NUTS & BOLTS OF IMMIGRATION FOR EMPLOYERS AND ENTREPRENEURS



Overview of Presentation

- □Compliance: I-9 & E-Verify
- Visa Types
 - Considerations for entrepreneurs
 - Considerations for new businesses
- Green Card Options



Who is eligible to work for a US company?

- US citizens
- Permanent residents (i.e. green card holders)
- Individual with work-authorized visas
- Other foreign nationals given employment authorization



I-9 & E-Verify

■ Form I-9

- By law, every employer is required to determine the work authorization of a new employee within 3 days of employment starting. I-9 must be kept on file for each employee
- □ Financial penalties for non-compliance
- E-Verify
 - Additional online program that verifies information on Form I-9 for employment eligibility



What Visa Status Is Required to Start a Company?

No status is required



F-1 (OPT)

- Students on F-1 status can work before and after graduation in positions related to their fields of study
- Employer does not need to take any steps to sponsor the student employee
- OPT is 12 months (can be unpaid)
- 24-month extension for STEM degrees (must be paid)
- Can work for your own company, with permission from Designated School Official
 - Training program and supervision are required



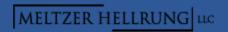
E-Verify and F-1 (OPT)

- When a company signs up for E-Verify, it must use it for every new hire
- Students with STEM degrees are eligible for 12 month OPT period and an additional 24-month OPT extension
 - □ To qualify, the employer must participate in E-Verify



H-1B

- General purpose visa for positions that require a bachelor's degree or higher
- Employee must have related degree
- Required to pay prevailing wage as set by Department of Labor
 - Equity does not count as wages
- Three year visa, up to six years available
 - 6-year max out can be waived through green card sponsorship process



H-1B Continued

- 65,000 new H-1B visas available each year
 - 20,000 additional slots for individuals with US master's degrees (including MBA, PhD, MD, JD, etc.)
- H-1B Lottery (199,000 applications in 2017)
- Application date: First 5 Business Days of April
- Employment date: October 1
- Cap-gap for F-1 (OPT)
- H-1B transfers
- Cap-Exempt employers



H-1B for Entrepreneurs

- H-1B requires employer-employee relationship
- Majority owner must be an employee of the company
 - ■Corporate board structure
- Availability of work

H-1B1 and E-3

- Same general rules as H-1B
- H-1B1 for employees from Chile and Singapore
- E-3 for employees from Australia
- Can apply directly at consulate
- Numerical cap has never been met



TN - NAFTA-based petition

- Available for Canadians and Mexicans working in particular occupational categories, including:
 - Computer Systems Analyst
 - Accountant
 - Engineer (including Software Engineer)
 - Graphic Designer
 - Management Consultant
- Individual must have degree in field related to occupational category
- Can be used by entrepreneurs in limited circumstances
- No time limit on visa use or prevailing wage



O-1

- Visa for individuals with extraordinary ability
- Any field of ability (sports, science, music, etc.)
- No numerical limit or maximum amount of time
- Must show that individual as at the top of his/her respective profession
- Available to entrepreneurs
 - Letters of recommendation very important



E-2

- Treaty country relationship
 - India and China are not treaty countries
- U.S. business at least 50% owned by treaty national
- Three types: Investor, Manager, Essential Employee
- Company must exist before application
 - Substantiality and proportionality tests
- No time limit
- Great for entrepreneurs



E-1

- Treaty country condition, like E-2
- 50% or more of the trade must be between the US and the treaty country
- No U.S. entity requirement, unlike H, L, O, and E-2 visa



L-1A and L-1B

- Intra-company transfer between related foreign company and US company
- Employee must have worked for one year abroad at "Qualifying Organization"
- L-1B = specialized knowledge (5 year limit)
- L-1A = manager or executive (7 year limit)
- Great option for entrepreneurs with successful foreign ventures (L-1A New Office petition)



Visa Waiver, B-1, and B-2

- Visa waiver (ESTA) = ability to enter without a visa
- \blacksquare B-1 = business visa
- \square B-2 = tourist visa
- These visas do not provide work authorization for a US company
 - Person should never be on US payroll
- Can be used to set up company that will eventually qualify for another visa



Parole for Entrepreneurs

- In effect but currently being rescinded
 - □ Company must have been formed within 5 years of application
 - Applicant must own at least 10% + active/central role
 - Significant US investment or government funding:
 - \$250,000 in investment from VC firms, angels, accelerators, or notable investors with established investment record
 - **\$100,000** in Federal, State, or local government grants
 - Additional reliable/compelling evidence of company's potential for growth and job creation



Green Card Options



EB-5

- \$500,000 or \$1 million investment minimum, depending on location (proposed rule ups minimum to 1.3 million)
- Invest in your company
 - Bootstrapping doesn't work (secured loans & gifts OK)
 - Investment must be from your wallet into the company
- Invest in another company
 - Regional centers
- Create 10 jobs



EB-1 — Extraordinary Ability

- Equivalent of O-1 visa for green card
- Available for entrepreneurs in certain circumstances
- Generally the company must be highly valued to get a green card

PERM Process

- Most common green card process through employment
- PERM labor market test
 - Position
 - Recruitment
- Ability to pay prevailing wage
- □ EB-2 vs EB-3
 - China, India, Philippines, Mexico, all other countries

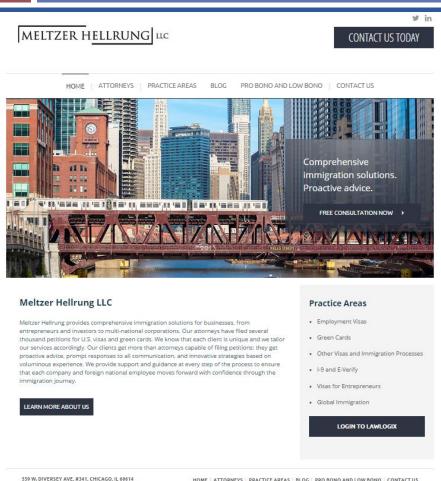


National Interest Waiver for Entrepreneurs?

- Executive action proposed expanding scope for entrepreneurs
- Precedent decision Matter of Dhanasar (Dec. 27, 2016) established new test:
 - FN's proposed endeavor has both substantial merit and national importance
 - FN is well positioned to advance proposed endeavor
 - U.S. will benefit by waiving labor certification (PERM)



Contact Us



- Matthew Meltzer, Partner
- mmeltzer@meltzerhellrung.com
- www.meltzerhellrung.com
- Flat-fee pricing
- Thousands of cases filed
- Expertise working with small companies and entrepreneurs
- Online immigration portal

HOME ATTORNEYS PRACTICE AREAS BLOG PRO BONO AND LOW BONO CONTACT US

