

Welcome to the US, Enjoy Your Stay!

an analysis of the options available to a foreigner obtaining entry into the US on a temporary basis; and immigration considerations for more long term residency as a foreigner or foreign investor

International Wealth Planners

January 26, 2012

New York

US immigration

- **Nonimmigrants**
 - **Temporary**
- **Immigrants**
 - **permanent**
- **US citizens**

Nonimmigrants

- **Visa waiver**

Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland and the United Kingdom.

- **ESTA**

<https://esta.cbp.dhs.gov/esta/esta.html>

- **B-1/B-2 visa**

B-1/B-2 visa

- Business (B-1)
- Pleasure (B-2)
- 6 months with 6 month extension option
- Demonstrate no intention to abandon residence outside of the US
- Show ties to home country
- Cannot work in the US

B-1 business visa

- Allowable activities
 - Engage in commercial transactions
 - Passive investment that does not include “productive work”
 - Negotiate contracts
 - Consult with business associates
 - Litigate
 - Participate in conventions, conferences, or seminars
 - Undertake independent research
- Personal/Domestic employees (temporary)

B-2 visa for pleasure

- Tourism
- Medical Reasons
- Social events
- Short course of study
- Domestic Partners

Nonimmigrants

- **H-1B speciality occupations**
- **TN Nafta visa**
- **L-1 intra company transferee**
- **O-1 individual of extraordinary ability**
- **E-1/E-2 treaty trader or investor**

Nonimmigrants

E-1/E-2 treaty traders and investors

- **treaty nationality**
- **trade vs investment**
- **supervisors, executives and essential employees**

Immigrants

- **Employment-based**
 - 1st – 5th preference
- **Family-based**
- **Diversity visa lottery**

Immigrants

Employment-Based Fifth Preference (EB-5)

- Investors
 - Must invest in a new commercial enterprise (November 29, 1990)
 - \$1 million or \$500,000
 - Must create or preserve at least 10 full-time jobs
 - Regional Center (passive investment) or one's own enterprise (active investment)

Immigrants

Diversity Visa Lottery

- Up to 55,000 diversity visas available annually
- Drawn from individuals who are from countries with low rates of immigration to the US
- Must have at least:
 - A high school education or its equivalent; or
 - Two years of work experience within the past five years in an occupation requiring at least two years' training or experience.

Citizenship

- US citizen
 - At birth
 - Born in the US
 - Born outside the US
 - Through naturalization

Loss of US citizenship

- Renunciation
- Relinquishment
- Why expatriate
 - “Accidental” US citizen
 - Center of gravity no longer in the US
 - Simplifying matters

Loss of US citizenship

- Entering the US after expatriation
 - Dual national – visa national/ESTA (electronic system for travel authorization)
 - Prior to CLN issued
 - After CLN issued
 - All grounds of excludability apply
 - Intending immigrant
 - Criminal grounds
 - Reed Amendment

Loss of citizenship

- Reed amendment – excludable from the US if the reason for expatriation was tax motivated
 - Never been used as a ground of excludability but would not recommend expatriating
 - If the reason is to avoid US taxes
 - With a tax attorney as counsel
 - If there are close ties to the US in terms of proximity and timing and a potentially forthcoming financial windfall

Pre-expatriation planning

- Second nationality
 - If not already a dual national, options for acquiring another nationality
 - St. Kitts and Nevis investment (citizenship)
 - Commonwealth of Dominica (citizenship)
 - UK investor programme (residence)
 - Visa/inadmissibility issues
- Spouse and children
- Tax advice!

Abandonment of LPR status

- IRS vs Department of Homeland Security (DHS)
 - Abandoning residence for IRS
 - I-407
 - File with DHS abroad
 - File with Customs and Border Protection on entry to the US
 - Abandoning residence for DHS
 - Maintaining LPR status?

Abandoning LPR status

- Entering the US after abandonment
 - Visa issues
 - Spouse/children
 - Green card in future?

Heroes Earnings Assistance and Relief Act of 2008 (Heroes Act)

- Applies to US citizens and long term LPRs
- Makes act and intention for loss of citizenship important
- Makes formal abandonment of LPR status on I-407 important

Welcome to the US, Enjoy Your Stay!

an analysis of the options available to a foreigner obtaining entry into the US on a temporary basis; and immigration considerations for more long term residency as a foreigner or foreign investor

International Wealth Planners

January 26, 2012

New York