Innovative Visa Options for International Entrepreneurs and Investors

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RESOURCES

Article regarding visa options for international entrepreneurs:

Updates on ongoing immigration changes:
http://millermayer.com/2017immigrationchanges
1. Overview of entrepreneur immigration

2. Most common visa options for entrepreneurs and investors
   a. F-1 OPT / J-1 AT
   b. E
   c. H-1B, including creative cap exemptions
   d. O-1 and other temporary work visa options
   e. General Family-based and Employment-based green card options
   f. EB-5
   f. Other green card options

3. Big picture strategy - choose a series of visa categories to achieve your goals
Overview of Entrepreneur Immigration in Congress and at USCIS

Lots of ideas but no action in Congress
USCIS Did as Much as It Could in 2016

http://www.uscis.gov/portal/site/uscis/eir
Entrepreneur Parole: New!

Up to 5 years, regardless of current status
But not a green card
Based on strong business plan and showing that the experts agree
- This can be shown by significant investment by angel investor, government agency, or other evidence.
Most common visa options for entrepreneurs

• F-1 OPT / J-1 AT
• E visa
• H-1B (including creative cap exemptions)
• Other options (O, L, etc.)
• General Family-based and Employment-based green card options.
• EB-5
• Other green card options
Step 1: List all visa options available.

Step 2: Weigh the advantages and disadvantages of the different types of visas.
• A Diplomats
• B Visitors (business/pleasure)
• C Transit
• D Crewman
• E Treaty trader/investors
• F Academic students
• G International Organization
• H Temporary workers
• I Journalists/Media
• J Exchange visitors
• K Fiancés/fiancées of US citizens
• L Intra-company transferees
• M Vocational students
• N Another Diplomatic category
• O Persons of extraordinary ability
• P Athletes or entertainers
• Q International cultural exchange
• R Religious workers
• S Federal witnesses (snitches)
• T Trafficking of persons victims
• TN NAFTA professionals (Mexico and Canada)
• U Certain crime victims
• V Spouses/children waiting for green cards
Typical Immigration Timeline

**Student Employee Pathway**
- U.S. Graduated F-1/J-1 Students work permit (OPT)
- Employer Sponsored Work Visa H-1B or other
- Green Card, LPR
- U.S. citizenship (naturalization)

**International Employee Pathway**
- Employer Sponsored Work Visa H-1B or other
- Green Card, LPR
- U.S. citizenship (naturalization)

**Family or Asylee Pathway**
- Green Card, LPR
- U.S. citizenship (naturalization)
New Work Opportunity for Certain F-1 Students: STEM OPT

- STEM = Science, Technology, Engineering and Math
  - http://www.ice.gov/sevis/stemlist.htm
  - Can be undergrad degree

- Graduated F-1 STEM student to 36 months OPT
- Employer must use E-Verify

- For some, no need for employer-sponsored work visa, e.g., H-1B

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E-1/E-2 Visa

- **E-1 Treaty Traders**
  - Substantial trade, principally between the U.S. and home country.

- **E-2 Treaty Investors**
  - Invest substantial capital in a bona fide enterprise in the U.S.
  - Toronto Consulate has indicated that $50,000 is the lowest “substantial investment” they have approved

- **E-1/E-2 Generally**
  - Can start or buy a company
  - Company must be 50% owned by nationals of the same treaty country
  - Can be employed by a company qualifying for E-1/E-2 status where the owner(s) shares your nationality
  - Holders of E-1/E-2 status can lead, direct, manage
  - No China, India; few Middle Eastern or African countries
  - Spouse can work.
  - No limit on extensions.
• Employer sponsored for up to 6 years in a “specialty occupation”
• Requires employer-employee relationship
• Three requirements:
  1. Job must require a bachelor’s degree or higher in specific field – USCIS now imposing more exacting standard
  2. Beneficiary must have at least the relevant Bachelor’s degree or equivalent
  3. Employer must pay the required wage
• Spouses can work after certain steps towards permanent residence
What is the H-1B “Cap”?

