

# VISA OPTIONS AFTER GRADUATION (ENTREPRENEURSHIP FOCUS)

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# Attorney Profile

## Dana Roxana Bucin



- ◆ Practice Areas: Immigration Law (Business- and Family-based), International Business Transactions, Corporate/ Business Law
- ◆ Education: Boston University School of Law (J.D.); Ohio Wesleyan University (B.A., summa cum laude, Phi Beta Kappa)
- ◆ Professional Recognition: SuperLawyer 2013, New Leaders in the Law 2012, Women in the Law High Achievers 2010, 40 under Forty 2009
- ◆ Languages: Romanian, English, French and Spanish; Basic Italian, German, Hungarian and Latin

# Practical Examples of Legal Representation



- ◆ Represent foreign students and graduates with proactively planning for visa options after graduation
- ◆ Represent foreign investors with: 1) opening up or buying businesses in the U.S. (including contract negotiation); and 2) obtaining green cards or visas based on such investments
- ◆ Represent EB-5 Regional Centers with attracting foreign investors (either \$1,000,000 or \$500,000 level), including for financing exports; represent individual EB-5 investors
- ◆ Obtain H-1B visas for Engineers, Computer Programmers, Doctors, Managers, other Professionals
- ◆ Assist foreign companies in establishing new offices in the U.S. and transferring personnel
- ◆ Assist U.S. manufacturers with business transactions in foreign countries (sales contracts, NDAs, distributorship agreements, joint venture agreement, etc)
- ◆ Assist U.S. manufacturers with securing work permits and visas for U.S. personnel travelling abroad

# Introduction to Immigration Incentives for Investors



## General Immigration Categories

- ◆ Business/ Employment
- ◆ Family
- ◆ Asylum/ Refugee Status
- ◆ Diversity Visa Lottery
- ◆ Other (VAWA, Cancellation of Removal, NACARA, Cuban Adjustment)

# General Principles of Immigration Law



## Visa Duration

- ◆ Temporary (Nonimmigrant)
- ◆ Permanent (Immigrant/ Green Card)

# Path to Citizenship



- ◆ Non-Immigrant Visa  
(F-1/CPT/ OPT → H-1B)  
↓
- ◆ Green Card (Permanent Residence)  
↓
- ◆ Citizenship through Naturalization

# Visa Options for Foreign Students and Graduates



## Non-Immigrant Visas:

- ◆ ***F-1 with CPT/ OPT***
- ◆ ***J-1 Visa with Academic Training***
- ◆ ***H-1B Professional Workers***
- ◆ ***TN Visa for Mexicans/ Canadians***
- ◆ ***L-1 Multi-National Managers or Executives***
- ◆ ***E Treaty Investors or Traders***
- ◆ ***O-1 Extraordinary Ability***

## Green Card:

- ◆ ***EB-1 Extraordinary Ability***
- ◆ ***EB-1 Multi-National Managers or Executives***
- ◆ ***EB-1 Outstanding Professors and Researchers***
- ◆ ***EB-2 National Interest Waiver***
- ◆ ***EB-2 Advanced Degree***
- ◆ ***EB-3 Professional Worker***
- ◆ ***EB-5 Immigrant Investor Program***

# F-1 Curricular Practical Training (CPT)



- ◆ Full-time student for at least 1 academic year
- ◆ Work related to a course of study
- ◆ Employment for the purpose of practical training
- ◆ Alternate work/study, internship, cooperative education or any other type of required internship or practicum
- ◆ part-time basis ( $\leq 20$  hours/week) with no impact on OPT or a full-time basis ( $> 20$  hours/week) with impact on OPT if  $> 12$  months
- ◆ Job offer required
- ◆ See DSO for internal procedures for applying
- ◆ Self-employed business owners allowed: Yes, if complying with all other criteria

# F-1 Optional Practical Training (OPT)



- ◆ Pre-completion OPT: 20 hours/ week while school is in session, full-time otherwise
- ◆ Post-completion OPT: 12 months
  - ❑ New: STEM OPT 17 month extension invalidated on 8/12/2015 effective as of 2/12/2016
  - ❑ 10/19/2015: new proposed rules for STEM 24 month extension (total of 36 months of OPT for STEM graduates)
  - ❑ New rules clarify STEM fields, propose formal mentoring and training programs, increase unemployment period to 60 days during STEM extension (from 30)
  - ❑ Public comments through 11/18/2015

# F-1 Optional Practical Training (OPT)



- ◆ Full-time F-1 student in good standing for at least 1 full academic year
- ◆ Currently maintaining F-1 status
- ◆ Proposed work must be directly related to major area of study
- ◆ Self employed business owners ok, as long as the majority of the work to be performed is within field of study

