

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-1 B Continued

- 65,000 new H-1 B visas available each year
 - 20,000 additional slots for individuals with US master's degrees (including MBA, PhD, MD, JD, etc.)
- H-1 B 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-1 B transfers
- Cap-Exempt employers

H-1 B for Entrepreneurs

- H-1 B 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-1 A and L-1 B

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

Visa Waiver, B-1, and B-2

- ❑ Visa waiver (ESTA) = ability to enter without a visa
- ❑ B-1 = business visa
- ❑ 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

The screenshot shows the website for Meltzer Hellrung LLC. At the top left is the logo "MELTZER HELLRUNG LLC" and at the top right is a "CONTACT US TODAY" button. Below the logo is a navigation menu with links for HOME, ATTORNEYS, PRACTICE AREAS, BLOG, PRO BONO AND LOW BONO, and CONTACT US. The main content area features a large image of a city skyline with a bridge and a train. Overlaid on this image is the text "Comprehensive immigration solutions. Proactive advice." and a "FREE CONSULTATION NOW" button with a right-pointing arrow. Below the image, there are two columns of text. The left column is titled "Meltzer Hellrung LLC" and contains a paragraph describing the firm's services. Below this text is a "LEARN MORE ABOUT US" button. The right column is titled "Practice Areas" and contains a bulleted list of services: Employment Visas, Green Cards, Other Visas and Immigration Processes, I-9 and E-Verify, Visas for Entrepreneurs, and Global Immigration. Below this list is a "LOGIN TO LAWLOGIX" button. At the bottom of the page, there is a footer with the address "559 W. DIVERSEY AVE, #341, CHICAGO, IL 60614" and a repeat of the navigation menu.

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Comprehensive immigration solutions.
Proactive advice.

FREE CONSULTATION NOW

Meltzer Hellrung LLC

Meltzer Hellrung provides comprehensive immigration solutions for businesses, from entrepreneurs and investors to multi-national corporations. Our attorneys have filed several thousand petitions for U.S. visas and green cards. We know that each client is unique and we tailor our services accordingly. Our clients get more than attorneys capable of filing petitions; they get proactive advice, prompt responses to all communication, and innovative strategies based on voluminous experience. We provide support and guidance at every step of the process to ensure that each company and foreign national employee moves forward with confidence through the immigration journey.

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- Green Cards
- Other Visas and Immigration Processes
- I-9 and E-Verify
- Visas for Entrepreneurs
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