obtain an immigrant status through the U.S. through a family relationship. For instance, the foreign national may be married to a U.S. citizen, may be a child of a U.S. citizen parent, or may be a parent of a U.S. citizen child. On this basis it may be quicker to obtain immigrant status through a family relationship than to pursue one of the above business relations.

Conclusion

Effective, efficient and expedited business migration to the U.S. will be achieved only through experienced, competent, and professional legal representation. The legal representative will be the director of a team of professionals which may include certified accountants, security lawyers, corporate lawyers, economists, business planners and other related professionals.

The economic reality of today’s world sometimes does not equate to the current U.S. immigration policy of allowing the business migrant to enter the U.S either on a temporary or permanent basis.

The last word is with our help, we will see you in the U.S.

Document prepared by:
Edward C. Beshara and Sal Picataggio