# J-1 Visa with Academic Training



- ◆ 212(e) foreign residence requirement (2 years) as a potential issue
- ◆ May switch from J-1 to O-1 (consular processing) even if there is a 212(e) issue (but the issue comes back once switching away from O-1)
- ◆ Paid or unpaid academic training pre- or post-completion (up to 18 months post-completion, unless program mandates a longer period)
- ◆ Waivers of 212(e): persecution, exceptional hardship, no objection letter, request by US federal executive agency, international medical graduates waivers



## H-1B Visa

- ◆ Bachelor's degree (or higher) in the occupational area is required for the position
- ◆ Apply: every April 1
- ◆ Start date: following October 1
- ◆ OPT Cap Gap
- ◆ Prevailing wage and LCA requirements
- ◆ Certain notice and attestation requirements

## H-1B Visa (cont'd)



- ◆ H-1B cap of 65,000 per fiscal year + 20,000 for advanced degrees
- ◆ **THE TRAGEDY**: April 1, 2015: 233,000 H-1B petitions for 85,000 available H-1B visas
- ◆ Maximum period of stay is 6 years – extensions may be available
- ◆ H-1B1 – Singaporean and Chilean nationals only – per Treaties (annual cap never reached)



## TN Visa

- ◆ The “H-1B” for Mexican and Canadian professionals
- ◆ Occupation must be on the NAFTA list
- ◆ Three year stay, but can be extended repeatedly (no maximum stay)
- ◆ No cap

# L-1 Multinational Managers and Executives



- Requires having a company in country of origin and opening up a branch/ subsidiary/ affiliate in the U.S.
- Foreign Investor must have worked at least 1 year for company abroad as manager/executive within last 3 years
- Must be coming to U.S. as manager/executive
- Maximum stay 7 years, but fairly easy to obtain green card
- **Key concept:** the Foreign Company doing the investment must have ownership and control of US venture (except in cases of equity joint ventures where 50-50% is acceptable)



## L-1 Investment Structures

- **Parent-Subsidiary:** Foreign Company owns and controls newly created US subsidiary (>51%)
- **Joint Venture:** Foreign Company and US venture enter into an equity joint venture (50-50% ownership and control)
- **Stock Purchase:** Foreign Company purchases 51% or more of the stock of an existing US venture
- **Asset Purchase:** Foreign Company purchases substantial assets of an existing US venture

If US venture/ subsidiary is “new” (i.e. less than 1 year in business): 1 year “trial period”



# E Treaty/ Traders Visa

- Requires substantial and active trade (E-1) or **substantial investment (E-2)** into a U.S. venture by a foreign company or individual
- E-2 substantial investment: enough to match the capitalization needs of the business (could be as low as \$40k and as high as desired)
- E-2 is available only to 80 select countries which are signatories to a bilateral investment treaty with the U.S.
- Must be a “Manager” OR employee with skills which are “essential to the successful operation of the enterprise”
- **Key concept:** the Foreign Company/ Individual doing the investment must have ownership and control of US venture (except in cases of equity joint ventures where 50-50% is acceptable)

## E-2 Investment Structures



- **Parent-Subsidiary:** Foreign Company owns and controls newly created US subsidiary (>51%)
- **Joint Venture:** Foreign Company/ Individual and US venture enter into an equity joint venture (50-50% ownership and control)
- **Stock Purchase:** Foreign Company/ Individual purchases 51% or more of the stock of an existing US venture
- **Asset Purchase:** Foreign Company/ Individual purchases substantial assets of an existing US venture
- **Entrepreneurial Venture:** Foreign Individual creates US venture startup >51% ownership and control

# O-1 Visa Extraordinary Ability in the Arts, Sciences, Education, Business, Athletics



- ◆ High standard – individual must be of the small percentage who have risen to the very top of his/her field
- ◆ Must obtain Advisory Opinion from peer group
- ◆ Can change from J-1 to O-1 w/o waiver of foreign residence requirement (but must pursue consular processing)
- ◆ Initial period of stay is 3 years + extension available in one-year increments (indefinitely)



# Immigrant (Permanent) Visa

- ◆ Also called the “Green Card” or “Permanent Residence”
- ◆ Priorities and Preferences: EB-5 means Employment-Based 5<sup>th</sup> preference category (for employment creators)



# Employment Immigrant Preferences

1. Persons of Extraordinary Ability, Outstanding Professors and Researchers, Multinational Executives and Managers
2. Members of the Professions Holding Advanced Degrees (including National Interest Waiver) or Persons of Exceptional Ability
3. Skilled Workers, Professionals and Other Workers
4. Certain Special Immigrants: religious workers, NATO employees, etc
5. Employment Creators: investors

# EB-1 Extraordinary Ability (Could be Self-Petition)



- Extraordinary Ability in Business, Science, Arts, Education or Athletics
- National or international acclaim in the field:
  - a. Major international award (e.g. Nobel Prize) OR
  - b. At least 3/ 10 requirements: lesser national/ international award, elite organizations, published in major journals, judge of the work of others, original contributions to the field, publications about you/ your work, leading/ critical role in reputable organizations
- Applicant coming to the US to work in the area of extraordinary ability

