

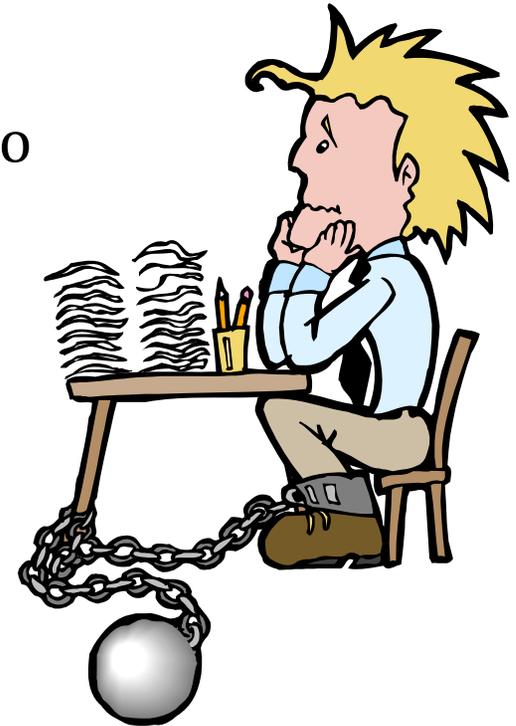


International Student Entrepreneurship: Immigration Options

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The International Entrepreneur's Dilemma

- The more common visas are employment-based, and typically require an established employer to petition for a visa for its international employee.
- Start-up businesses are subject to additional scrutiny, and can encounter difficulties satisfying USCIS criteria.





Recent Developments & Support for the International Entrepreneur

- Michigan – the State of Michigan and its Universities are very supportive
- Federal Government
 - Congress – recent legislation and bipartisan efforts to encourage foreign investment and job creation
 - U.S. Citizenship and Immigration Services (USCIS) – recent policy pronouncements softening policy and encouraging the investment and self-employment visa options



The Entrepreneur as Investor the Investment Visas

- EB-5 Investor Visas
- E-2 Treaty Investor Visas





EB-5 Investor Visa

The EB-5 program was created in 1990 to encourage capital investment and create domestic jobs.

It has 3 primary requirements:

- Investment must create a new commercial enterprise
 - i.e. a new business, or restructuring or expansion of existing business
- Investment of at least \$1M
 - \$500K if investing in a “targeted employment area”
- Enterprise must create at least 10 full-time U.S. jobs within 2 years.
 - Indirect (tangential or downstream) job creation may be counted, if the investment is processed through a “Regional Center”



EB-5 Visa Benefits

- The great benefit of the EB-5 Visa is that it is a permanent visa, which results in “Legal Permanent Residence”
 - aka a “Green Card”!
 - Most employment visa categories are *temporary*, resulting in visas of limited duration.



EB-5 Visas – Regional Centers

- Regional Center:
 - An entity or agency preauthorized and designated by USCIS as eligible to receive EB-5 investments in a new commercial enterprise.



EB-5 – Regional Center (cont.)

- The Regional Center (RC) can greatly benefit potential applicants:
 - RC finds a viable project in a Targeted Employment Area.
 - RC obtains expert opinion supporting direct and indirect creation of at least 10 jobs.
 - RC has pre-established financing arrangements and investment contracts.
 - RC confirms acceptable and verifiable sources of investment funds.
 - RC helps support international applicant and her immigration counsel with her visa applications.



EB-5 – International Michigan Investments Regional Center

The International Michigan Investments Regional Center:

- Michigan's first Regional Center
- Recently granted the entire State of Michigan as its geographic scope – can now place investments throughout the entire State.
- Foster Swift Shareholder Gary McRay is a co-founder and continuing partner in the Regional Center.
- See Brochures being distributed, and visit
 - www.invest2usa.com



Yes, but I don't have \$500K...

- I want to start my own business, but I'm on a budget – are there other options?





