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bitspiration

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US Immigration Law for Tech Companies and Founders

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Agenda

1. *Immigration Law Overview*
2. *B-1 Visa*
3. *H-1b*
4. *E-1*
5. *E-2*
6. *L-1/L-2*
7. *E-1*
8. *Eb-5*
9. *Q&A*

Sources of Law

- Immigration and Naturalization Act

Government Agencies

- Department of State (DOS)
- US Citizenship and Immigration Services (USCIS)
- Immigration and Customs Enforcement (ICE)
- Customs and Border Patrol (CBP)

Non-Immigrant Visa

- H-1 B
- E-1/E-2
- O-1
- L-1A/L-1B

Immigrant Visas

- Eb-1
- Eb-2 and E-3
- Eb-5

B-1 Business Visa

B-1 Visa

- Temporary visitor for business.
- May engage in specified commercial, professional or business activities that do not involve gainful employment in the US.
- **Examples:** negotiations, litigation, consultations, participate in conventions, incubator, seminar etc.
- Department of State original jurisdiction. Limited Time.
- ***Cannot work for hire. Non-stop violated by foreign founders and can lead to serious sanctions, including ban to enter US.***

H-1B Visa

Specialty occupation

- Bachelor's degree in a specific field for entry into the occupation. Foreign national must be qualified to perform services in the “***specialty occupation***”.

Annual quota

- 65,000 plus additional 20,000 for foreign nationals with U.S. master's degrees.

Prevailing Wage & DOL Authorization

- H-1B workers have to be paid the ***prevailing wage*** for the occupation in the area of employment, or the actual wage paid by the employer to U.S. workers in the same occupation, whichever is higher.
- ***Employers file attestations*** regarding the wage and conditions of employment with the Department of Labor (Labor Conditions Application).

Maximum length:

- ***6 years*** (after six years as an H-1B worker in the U.S., a foreign national has to spend at least one full year abroad), exceptions for founder in the process of obtaining permanent residence based on their employment.

Spouse

- Cannot work in the US.

E-1 Trader Visa

Treaty of Friendship Commerce and Navigation or a ***Bilateral Investment Treaty***

- Underutilized by service IT/internet service industry

➤ Treaty Trader Requirements:

International Trade

- The activities must constitute “international trade” – commercial exchange of ***goods*** or ***services*** in the international marketplace.
 - ✓ Service: IT/software service between Poland and USA
 - ✓ Evidence: Invoice, contracts, bill of lading

Substantial

- Such trade must be "substantial"- continuous, flow of items of international trade between the U.S. and the treaty country, i.e. numerous transactions. ***No minimum for value or volume. No bright line rule.***

Treaty Country Trade

- Such trade must be principally between the U.S. and the treaty country. ***Minimum 51%*** of the trade between US and country.

E-2 Treaty Investor Visa

Bona fide commercial enterprise

- bank accounts, real estate investments, stocks do not qualify

Investment

- The investor must demonstrate that he has ***control of the funds***; the funds are placed “***at risk***” (i.e. subject to full or partial loss if the investment fails); and that they are ***irrevocably committed*** (except that a contract may be conditioned upon the issuance of the visa).
- The investment must be ***substantial*** in relation to the total cost of the enterprise and sufficient to ***ensure the investor’s commitment*** and to support the ***likelihood of the enterprise’s success. Reverse sliding scale to measure.***
- The investment must generate more income than just to provide a minimal living to the investor and family (***not marginal***).
- The investor must prove that he/she will develop and direct the enterprise (must have at least ***50% ownership or operational control***).

Type of Employee

- The employee is employed in a ***supervisory or executive capacity***, or the employee's services are ***“essential” to the efficient operation of the US enterprise***

Company and Employee Relationship

- Both the company and the individual coming to the US are nationals of the same treaty country.
- Nationality of a corporate trader or investor is “traced” to ultimate owners.

Length of stay

- Can be renewed unlimited times and but have to have intent do depart.

Spouses

- Eligible to apply for an “open market” employment authorization in the US.

O-1 Visa for Extraordinary Ability in Science and Business

- A level of ***expertise demonstrating*** that the person is one of the small percentage who have arisen to the very top of their field of endeavor

Major award or one of three criteria below.

Criteria

- receipt of lesser prizes or awards;
- membership in associations in the field which require outstanding achievements of their members;
- published material in professional or major trade publications or major media about founder;
- participation as a judge of the work of others original scientific, scholarly, or business-related contributions of major significance in the field;
- employment in a critical or essential capacity for organizations and establishments
- that have a distinguished reputation;
- authorship of scholarly articles in the field; or
- high salary or remuneration.

Initial admission

- Three years extended in one year renewals.

L-1A/L-1B Visas - Intracompany Transferees

Intracompany

The U.S. entity and the foreign entity where the foreign national is currently employed must be related in one of the following ways:

- Branches of the same organization;
- Parent/subsidiary
- Affiliates

Employment

- The foreign national must have been employed by the foreign entity for at least ***one year within the three*** years preceding the application.
- Must be:
 - ✓ Executive;
 - ✓ Managerial
 - ✓ “Specialized knowledge” – special knowledge of the organization’s product, equipment, techniques.
- The proposed position in the U.S. must also be executive or managerial (**L-1A**) or “specialized knowledge” (**L-1B**).

Maximum length of stay:

- L-1A – 7 years; L-1B – 5 years

Spouses:

- Eligible to apply for an “open market” employment authorization in the U.S.

Eb-1

Who?

- ***Aliens with extraordinary ability***
 - ***sustained national or international acclaim*** - level of expertise indicating that the individual is one of ***that small percentage who have risen to the very top of their field of endeavor***.
 - No job offer requirement
 - One-time achievement (i.e. a major award) or satisfying at least three out of ten alternative criteria listed under O-1 criteria
- ***Multinational Executives or Managers***
 - Multinational entity relationship.
 - Managerial or executive capacity for at least one year within the three years preceding the application.
 - U.S. employment (1) U.S. position must be managerial or executive; (2) U.S. company must be in existence for at least one year.

Labor Certification (PERM)

- Obtain certificate from DOL there is no US worker for the job.

Schedule A

- DOL has specified there is a shortage of special qualified workers, including ***scientists of extraordinary skills*** (Group II).

Permanent residency

- Permanent residence based on investments in the U.S., which create jobs

Invested capital

- \$1,000,000; or
- \$500K for investments in targeted employment areas i.e. : (1) rural areas and (2) areas with high unemployment rates.

Example: 10 Chinese investors financing each \$50 G. Green cards for investors and family.

Jobs

- investment must create at least ten jobs for U.S. workers.

Conditional residency

- Conditional residence for two years.
- When applying for removal of conditions, the applicant will have to prove that the enterprise was created, the investment requirement has been substantially met, and that ten jobs have been created or are expected to be created within a reasonable time.

Q&A

➤ **THANK YOU!**