



GOSS ASSOCIATES

IMMIGRATION LAW



Visa Lifecycle & Your 3-7 Year Strategy



Commonly used non-immigrant visa categories



Employment Based Immigrant Visa System



Self-Sponsored Immigrant Visas



Wrap-up, Q&A

CONTENTS

Current US Immigration System: The Parallel Track

Non-Immigrant & Immigrant Visa System

- ▶ NIV: Temporary visit for a specific purpose and limited period vs. permanent residence
- ▶ IV: Legal Permanent Residence (LPR/Green Card)
 - Travelling Overseas: Immigrant presumption
 - Requirement to prove lack of immigrant intent
- Think ahead: Visa Life-Cycle 12-18 months or 7-10 years (It's complicated)

Work Authorization

- ▶ No clear definition of work in statutes or regulations
- ▶ FSLA states: Time spent “in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business”
- ▶ *The term employee means an individual who provides services or labor for an employer for wages or other remuneration." 8 CFR 274a.1(f).*

Planning v. Operating

- ▶ Mere Ownership of a Business ≠ Employment
Matter of Bhakta
- ▶ Running a Business = Employment
Matter of Wettasingh “assistance”

NON-IMMIGRANT VS. IMMIGRANT VISAS



Temporary visit for
a specific purpose
and limited period
vs. permanent
residence



Immigrant
presumption

Requirement to prove lack
of immigrant intent



Think ahead: Plan
your non-immigrant
and immigrant visa
options 3-7 years in
advance

IS WORK AUTHORIZATION NECESSARY?

SETTING UP A BUSINESS VS. OPERATING A BUSINESS

- Permitted to study entrepreneurship, conduct research, plan launch
- May register business under your name
- May not develop products/services without work authorization

PASSIVE VS. ACTIVE INCOME

- Cannot be “actively” involved in making money while in U.S. in student status without authorization (CPT, OPT, academic training)
- Passive income is allowed (dividends, interest, capital gains, etc.)

DIFFERENT TYPES OF SELF-EMPLOYMENT

- Owner of incorporated company (act of registering company with state corporation commission makes the company its own entity)
- Sole proprietorship

More on Volunteering

- ▶ Department of Labor Definition: A service for civic, charitable, or humanitarian reasons where no individual receives anything in return for the service provided (e.g. mosque, church, synagogue, temple; homeless shelter; etc.)
- ▶ Cannot volunteer for an activity involving tasks others are paid to do.

Maintenance of Status (Unauthorized Work)

Draft Policy Memo:

Accrual of Unlawful Presence and F, J, and M Nonimm. (PM-602-1060) to take effect August 9, 2018

Redefinition of Duration of Status (D/S)

Goes into effect August 9, 2018, begins accruing unlawful presence “the day after the . . . nonimmigrant no longer pursues the course of study or the authorized activity, or the **day after he or she engages in an unauthorized activity.**” (emphasis added)

Draft Policy Memo: *Accrual of Unlawful Presence and F, J, and M Nonimm.* (PM-602-1060, May 10, 2018)

F-1 OPT /STEM as a BRIDGE

Regular OPT (12 months)

- Pre- or post- graduation
- Employment in field
- Can be self-employed
- No salary requirement

STEM OPT (+24 months)

- Training plan requirement
- Employer-employee relationship
- Document Control

COMMONLY USED NON-IMMIGRANT VISA CATEGORIES (POST-OPT)

H-1B Specialty Occupations

- E-3 Australians, H1-B1 Chileans & Singaporeans
- Similar Issue with NAFTA (Canada & Mexico)

E-1/E-2 Treaty Traders or Investors

O-1 Extraordinary Ability in Arts, Sciences, Business

L-1 Intra-company Transferees

H-1B SPECIALTY OCCUPATIONS

- Quota Limits
- Is the company a going concern?
- Who is doing the photocopying?
- Requires employer-employee relationship
- Incubator Space - Sufficient?

