

## BUSINESS IMMIGRATION LAW

### A PRIMER FOR THOSE WHO HIRE, MANAGE OR RECRUIT FOREIGN TALENT

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**Benjamin T. Kurten** is the chair of Reinhart's Immigration Law Group, and a shareholder in the firm's Labor and Employment, and International practices. Assisting clients with the successful navigation of complex U.S immigration laws, Ben helps large multinational corporations, small private companies and individual investors. He frequently advises clients with business-related needs such as: transferring international personnel, hiring foreign-born talent with hard-to-find skill sets to fill professional positions, and establishing new U.S. investment enterprises or branch operations.

# Webinar Housekeeping

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## Information

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# The Players

- USCIS
- CBP
- ICE
- DOS
- DOL



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- I-94
- Visa
- Admission stamp
- Status

[illegible]

in the U.S. See "What is a  
Visa?"

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- May engage in business tourism, such as:
  - Engaging in commercial transactions (*i.e.*, buying or selling) which do not involve gainful employment in the United States
  - Negotiating contracts
  - Consulting with business associates, including attending meetings at a U.S. corporation
  - Litigating
  - Participating in scientific, educational, professional or business conventions, conferences or seminars
  - Undertaking independent research
- May not engage in employment!



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## B-1—Business Tourist (cont.)

- Visa Waiver Program
  - No visa required for citizens or nationals from countries participating in the Visa Waiver Program
  - Admitted for maximum of 90 days
  - Must have roundtrip ticket and valid, machine readable passport from participating country, and approval for travel from Electronic System for Travel Authorization (ESTA) prior to traveling to the United States
  - Employment not permitted; may only engage in legitimate B-1 or B-2 activities



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## H-1B—Professional Workers

- Specialty occupation
- H-1B cap
- Required wage
- Public access file



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## L-1—Multinational Transferees

- Executives
- Managers (senior)
- Specialized knowledge



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## E1/E2—Treaty Trader/Treaty Investor

- E-1: to carry on substantial trade, including trade in services and technology, principally between the U.S. and the foreign state that has a commerce or investment treaty with the U.S.
- E-2: seeks to develop and direct the operations of an enterprise in which he or she has invested, or of an enterprise in which he or she is actively in the process of investing a substantial amount of capital



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## E1/E2—Treaty Trader/Treaty Investor (cont.)

- Available to principals and employees of an enterprise, the majority of ownership of which is from a country that has a commerce or investment treaty with the United States
  - Treaties exist with 78 countries
- Visa applicant must have same nationality as that of the majority owners of the enterprise or firm
- Enterprise must not be marginal



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## O-1—Extraordinary Ability

- National or international acclaim
- Top in the field



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## NAFTA—TN

- Canadian citizens
- Mexican citizens
- Listed professions



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## Permanent Residency (a.k.a. Green Card)

- Priority workers (EB-1)
  - Extraordinary ability
  - Outstanding professors and researchers
  - Managers and executives
    - File I-140 directly, no labor certification



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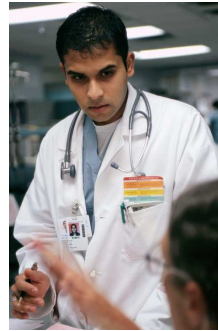
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## Permanent Residency (cont.)

- Advanced degree/  
exceptional ability (EB-2)
  - Master's/Ph.D. or Bach.+5
  - NIW
  - Exceptional ability
    - Labor certification  
sometimes required



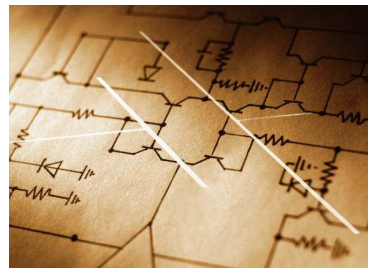
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## Permanent Residency (cont.)

- Professionals/skilled  
workers (EB-3)
  - Bachelor's degree
  - Two years' training
  - First labor certification,  
then file I-140



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## PERM Labor Certification

- Recruitment to prove no U.S. workers are:
  - Available
  - Able
  - Willing
  - Qualified



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## PERM Labor Certification (cont.)

- Minimally qualified standard



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## PERM Labor Certification (cont.)

- Job order
- In-house posting
- Two print ads
- Three other recruitment steps



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## Immigrant Visa Availability

- Priority date
- Preference category
- Country of chargeability
- Current



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## I-9

- Section 274A of the Immigration and Nationality Act requires employers to verify that all employees are authorized to work in the United States and have established their identities using Form I-9, Employment Eligibility Verification

The image shows two versions of Form I-9, Employment Eligibility Verification. The left version is the front side, and the right version is the back side. Both forms contain various sections for employer and employee information, including identification documents and dates of hire.

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# Questions?

# Thank you!

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