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WHICH BUSINESS VISA OPTION IS BEST FOR YOUR CLIENT?

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CHOOSING THE BEST VISA FOR YOUR CLIENT - WHAT WILL WE COVER TODAY?

WHY WORKING WITH OUR PROFESSIONAL TEAM IS CRITICAL TO PAIN-FREE VISA APPROVAL...

- ✓ Requirements for each Visa type
- ✓ Comparing the Visas
- ✓ Importance of Business Plan for each Visa
- ✓ Comparing Visa Business Plan requirements



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E VISA CATEGORY TREATY TRADERS AND INVESTORS

Created to promote bilateral trade between U.S. & strategic trade partners; expanded to cover bilateral investment.

- ✓ Limited by treaty
 - Some countries have one or both; others excluded
- ✓ Case of first impression at consulate
- ✓ Length of issuance based on country reciprocity
- ✓ Renewable indefinitely as long as visa requirements met



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E VISA (E-1/E-2) COMMON REQUIREMENTS (9 FAM 41.51)

- ✓ Treaty Exists between the U.S. & Applicant's Country of Nationality
- ✓ Applicant and Business Possess Treaty Country Nationality
- ✓ E Employee will fill Executive or Supervisory Position or Possesses Essential Skills
- ✓ Applicant Intends to Depart U.S. upon Termination of Status
- ✓ Spouses may obtain employment authorization



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E-1 – TREATY TRADER VISA REQUIREMENTS (9 FAM 41.51)

- ✓ Activities = Trade (INA Meaning)
- ✓ Trade is Substantial
- ✓ Trade Principally between US and Treaty Country
- ✓ BUSINESS PLAN REQUIREMENTS



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E-2 – TREATY INVESTOR VISA REQUIREMENTS (9 FAM 41.51)

- ✓ Principal Investor invested/in process of investing in U.S. business
- ✓ Principal Investor will develop/direct enterprise – owns 50+%
- ✓ Business is real, operating commercial enterprise – *not* passive
- ✓ Investment is *proportionally* substantial for industry
- ✓ Business not *marginal* – creates jobs beyond investor + family
- ✓ BUSINESS PLAN REQUIREMENTS & CONSULAR DIFFERENCES



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E-1 & E-2 BUSINESS PLAN REQUIREMENTS + Q & A

- ✓ Consular Differences
- ✓ Role of Investor/Trader/Beneficiary
- ✓ Financial Projections
- ✓ Market/Competitive Analysis
- ✓ Important Elements



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INTRACOMPANY TRANSFEREE CATEGORY L-1A MANAGER/EXECUTIVE

Created in 1970 to accommodate the rise of the multinational corporation and tremendous increase in international trade

- ✓ Multinational companies can transfer key executive/ managerial employees from foreign branch to U.S. branch
- ✓ No nationality restrictions or visa limitations
- ✓ Limit of 7 years of consecutive stay in L-1 status
- ✓ Can lead directly to green card
- ✓ Spouses may obtain employment authorization



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INTRACOMPANY TRANSFEREE REQUIREMENTS

- ✓ Qualifying Relationship between U.S. & Foreign Entities
- ✓ Beneficiary worked 1 of the last 3 years at the foreign company as an Executive or Manager
- ✓ Beneficiary will work for U.S. company in Executive or Managerial capacity



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L-1A BUSINESS PLANS + Q & A

- ✓ Specific L-1 Business Plan Requirements
 - Important Elements
 - Financial Projections
 - Role of Beneficiary
 - Personnel Plans & Job Descriptions



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EB-5 IMMIGRANT INVESTOR VISA REQUIREMENTS (8 CFR § 204.6 and 8 CFR § 216.6)

Created in 1990 to bring new investment capital to U.S. & create jobs for U.S. workers

- ✓ Minimum Investment of \$1MM or \$500K in a Targeted Employment Area (TEA)
- ✓ Investment in a New Commercial Enterprise (NCE) created after 1990
- ✓ Investment must create (or preserve) 10 *qualifying* jobs



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EB-5 TARGETED EMPLOYMENT AREA (TEA)

PRINCIPAL OPERATIONS LOCATED IN:

- ✓ High Unemployment Area - unemployment rate is 150% of national average
- OR
- ✓ Rural Area - outside of a Metropolitan Statistical Area and city/town with 20,000+ population

ALLOWS FOR LOWER INVESTMENT THRESHOLD OF \$500K



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EB-5 NEW COMMERCIAL ENTERPRISE

FOR-PROFIT BUSINESS

- ✓ Established after November 29, 1990
OR
- ✓ Established on or before November 29, 1990 and experiences
 - significant restructuring/reorganization
OR
 - expansion to 140% of pre-investment net worth or number of employees

...as a result of the investment



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EB-5 JOB CREATION REQUIREMENTS

DIRECT INVESTMENT:

- ✓ Direct, full-time, permanent jobs

REGIONAL CENTER PROJECT INVESTMENT:

- ✓ Direct, full-time, permanent jobs
- ✓ Indirect and induced jobs – collaterally created

TROUBLED BUSINESS

- ✓ 10 jobs must be preserved, created, or a combination



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EB-5 QUALIFIED EMPLOYEES

- ✓ U.S. citizens, LPR's, and other immigrant classes
- ✓ Nonimmigrant workers and/or members of the EB-5 investor's family do not qualify



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DIRECT VS. REGIONAL CENTER INVESTMENT

DIRECT INVESTMENT:

- ✓ Investment directly into NCE
- ✓ Direct management of NCE by investor
- ✓ Jobs directly created by NCE or a wholly owned subsidiary(ies)