CREATIVE IDEAS – QUOTA EXCEPTIONS

1. Concurrent H-1b

- H-1Bs filed by CAP-Exempt entity AND private company

2. “Employed at qualifying institution”

- Seat at innovation/entrepreneurship center at university
- Working with profession in his/her office/laboratory
- Activities must further mission & objectives of CAP-exempt entity
- Issues: Time spent at qualifying institution, nature of activities, possibility of audit.

L-1 INTRA-COMPANY TRANSFEREES

The Basics

- **Common ownership of the U.S. company and the foreign affiliated company (FAC)**
- **1 year of employment with FAC within last 3 years**
- **L-1A Executive or Manager (7 year max)**
- **L-1B Specialized Knowledge (5 year max) – difficult!**
- **No prevailing wage requirement, non-US employee OK**
- **New office L**

O-1: Extraordinary Ability

- ▶ Employer-Employee Relationship not Required
 - ▶ Self-Employment not allowed

Must meet 3 out of delineated criteria

Awards

Memberships

Media

Publication

Original Achievements

Review Work

Catch-all

NON- IMMIGRANT INVESTOR VISAS CONTINUED

E-2 Treaty Investor Visa

- Investor must have same nationality as investing company
 - Company nationality and 50% ownership rule
- Employer in possession/control of investment
- Investment *at risk* (prospective plans insufficient)
- Investment more than *marginal*
 - Not just supporting investor and family
 - Creating job opportunities for US workers
- Position/Duties of investor are important

IN BRIEF – TN, E-3, AND H-1B1 VISA OPTIONS

- ▶ **TN – For Mexican and Canadian nationals only**
- ▶ **E-3 – For Australian nationals only**
- ▶ **Spouses can apply for work authorization**
- ▶ **H-1b1 Carve out for Singapore and Chile**

Permanent Residence- Quota Limits and Priority Dates

- Quota limit of ~142,000 employment-based Green Cards per year
- Country quota limits
- Determining applicant's priority date
 - ▶ Category Based 1-2
 - ▶ 1 Priority workers no wait (until now)
 - ▶ 2 Wait for India/China/Philippines

Priority dates and the waiting game...

Your priority date is:

- ▶ EB-1/ EB-2 P/NIW – date I-140 was filed, if approved
- ▶ EB-2 – date PERM labor certification was filed, if approved

You can apply when your priority date is reached in the visa bulletin
(updated monthly

<http://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>)

The Visa Bulletin August 2018

Employment Based, Final Action Dates Chart A

| Employment Based Category | All Chargeability | China – Mainland | El Salvador, Guatemala, Honduras | India | Mexico | Philippines | Vietnam |
|---------------------------|-------------------|------------------|----------------------------------|-----------|-----------|-------------|-----------|
| 1 st | 01 JAN 18 | 22 FEB 17 | 01 JAN 18 | 22 FEB 17 | 01 JAN 18 | 01 JAN 18 | 01 JAN 18 |
| 2 nd | C | 01 JAN 16 | C | 09 APR 09 | C | C | C |
| 3 rd | C | 08 JUL 15 | C | 22 MAY 09 | C | 01 DEC 17 | C |

Self-Sponsored Option

NIW

- ▶ (Master's degree or higher)
- ▶ Serves some National Interest
- ▶ DHANASAR
 - **Entrepreneurship is a national economic interest

Outstanding Professor & Researcher

- ▶ Sponsored by Employer
- ▶ Three years of full-time work experience
- ▶ Three Full-Time Research staff
- ▶ National and International Acclaim
 - Kazarian Two-Step
 - 2 out of 6
 - PLUS
 - Totality of Circumstances

Self-Sponsored Option: Extraordinary Ability

▶ Extraordinary Ability

- Sustained International Acclaim
- Kazarian Two-Step
- 3 out of 6
- Plus
- Totality of the Circumstances

EB-5 IMMIGRANT INVESTOR VISA

- **\$1 million + 10 new full-time jobs within 2 years**
 - **Or \$500,000 in targeted employment area**
- **Investment must be “at risk”**
- **Regional Center**
- **Conditional residency can be removed after 2 years**

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Join us at our next immigration session:
Self Sponsored Green Card Options
CIC Cambridge Havana Room
Wed. April 3rd, 2019, 4pm-6pm

THANK YOU