

# Realtors play an essential role with their clients' Immigration status

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*Excerpt from 2014-2015 Foreign Investors Guide: Purchasing Real Property & Doing Business in the United States*

- A. The B visa category
- B. The Visa Waiver Pilot Program (VWP)
- C. The E-2 Treaty Investor visa
- D. The L Intra-company Transferee visa

This article will stress the important role a Realtor plays in directing their clients to get early legal advice regarding immigration. In doing so, the Realtor may save their clients a substantial amount of money because a qualified immigration attorney will be able to advise clients on structuring companies and/or taking title of their properties to meet their immigration objectives.

In addition, a qualified immigration attorney may be able to alert clients about the intricacies of the U.S. tax code and any impact on investments. Professional advice is paramount as the client's physical presence in the United States could have U.S. tax consequences on their worldwide income.

The typical foreign client comes to the United States for vacation under a tourist visa (B visa) or the Visa Waiver Program. Shortly after, they may want to purchase a vacation home for personal use or may want to invest because they find a good investment opportunity. If someone only wants to come to the US under a tourist visa and/or the Visa Waiver program without wanting anything more, the advice of an immigration attorney may not be necessary. However, if the client wants to live on a more permanent basis in the US and/or work and retire in the US, it is very important to seek legal advice from a qualified immigration attorney, as soon as possible.

There are various visas that may be available for a client, please note the following outlined visas are only some of the many other alternatives a foreigner may have. It is essential that a client get legal counsel to evaluate the best option.

## **A. Tourist or Visitor Visa, B visa:**

Most foreigners need a visa to temporarily visit the United States. Depending on the purpose of their visa, they may get a B-1 "business visitor" or B-2 "tourist." In order to get this visa, the foreigner must prove to the consular post that the applicant has sufficient ties to his/her country of origin that shows intent to return. In addition, proof of economic sustainability during their temporary stay is important.

### **a) B-1 Visa**

The B-1 "business visitor" visa allows an individual to come to the U.S. for a short period of time for 'business purposes' that may include the following:

- Buying real estate and all the required meeting and financing arrangements;
- Meetings and consultations with U.S. business associates;
- Participating in sports tournaments;
- Attending non-productive training for the benefit of the overseas company or professional conferences;
- Buying supplies/raw materials for export.

The B-1 visitor is not authorized to perform productive work in the U.S., will generally remain on the foreign employer's home country's payroll and cannot receive compensation from a U.S. source, other than reimbursement for incidental expenses.

The usual authorized period of stay is for a maximum of 3 months.

## **b) B-2 Visa**

The tourist visa allows the applicant to visit the U.S. for vacation/or other temporary purposes: visiting family members, friends or for health reasons. The applicants for this visa must show proof of residence in his/her country of origin with no intentions of abandoning it. The usual maximum time of stay with this visa is six months.

## **B. The Visa Waiver Program (VWP)**

Foreigners of certain countries do not need a visa to enter the U.S. temporarily. Currently, individuals from the following countries can enter without a visa: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan and the United Kingdom. When nationals of these countries enter the U.S. under the VWP, they generally waive their right to review or appeal of a Customs and Border Protection (CBP) officer's decision as to their application for admission at the port of entry.

The maximum allowed period of authorized stay is between 30 to 90 days at a time. The only requirements are: a machine-readable passport and a return or onward ticket, and have authorization through the Electronic System for Travel Authorization (ESTA) prior to boarding a U.S. bound air or sea carrier. ESTA is the Department of Homeland Security (DHS), CBP's automated web-based system to determine eligibility to travel without a visa to the United States for tourism or business. The air or sea carrier must be approved by the US (most commercial carriers).

## **3. E Treaty Investor visa**

This visa category is based on commercial agreements with the United States and certain countries. In order to qualify for this visa, a foreign worker must be a national of one of these countries and the petitioner U.S. Company must be 50% owned by a national of the particular country. This company must establish business between the U.S. and the beneficiary country or must develop a project with a substantial investment from the beneficiary. The beneficiary can qualify for this Visa as the investor or the essential worker for the operation.

E visas can be issued for up to five (5) years and are renewable indefinitely as long as the company and the individual continue to qualify for E status. Upon each entry to the United States, E visa holders are generally granted two (2) years of authorized period of stay under E status as long as the E visa is valid at the time of entry.

## **4. The L Intra-company Transferee Visa**

Foreign companies that have an American subsidiary or affiliate and want to transfer a high profile executive or manager to provide the same services in the United States may use the L-1A visa. L-1B visas are for specialized workers in the company. These individuals must have been employed at least one year at the company abroad.

If the affiliate or subsidiary in the U.S. is a newly established company, the L-1A visa will be issued for 1 year, and can be extended after that for 3 years, for a maximum stay of 7 years.

## **Conclusion**

The U.S. government generally favors investment into the U.S. However, the investment must be into an active, commercial enterprise and, thereby, justify the presence of the foreign individual in order to gain the ability to reside long term in the US. Passive investments into vacation homes, etc. are subject to restrictions on the duration of stay of the foreigner in the U.S. Buying a property to "live in the U.S." visa unfortunately does not exist. Many other nonimmigrant and immigrant visa categories are available, but they are less used for real estate investments and would

exceed the scope of this article. Obtaining the advice of a qualified immigration attorney may be the smartest move a visitor can make before investing in the United States.

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Ms. Pines received her Bachelor of Business Administration Degree from the University of Miami in 1985 and earned an M.B.A. there in 1988. She received her Juris Doctor degree from St. Thomas University School of Law in 1994.