Non-university employers are subject to H-1B cap (annual quota)

- 65,000 per fiscal year
- Reduced by 6,800 allocation for Chile and Singapore
- Separate 20,000 for U.S. master’s degree or higher (INCLUDING A MASTER’S FROM RIT)
O-1 for Extraordinary and Prominent Individuals

- O-1A for business, science, education, sports: “extraordinary ability”
- O-1B for arts, media, television: “prominence”

**Show evidence of:**

- Prizes
- Media coverage
- Memberships
- Publications
- Citations
- Scholarly contributions
- Leading role
- High salary
<table>
<thead>
<tr>
<th><strong>L-1: Multinational Transferee</strong></th>
<th><strong>E-3: Australian work visa</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>For employers with related foreign companies</td>
<td>2 years</td>
</tr>
<tr>
<td>12 months foreign employment</td>
<td>Renewable indefinitely</td>
</tr>
<tr>
<td>Executive, manager, specialized knowledge</td>
<td>Professional positions</td>
</tr>
<tr>
<td>Spouse work permits</td>
<td>Spouse and child work permits</td>
</tr>
</tbody>
</table>
- Mexican/Canadian citizens
- Up to 3 years in job offer in listed occupation
- Same day application process possible
- Unlimited extensions
- Bachelor’s degree/license in that field

Common TN Occupations:

- Accountant
- Architect
- College/university professor
- Computer systems analyst
- Engineer
- Management consultant
- Occupational therapist
- Registered nurse
- Scientific technician
- Graphic designer
Other Nonimmigrant Visa Categories

- **F/J**: Study and Research
- **J**: Professional trainees/Interns
- **H-3**: Training Program
Spouses

- E-1, E-2, E-3, L-1, and J-1 status allow spouses to work in any field, and now some H-1Bs
- Spouse may also be able to pursue permanent residence
How to Sponsor for US Permanent Residency?

- Family-based
- Employment-based
- Diversity Lottery
## Family-Based Green Card Categories (FB)

<table>
<thead>
<tr>
<th></th>
<th>Spouse, Parents, children under 21</th>
<th>Sons and daughter 21+</th>
<th>Married sons/daughter</th>
<th>Siblings</th>
<th>Nationality = China, Mexico, Philippines, India</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>US citizen sponsor &gt; 21</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No difference</td>
</tr>
<tr>
<td><strong>Approx. wait time</strong></td>
<td>None</td>
<td>6 years</td>
<td>12 years</td>
<td>13 years</td>
<td>longer</td>
</tr>
<tr>
<td><strong>LPR/CPR sponsor &gt; 21</strong></td>
<td>Yes – spouse, child</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No - parents</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Approx. wait time</strong></td>
<td>1.5 years</td>
<td>7 years</td>
<td>N/A</td>
<td>N/A</td>
<td>Longer</td>
</tr>
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</table>
### Employment-Based Green Card Categories (EB)

<table>
<thead>
<tr>
<th>EB-1</th>
<th>EB-2</th>
<th>EB-3</th>
<th>EB-5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extra-ordinary ability</td>
<td>Advanced degree with PERM</td>
<td>Bachelor’s degree with PERM</td>
<td>Investors in job-creating project of Regional Center</td>
</tr>
<tr>
<td><em>no PERM</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tenure-track professor</td>
<td>Exceptional ability with PERM</td>
<td>Skilled workers with PERM</td>
<td>In self-managed business</td>
</tr>
<tr>
<td>Permanent researcher</td>
<td><em>no PERM</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multinational transferees</td>
<td>National Interest Waiver</td>
<td>Unskilled workers with PERM</td>
<td></td>
</tr>
<tr>
<td><em>no PERM</em></td>
<td><em>no PERM</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No quota delay</td>
<td>0-7 years</td>
<td>1-11 years</td>
<td>2+ years (China only)</td>
</tr>
<tr>
<td>3 -12 months processing time</td>
<td>3 - 24 months processing time</td>
<td>24+ months processing time</td>
<td>2 – 3 years processing time</td>
</tr>
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<td></td>
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</tr>
</tbody>
</table>
Employment Based Green Card Paths For Entrepreneurs

• **EB-1 priority workers:**
  1. EB-1-A extraordinary ability aliens
     i. Self-sponsor
     ii. Similar to O-1A NIV
  2. EB-1-C multinational executives and managers
     i. Similar to L-1A NIV

• **EB-2 “national interest” workers:**
  i. Self-sponsored
  ii. Advanced degree or exceptional ability
  iii. New case makes it easier for entrepreneurs to qualify
PERM-Based Green Card Process Requires an Employer-Employee Relationship

- PERM (DOL)
- "Special Handling PERM" For professors (DOL)
- I-140 Immigrant Visa Petition (USCIS)
- Adjustment of Status-AOS (USCIS)
- Consular Process Overseas (DOS)
## Visa Bulletin: Employment February 2017

