

GCI Business Immigration Newsletter - May 2013

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Employment Based and High-Skilled Entrepreneurs/Worker Visas

U.S. Citizenship and Immigration Services (USCIS) has initiated 'Entrepreneurs in Residence (EIR) for employment-based and high-skilled visa categories, including H-1B, EB-2, and EB-5. The Department of Homeland Security (DHS) has outlined a series of policy, operational, and outreach efforts to stimulate the nation's economy and create American jobs through immigration/non-immigrant visa programs.¹ Foreign entrepreneurs may consider the following types of visa, which may allow starting a new business in the U.S. and immigrating to the U.S.

NONIMMIGRANT VISAS

H-1B Specialty Occupation

The H-1B visa is available for foreign nationals employed in the U.S. in a "specialty occupation," which requires a bachelor's or higher degree or equivalent in a field related to the position. There must be an employer-employee relationship with the petitioning

¹ Nonimmigrant visas are for persons temporarily admitted to the United States for reasons other than permanent residence and immigrant visas are for persons entering the United States to reside permanently.

U.S. employer. U.S. businesses use the H-1B program to employ foreign workers in specialty occupations such as scientists, engineers, or computer programmers. The initial period of stay is up to 3 years and the maximum period of stay is generally 6 years. The H-1B visa holders' spouse and unmarried children under 21 years of age may seek admission in the H-4 classification. Family members with the H-4 visa may not engage in employment in the U.S.

Foreign entrepreneurs may be eligible for an H-1B visa if they are planning to work for the business, which they establish in the U.S., in an occupation that normally requires a bachelor's degree or higher in a related field of study. An H-1B beneficiary who is the sole or majority owner of the petitioning company may establish a valid employer-employee relationship for the purposes of the H-1B visa application.

O-1A Extraordinary Ability and Achievement

The O-1 visa is available to foreign nationals who have "extraordinary ability in the sciences, arts, education, business or athletics" and have a plan to work in his/her field of ability. The immigration regulations define extraordinary ability as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." The extraordinary ability must be demonstrated by "sustained national or international acclaim." The initial period of stay in the U.S. is up to 3 years and the visa can be extended or renewed the period of stay in 1 year increments as necessary to complete or further the activities/projects. The O-1A visa holders' spouse and children under the age of 21 may be eligible to apply for an O-3 visa, subject to the same period of admission and limitations as the O-1A nonimmigrant. They may not work in the U.S. under this classification; however, they may engage in full or part time study under the O-3 classification.

Foreign entrepreneurs may consider an O-1A visa in order to start a business in their field if they have "extraordinary ability," which can be demonstrated by sustained acclaim and recognition, as the regulations defined. An entity owned by the beneficiary of O-1A may be eligible to file the petition.

E-2 Treaty Investor

The E-2 visas allow foreign nationals of a treaty country, with which the U.S. maintains a treaty of commerce and navigation, to come to the U.S. if they are investing a substantial amount of capital in a U.S. business. Certain employees of such a person or of a qualifying organization may also be eligible for this classification.

To be eligible for an E-2 visa, foreign entrepreneurs must prove their direct investment in a bona fide U.S. enterprise and be from a country that has a treaty of commerce and

navigation with the U.S. or a country designated by Congress as eligible for participation in the E-2 nonimmigrant visa program. For a list of treaty countries, click [here](#). The initial period of stay in the U.S. is up to 2 years and the visa can be extended or renewed the period of stay in 2 years increments. Family members of the E-2 visa holders may seek E-2 nonimmigrant classification and they may apply for work authorization in order to work.

Foreign entrepreneurs, with talent of exceptional ability or who otherwise can create jobs, may obtain an EB-2 immigrant visa if they satisfy the existing requirements, and also may qualify for a National Interest Waiver if they can demonstrate that their business endeavors will be in the interest of the U.S.

L-1A/B Intracompany Transferee

L-1 work visas are available for foreign nationals transferring from a company abroad to work in the U.S. for a related company. To be eligible, the foreign national must hold an executive or managerial position, or be a professional employee with specialized knowledge about company products or processes. The L-1B classification enables a U.S. employer to transfer a professional employee with specialized knowledge relating to the organization's interests from one of its affiliated foreign offices to one of its offices in the U.S. It also enables a foreign company, which does not yet have an affiliated U.S. office, to send a specialized knowledge employee to the U.S. to help establish one. The initial period of stay in the U.S. is up to 3 years (1 year when it is for new office petition). The visa can be extended in up to 2-year increments. However, the maximum period of stay is 7 years for managers and executives and 5 years for specialized knowledge employees. The L-1 visa holders' spouse and unmarried children who are under 21 years of age may seek admission in L-2 nonimmigrant classification and they may apply for work authorization in order to work.

Foreign entrepreneurs may apply for an L-1 visa if they are an executive, manager, or a worker with specialized knowledge who has worked abroad for a qualifying organization.

IMMIGRANT VISAS

Current immigration policy has a cap of 140,000 employment-based (EB) immigrant visas, which are divided into five preference categories (EB-1, EB-2, EB-3, EB-4, and EB-5). EB Visas are for priority workers, professionals holding advanced degrees or persons of exceptional ability, skilled workers, special immigrants, and employment creating investors. Spouses and children accompanying the workers count toward the cap.

EB-1 Extraordinary Ability

Foreign entrepreneurs may be eligible for the EB-1 extraordinary ability immigrant classification if they have extraordinary ability in the sciences, arts, education, business, or athletics as demonstrated by sustained national or international acclaim and recognized achievements in the field of expertise.

To be eligible for an EB-1, foreign nationals must show that they will continue working in the area of their extraordinary ability. A job offer or employer-employee relationship is not required for this classification and applicants may self-petition for this immigrant classification.