E-2 Treaty Investor Visa

- E-2 is a Nonimmigrant (Temporary) Visa.
- The E-2 applicant seeks to enter the U.S.:
 - *Solely to **develop and direct** the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a **substantial amount** of capital.*



E-2 – Basic Requirements

- Nationality – must be from a listed **Treaty Country**.
- Investment must be **at risk** & irrevocably committed.
- **Substantiality**
 - The investment must be “substantial” – a subjective legal term of art, which varies based upon business.
 - No set minimum and varies by consulate
 - Typical rule of thumb for investment floor between ~ \$65K – 100K
- **Marginality**
 - Investment may not be “marginal” (another legal term of art) – must have capacity to generate positive significant economic impact
 - Job creation not specifically required, but very helpful in establishing non-marginality
- Ability to **Develop and Direct** the business
 - Typically show at least 50% ownership



E-2 - Benefits

- Duration of Visa – initially 2 – 5 years, but no set limit on extensions, can essentially be a perpetual visa, so long as business remains viable.
- Quick Processing (depending on Consulate)
 - As fast as ~ 3 – 5 weeks at some Consulates
- Self-Employment
- Limited Dual Intent features (permitting pursuit of conversion to permanent visa)
- Relaxed temporary intent requirement



E-2 – Drawbacks and Limitations

- Non-Treaty Country Nationals are not eligible.
- Temporary Visa – does not result in a Green Card, subject to renewals and risk of a subsequent denial in the future.
- Subjective adjudication – E-2's appear particularly susceptible to inconsistent adjudications.
- At-Risk nature of investment – the investment must be committed and at-risk; it cannot be dependent upon obtaining visa.



Related Start-up or Investment Services

- The Entrepreneur or Investor often encounters a number of related legal issues and need for services, including:
 - Business organizations and contracts
 - International trade and contracts
 - Securities and investments
 - Financing and loan documents
 - Estate planning



Other Self-Employment Options?

- OPT
- EB-2 – Advanced Degree or Exceptional Ability + National Interest Waiver
- H-1B – Specialty Occupation
- L-1 - Intracompany Transferees



Optional Practical Training (OPT)

- 12 months – for each higher level of education
- No Job Offer required
- Start-up activity prior to OPT?



EB-2 Visa – Advanced Degree / Exceptional Ability

- Permanent Visa / Green Card
- Professional with Advanced Degree; or
 - U.S. Master's, or equivalent, or
 - U.S. Bachelor's, or equivalent, + 5 years progressive work experience
- Exceptional Ability
 - Possibly evidenced by acclaim, work history, prizes or awards, peer recognition, publications, etc.



EB-2 – National Interest Waiver (NIW)

- The EB-2 NIW permits exemption from typical requirements of labor certification and job offer.
 - Therefore, permits self-petitioning and self-employment.
- Must establish that his U.S. employment will be in the “national interest.”
- Recent USCIS pronouncements are encouraging, and suggest additional support for granting NIW where:
 - Entrepreneur will create jobs for U.S. workers, or
 - Otherwise enhance the welfare of the U.S.



H-1B – Employment in a Specialty Occupation

- A “Specialty Occupation” is one that requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires the attainment of a bachelor’s or higher degree in a specific specialty, or its equivalent.
- **Licensure**
 - If required by state to practice, the beneficiary must possess the requisite license, or an interim permit, if available.



H-1B – Self-Employment?

- Entrepreneur would like to start a business, and then petition for a visa for herself as an H-1B employee of the business.
- Previously permitted, however, recent *Neufeld* Memo required:
 - Separation between owner and employee, and
 - Independent right of control over employee



H-1B – Self-Employment

- Recent additional policy pronouncements from USCIS appear to mitigate Neufeld Memo implications and encourage viability of H-1B self-employment option. However:
 - Additional showing of *bona fide* employer-employee relationship still required
 - Right to control employee remains an issue – separate Board of Directors
 - Actual implementation remains to be seen



H-1B – Filing Requirements and Self-Employment

- Employer must obtain a *Prevailing Wage Determination* (PWD) (*i.e.* government's opinion of a fair wage) for similar occupations
- Start-up companies must show company's ability to pay the PWD
 - USCIS is often skeptical for this reason – a hurdle for the self-employed to overcome



L-1 Intracompany Transferees

- An entrepreneur or his family might own a company outside of the U.S., which desires to become multi-national by establishing an office in the U.S. and hiring the entrepreneur on an L-1 visa. L-1 requires:
 - Employed continuously by the company abroad for at least 1 of the past 3 years.
 - Employment as a Manager / Executive or in a position requiring “specialized knowledge.”



Welcome!

*We wish to welcome international
entrepreneurs to Michigan,
and*

*Encourage you to pursue your dreams and
start your own business*

&

Thank you for your Interest!