<table>
<thead>
<tr>
<th>Employment based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>EL SALVADOR GUATEMALA HONDURAS</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
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<tr>
<td>2nd</td>
<td>C</td>
<td>15NOV12</td>
<td>C</td>
<td>15APR08</td>
<td>C</td>
<td>C</td>
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<tr>
<td>3rd</td>
<td>01OCT16</td>
<td>01OCT13</td>
<td>01OCT16</td>
<td>22MAR05</td>
<td>01OCT16</td>
<td>15OCT11</td>
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<tr>
<td>Other Workers</td>
<td>01OCT16</td>
<td>01DEC05</td>
<td>01OCT16</td>
<td>22MAR05</td>
<td>01OCT16</td>
<td>15OCT11</td>
</tr>
<tr>
<td>4th</td>
<td>C</td>
<td>C</td>
<td>15JUL15</td>
<td>C</td>
<td>15JUL15</td>
<td>C</td>
</tr>
<tr>
<td>Certain Religious Workers</td>
<td>C</td>
<td>C</td>
<td>15JUL15</td>
<td>C</td>
<td>15JUL15</td>
<td>C</td>
</tr>
<tr>
<td>5th Non-Regional Center (C5 and T5)</td>
<td>C</td>
<td>15APR14</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>5th Regional Center (I5 and R5)</td>
<td>C</td>
<td>15APR14</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
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</table>
• File Form I-526 (including documentation of a valid source of funds); then consular processing; and within 90 days of 2 year anniversary, file Form I-829 for LPR.
• Entire EB-5 process can take 5-6 years
• Must create or save 10+ full-time jobs
• Must invest $1 million, or $500,000 if project is in rural or high unemployment area
• 10,000 EB-5 green cards available each year
• Backlog for Chinese Investors
Due Diligence – Projects and Regional Centers:

• Work with reputable regional centers and agents
• Try to find projects that are solid and not likely to raise questions with USCIS
EB-5: Important Considerations
Source of Funds

• Due Diligence:
  • Prove investors earned money legally
  • Work with agent or immigration attorney to find the source and path of funds that is simplest and easiest to document

• Shareholder Loan:
  • Show capital contribution

• Earned Income:
  • Accumulation of funds in specific account(s)
  • Payment of taxes
  • Track all interim transfers
  • Flow chart helpful in some circumstances
EB-5: Important Considerations
Source of Funds

Real Estate Sale:
• Show funds used for initial purchase

Mortgage:
• Show funds used for initial purchase

Security/Stock Gains:
• Show funds used for initial investment
• Due Diligence – I-829

• Investors have little control on I-829 requests for evidence

• Usually project-related issues, not issues concerning the investment
Over 19 years of EB-5 legal counseling
Represent EB-5 investors, regional centers and developers
Thousands of approved green cards for EB-5 clients
Miller Mayer clients have raised over $1 billion in EB-5 funds
Regularly publish and speak on immigration and EB-5 issues
Testified before Congress on EB-5 matters
Former chairs and co-chairs of AILA EB-5 Committee
Founder and first executive director of IIUSA
Program allows 50,000 randomly selected diversity visas (DVs) annually, must meet strict eligibility requirements, from countries with low immigration rates.

Eligibility requirements:
- Receive a visa based on education or work
- Must have a high school education or
- Two years of work experience within the past five years

- Current program: [DV-2017 Program Instructions](#)
Complex process (PERM, I-140, AOS) > 5 years

Quota delays affect Bachelor’s degree level jobs (EB-3) and India and China Masters and Bachelor’s degrees (EB-2)

During quota delay wait period, employer-sponsored temporary work visa necessary

USCIS issued a rule recently that liberalizes work permissions for many foreign nationals, especially those affected by long quota delays in the EB PR categories.
Big picture strategy - choose a series of visa categories to achieve your goals
Can I Pay Myself?

- Only if authorized by USCIS!

- Keep up a series of temporary visas until an opportunity for permanent residence arises.
Yes, visa status is not required to be a passive owner, as in buying stock or owning real estate.
Can I Stay In The US For My Business?

- Need legal status to remain in the US
- During F-1 status, must have work authorization to be employed by the business
- OPT is most flexible time of F-1 status
- After OPT, need to find another status to remain in US for the business
The Internet: A tool for you, and for USCIS

Make sure your web presence only has authorized work!