REGIONAL CENTER INVESTMENT:

- ✓ NCE is a pooled investment fund that lends money to or invests in a Project Company
- ✓ Investor has limited duties and power
- ✓ Jobs created directly or indirectly by Project Company



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EB-5 BUSINESS PLAN REQUIREMENTS (Regional Center Project OR Direct Investment)

1998 AAO Case, Matter of Ho - Comprehensive Business Plans mandatory in EB-5 cases - “Most importantly, the Business Plan must be **credible.**”

Compliant EB-5 Business Plans should specifically include:

1. Business Description
2. Business Structure
3. Marketing Plan
4. Personnel Experience.
5. Competitive Analysis
6. Required Licenses & Permits
7. Hiring Timetable
8. Job Descriptions
9. Budget & Financial Projections



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	E-1 Visa	E-2 Visa	L-1A Visa	EB-5 Visa
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<i>Who Can Apply</i>	Must be a national of the treaty country	Must be a national of the treaty country	Must have worked in a managerial or executive capacity abroad for 1 out of the last 3 years	Any foreign investor who meets the investment requirements
<i>U.S. Position</i>	Must be coming to the U.S. to engage in substantial trade with the treaty country	Must be coming to direct and control the new U.S. enterprise	Must be coming to the U.S. to work primarily in a managerial or executive capacity	May work as an employee of the NCE or have limited involvement
<i>Investment Requirement</i>	No specific requirement other than to obtain sufficient premises	Must be substantial relative to the capitalization of the U.S. enterprise	No specific requirement other than to obtain sufficient premises and adequately capitalize the business (if new)	\$1,000,000 or \$500,000 in a TEA



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E-1 Visa

E-2 Visa

L-1A Visa

EB-5 Visa

Foreign Company Affiliation

No specific requirement

No specific requirement

Ownership of the foreign and U.S. entities must be substantially similar

No specific requirement

Job Creation Requirement

No specific requirement, but the statute contemplates job creation

Investment must be more than marginal – general expectation that U.S. jobs will be created

Organization must be sufficient to support L-1A visa holder's performing mainly managerial or executive duties

Must create or preserve 10 new, full-time, permanent jobs per investor

Green Card Obtainability

Does not lead directly to a green card

Does not lead directly to a green card

Non-immigrant visa with a fast track green card using EB-1 Multinational Manager category

Filing of I-526 petition creates eligibility for conditional permanent residency
Removal of conditions at I-829 stage

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E-1 Visa

E-2 Visa

L-1A Visa

EB-5 Visa

Dependents

Spouse and children under 21 can join the principal applicant in E-1 status. Spouse can obtain employment authorization.

Spouse and children under 21 can join the principal applicant in E-2 status. Spouse can obtain employment authorization.

Spouse and children under 21 can join the principal applicant in L-2 status. Spouse can obtain employment authorization.

Spouse and children under 21 can join the principal applicant in obtaining conditional residency and removal of conditions.



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E-1 Visa

E-2 Visa

L-1A Visa

EB-5 Visa

Business Plan Requirements

5-year business plan

- need to show Applicant and Business Possess Nationality of Treaty Country
- Need to prove SUBSTANTIAL trade between U.S. and treaty country
- 5-year pro forma projections

5-year business plan

- need to show Applicant and Business Possess Nationality of Treaty Country
- Need to prove SUBSTANTIAL investment by principal investor
- Need to prove business is NOT marginal (supports more than principal investor and family)
- Show likelihood of business success – competitive analysis
- 5-year pro forma projections based on reasonable assumptions

3-year business plan

- need to show petitioner and foreign company are qualifying organizations.
- Provide evidence that Foreign national will be employed in a managerial or executive capacity
- Show that business will support staff hires as of second year
- Show that foreign national will ONLY perform executive or managerial functions as of second year
- 3-year pro forma projections

Comprehensive, credible Business Plan (min 5 years)

- must comply with Matter of Ho including: Business Description; Business Structure; Marketing Plan with target market analysis; Personnel Experience; Competitive Analysis; Required Licenses and Permits; Staffing timetable for hiring (must show how 10 jobs per investor will be created); Job descriptions; Budget & Financial Information
- All data must be sourced
- Job creation is **key**
- Need to address economic impact of business/ project



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7 GENERAL CHARACTERISTICS OF STRONG BUSINESS PLANS

1. **Demonstrates** Legitimacy of Business
2. **Describes** Business and Business Model
3. **Details** Products or Services Offered
4. **Establishes** Goals & Intentions for Success
5. **Clarifies** Personnel Plans & Organizational Charts
6. **Evidences** Economic Impact & Other Benefits
7. **Outlines** Future Plans & possible Exit Strategy



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BUSINESS PLAN STRATEGIES

5 WAYS TO AVOID RFE'S (Requests for Evidence)

1. Retain services of professional business plan company
2. Have projections prepared by financial professional familiar with Visa requirements
3. Don't cut corners as savings now will cost time and \$\$ later
4. Ensure client receives the best possible *package* of services
5. Use professional team that know what USCIS wants and can help get Visas APPROVED

YOU CAN'T AFFORD NOT TO USE A PROFESSIONAL COMPANY TO PREPARE THE VISA BUSINESS PLANS NEEDED TO GET YOUR CASES APPROVED



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ATTENDEE QUESTIONS?

Are there questions on any of the immigrant or non-immigrant visa issues covered in today's presentation?

Q & A

To obtain a copy of these slides, please send a message to Lauren on LinkedIn @ [linkedin.com/in/ecouncilinc](https://www.linkedin.com/in/ecouncilinc)



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