EB-2 Advanced Degree Professional and Exceptional Ability

To be eligible for EB-2 category, a foreign national must be a professional holding a U.S. master's degree or higher or foreign equivalent degree that relates to the field they will be working in; (2) have a U.S. Bachelor's degree or foreign equivalent degree and at least 5 years of progressively responsible experience in their field after receiving the Bachelor's degree; or (3) have exceptional ability in the sciences, arts, or business. Exceptional ability means that you have a degree of expertise significantly above that ordinarily encountered in the sciences, arts or business. A job offer and a labor certification issued by the Department of Labor (DOL) are required.

Foreign entrepreneurs seeking EB-2 classification may request a National Interest Waiver (NIW) to be exempted from the job offer and labor certification requirements.

EB-5 Immigrant investor Program

A foreign entrepreneur may be eligible for the EB-5 immigrant investor immigrant classification if his/her invests \$1,000,000 in a qualified U.S. business and creates 10 new full-time jobs as a direct result of the investment. The minimum investment is lowered from \$1 million to \$500,000.00 if a business is located in a designated Targeted Employment Area (TEA).

The Program was created in 1990 to stimulate the U.S. economy through foreign capital investment and job creation. Approximately 10,000 EB-5 visas are allocated annually but the program has been underutilized due to issues and concerns about the program, including fraud and lack of established regulations. As the program is being stabilized and developed, however, the usage has drastically increased. In 2011, for example, 3,463 EB-5 visas were used and in 2012, 7,641 EB-5 visas were used. The top countries by visa usage are China, South Korea, Britain/Northern Ireland, India, Iran,

Mexico, Canada, and Russia. China accounted for over 70% and South Korea accounted for over 10% of all EB-5 visas worldwide in recent years. Since 2003, through the EB-5 Program, foreign investors have invested over \$3.1 billion of foreign capital in the U.S. economy, which has created over 65,000 jobs for U.S. workers. Foreign investors have invested in EB-5 projects in the following industries: Agriculture, Construction, Health care, Heavy and Light manufacturing, Resort, Schools, Service industry, Technology, Energy, Public Transportation, and Travel.

Comprehensive Immigration Bill

The proposed bill makes changes to the above Employment-based immigrant and non immigrant visas by increasing visas for skilled workers to 40% of total; maintains visas for special immigrants at 10% of total; creates a three-year INVEST visa for entrepreneurs; eliminates sunset for non-minister special immigrants; increases the annual cap on H-1B visas from 65,000 to 110,000; and creates a new W visa category for less-skilled workers and their dependents.

June 2013 Visa Bulletin

The Department of State (DOS) has released its June 2013 Visa Bulletin. The Visa Bulletin sets out per country priority date cutoffs that regulate the flow of adjustment of status (AOS) and consular immigrant visa applications. Foreign nationals may file applications to adjust their status to that of permanent resident, or to obtain approval of an immigrant visa application at an American embassy or consulate abroad, provided that their priority dates are prior to the cutoff dates specified by the DOS.

Priority date cutoffs are assessed on a monthly basis by the DOS based on anticipated demand. Cutoff dates can move forward or backward, or remain static and unchanged. Employers and employees should take the immigrant visa backlogs into account in their long-term planning, and take measures to mitigate their effects.

EMPLOYMENT BASED CATEGORIES					
Employment- Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	15JUL08	01SEP04	C	C
3rd	01SEP08	01SEP08	08JAN03	01SEP08	22SEP06

Other Workers	01SEP08	22OCT03	08JAN03	01SEP08	22SEP06
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Targeted Employment Areas/ Regional Centers and Pilot Programs	C	C	C	C	C

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

Global Migration

- **Italy**

All foreign migrants over 16 years of age who enter Italy for the first time and apply for a *residence* permit with a validity of at least one year must sign an 'Integration Agreement' (*Accordo di Integrazione*) at the immigration office (*Sportello unico per l'immigrazione*) or at the police headquarters (*Questura*). The "Integration Agreement" also regulates the new point system for the permit of stay and migrants will be accredited with points or credits based on their level of integration in Italian society. From the date of signing the agreement, the foreigner has two years to obtain the required minimum points. This can be extended up to three years if necessary.

About Gulf Coast Immigration

Immigration and Global Migration are one of the most complex and dynamic areas of law and policy affecting America's social and economic composition. A well-functioning immigration system is critical to America remaining strong and vibrant. To contribute to this goal and to meet the growing needs for comprehensive and sophisticated legal services in all aspects of business immigration-related matters in Northwest Florida, South Alabama and Mississippi, GCI has been issuing monthly business immigration newsletters/updates and immigration alerts to announce fast-breaking developments.

GCI offers guidance, advice, counsel and representation to business and individual

clients in matters of immigrant (both employment- and family- based) and nonimmigrant working visa petitions and applications, with a subspecialty focusing on the U.S. Immigration Investor Program (EB-5 Program) and foreign investments under the U.S.-Korea Free Trade Agreement. GCI offers a free evaluation service for individuals who intend to apply for nonimmigrant and both employed- and family-based immigrant visas as to their immigration options and the likelihood of a successful case. To be considered for the free evaluation service, please e-mail info@gcimmigration.com, reference "Free Evaluation" in the subject line and include contact information. GCI conducts free seminars as a public service for those community organizations and groups interested in learning about U.S. immigration laws and policies. If you would like to have GCI present a free seminar please visit www.gcimmigration.com for more information.

GCI also conducts fee-based educational lectures/seminars and training for U.S. based academic institutions and businesses on information and developments on the U.S. immigration law and policy, including I-9 Compliance, E-Verify, and the EB-5 Program. For further information about GCI, publications and lectures and seminars, contact us at www.gcimmigration.com

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