

Webinar Series:

U.S. LEGAL ISSUES
for Foreign Businesses in the United States



Presented by:
Reinhart
Attorneys at Law

Session two of a five-part webinar series

**IMMIGRATION ISSUES
FOR FOREIGN BUSINESSES**

March 25, 2014

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Benjamin T. Kurten is chair of the firm's Immigration team. He has more than 12 years of immigration law experience and represents both large and small clients across the country in a variety of industries, including manufacturing, health care, financial services, technology, entertainment, consumer goods and agriculture. His work includes both assisting clients with navigating the immigration regulations to be able to employ foreign-born talent as well as with developing, implementing and executing organizational objectives, policies and procedures to comply with U.S. immigration regulations.

Robert J. Misey, Jr. chairs the International Practice and is a shareholder in the firm's Tax and Business Law Practices. He concentrates his practice in the areas of international taxation and tax controversies, and works with a wide range of clients from a variety of industries including manufacturing, service, energy, retail and entertainment.



AGENDA

Times below are in Central European Time

11:45 a.m. CET Attendees Sign On

12:00 p.m. CET Webinar

12:50 p.m. CET Questions and Answers

Asking Questions

Throughout the webinar, type your questions using the "QUESTIONS" section in the webinar panel. We will answer as many questions as possible during our Q & A session at the end of the webinar.

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Webinar Housekeeping

Viewing the Slides

Today's slide presentation will advance automatically in synch with the live presentation.

Handouts

If you would like a hard copy of the slide presentation, a printable version was e-mailed to you yesterday.

Adjusting Your Volume

Volume can be adjusted using the volume control on your computer or phone.

Asking Questions

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Information

This webinar provides general information about legal issues. It should not be construed as legal advice or a legal opinion. Attendees should seek legal counsel concerning specific factual situations confronting them.

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Webinar Series

Thank you for attending the second in a series of five webinars.
Please consider joining us for the upcoming webinars in this series.
Each webinar starts at 12:00 p.m. Central European Time (CET).

April 29: U.S. Tax Planning for Foreign Businesses

Robert J. Misesy, Jr. / Jessica King

May 20: U.S. Dispute Resolution for Foreign Businesses

Laura A. Brenner / James N. Law / Andrew A. Price

June 17: U.S. Intellectual Property Issues for Foreign Businesses

Jeremy R. Bridge

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The Players

- USCIS
- CBP
- ICE
- DOS
- DOL



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Terms

- *Alien*
- *Immigrant*
- *Nonimmigrant*
- *Visa*
- *Admission*
- *Permanent resident*
- *Citizen*

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B-1 – Business Visitor

- OK:
 - 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
 - Participating in litigation (nonlawyer)
 - Participating in scientific, educational, professional or business conventions, conferences or seminars
 - Undertaking research (for work back in home country)
- Not OK:
 - Active, gainful employment by U.S. employer



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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

- Must have worked for one year in an executive or managerial position (L-1A) or specialized knowledge position (L-1B) abroad for a parent, branch, affiliate, subsidiary company of U.S. employer and must be coming to work in the U.S. in a capacity which is executive, managerial or involves specialized knowledge



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E-1 Treaty Trader

- To carry on substantial trade, including trade in services and technology, principally between the United States and the foreign state which has a commerce or investment treaty with the U.S.
- Over 50% of the total volume of trade must be between the U.S. and the treaty country
- Visa applicant must have same nationality as that of the majority owners of the enterprise or firm

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E-1 Treaty Trader (cont.)

- If a U.S. branch office of a foreign firm is engaged principally in trade between the United States and the treaty country, it is not material whether the office also engages in third-country or intra-U.S. trade, or that the firm's headquarters abroad is engaged primarily in trade with other countries
- E enterprises must not be marginal

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E-2 Treaty Investor

- Individuals who seek 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
- No one particular dollar amount is defined as constituting a substantial investment; a proportionality test is instead applied where the amount of investment is compared in relation to the total cost of the business

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E-2 Treaty Investor (cont.)

- The normal amount invested in the enterprise should be compared to the cost (value) of the business by assessing the percentage of the investment in relation to the cost of the business
- Borrowed funds may be counted towards the amount of the investment, but only if the investor is personally liable for the loan or his or her own personal property serves as the collateral for the loan. The loan amount may not be counted if only the E enterprise is at risk if there is a default

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E-2 Treaty Investor (cont.)

- E enterprises must not be marginal
- Visa applicant must have same nationality as that of the majority owners of the enterprise or firm

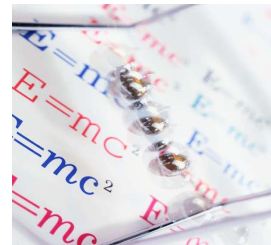
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Extraordinary Ability – O-1

- National or international acclaim
- Top in the field
- Coming to the U.S. to continue work in the area of his/her extraordinary ability or achievement



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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



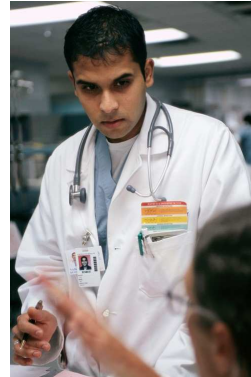
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Permanent Residency (cont.)

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



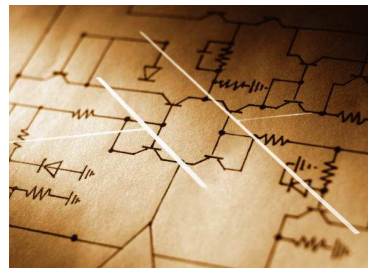
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Permanent Residency (cont.)

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



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Permanent Residency (cont.)

- Employment creating immigrants (EB-5):
 - Fully committed investment of \$1 million (or \$500,000 in targeted employment area)
 - Full amount must be put at risk for purpose of generating return on such capital
 - Must prove capital was obtained through lawful means

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Permanent Residency (cont.)

- Investment must benefit U.S. economy and must create full-time employment for at least ten U.S. workers
- Investment must be made in either new commercial enterprise or a troubled business
- Investor must be engaged in active management of investment

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Permanent Residency (cont.)

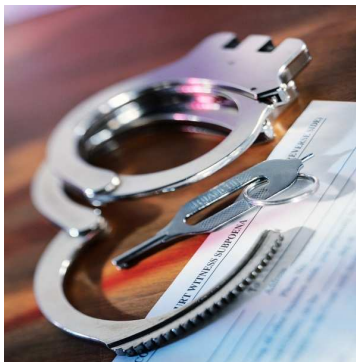
- Multiple investors allowed, but must each individually invest required amount and ten jobs must be created per investor
- Permanent residence is conditional for two years

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Worksite Compliance



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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

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Questions?



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THANK YOU!

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Please consider joining us for part three in this series:

April 29: U.S. Tax Planning for Foreign Businesses
~Robert J. Misey, Jr. and Jessica King

Rob will discuss the fundamentals of inbound U.S. taxation and will illustrate several inbound tax planning techniques for financing and foreign-owned exporters. Jessica will discuss the U.S. estate and gift tax regimes, their impact on foreign persons and planning opportunities.