# EB-1 Outstanding Professors and Researchers



- Recognized internationally as outstanding in a specific academic area
- 3 years' experience in teaching/ research in the academic area. Experience in teaching/ research while working on advanced degree may be counted if degree is acquired, person had full responsibility for the class taught, or the research has been recognized as outstanding in the academic field
- Seeks entry for:
  - a tenure/tenure track teaching position within a university
  - a comparable position at university to conduct research;  
*or*
  - a comparable position to conduct research with private employer if it employs at least 3 full-time researchers and the department/ division/ institution has achieved documented accomplishments in an academic field. Research will not include engineering or product design because such activity is the "technological application of existing research."

# EB-1 Outstanding Professors and Researchers (cont'd)



- Proving international recognition:
  - Receipt of major prizes or awards for outstanding achievement.
  - Membership in an association which requires outstanding achievement.
  - Published material in professional publications written by others about the applicant's work.
  - Evidence of the person's participation as a judge of the work of others.
  - Evidence of original scientific research.
  - Authorship of scholarly books or articles in the field.

# EB-2 National Interest Waiver (Could be Self-Petition)



1. Plan on working in the US in an area of substantial intrinsic merit
2. Impact of work is national in scope
3. Waiving Labor Certification is in the national interest of the US

New: Obama Executive Action on Immigration: founders, researchers, inventors, entrepreneurs, investors eligible for NIW

New: "Parole-in-place" for researchers/ inventors/ start-up founders (substantial US investor financing; or promise of innovation/ job creation thru new tech/ cutting edge research)

# EB-2 Advance Degree and EB-3 Professional



- For positions requiring at least a Master's degree or equivalent (for EB-2) or Bachelor/Skilled (EB-3)
- Requires employer sponsorship (applicant cannot own/ control the company)
- PERM or Labor Certification Application: 1) no minimally qualified US workers; and 2) paid at the prevailing wage
- Around 1 year of processing, with a longer line for: China, India, Mexico, Philippines

# EB-5 Immigrant Investor Program



3 options:

1. Stand-Alone/ Direct Investments
2. Troubled Business
3. Regional Center

2-year “trial” period:

- “conditional” followed by “permanent” green card 2 years later for investor and immediate family if successful job creation
- if unsuccessful, investor and family likely get deported

# EB-5 Stand-Alone/ Direct Investment



1. Invest \$1,000,000 in a U.S. business (\$500,000 if in Targeted Employment Area)
2. Capital at risk for generating “profit” = EQUITY INVESTMENTS (need not have ownership and control)
3. Money is “clean”
4. Employ at least 10 full-time US workers for 2 years DIRECTLY ON COMPANY’S PAYROLL (no Contractors)
5. Foreign Investor must be Officer or Director of US Venture



## EB-5 Troubled Business

1. Invest \$1,000,000 in a U.S. business (\$500,000 if in Targeted Employment Area) that has existed for at least two years
2. Equity investment into a business (need not have ownership and control) that has incurred a net loss (GAAP), for the 12-24 month period before filing of at least 20% of the business's net worth before the loss
3. Maintain the number of jobs at no less than the pre-investment level for a period of at least two years.
4. Money is "clean"
5. Foreign Investor must be Officer or Director of US Venture

# EB-5 Regional Center



1. Invest \$1,000,000 in a regional center affiliated business or troubled business (\$500,000 if in Targeted Employment Area) within a USCIS certified regional center
2. The investment must create jobs for at least 10 full-time US workers for 2 years DIRECT OR INDIRECT (Contractors also counted)
3. Money is “clean”
4. Foreign Investor DOES NOT need to be Officer or Director
5. Equity investment into a pooled fund, which can then make either equity investments or loans to the US venture



## EB-5 Statistics

- ❖ Cap of 10,000 EB-5 green cards per year
- ❖ Over 600 Regional Centers today in the US and more get certified each week
- ❖ Countries of Origin of most investors: China (mainland), South Korea, China (Taiwan), Iran, UK, Mexico, Venezuela, India, Russia, Vietnam, Canada, Brazil
- ❖ Timing of government processing of EB-5 investor applications: about 13.5 months (compare to L-1 and E-2 timing of 15 days); move to DC contemplated to reduce processing times



# Family Immigration Preferences

## **Immediate Relatives of USCs: Spouses, Minor Children (under 21) and Parents**

- 1.** Unmarried Sons and Daughters of Citizens
- 2.** Spouses and Children, Unmarried Sons and Daughters of Permanent Residents
  - A. Spouses and Children
  - B. Unmarried Sons and Daughters (21 years of age or older)
- 3.** Married Sons and Daughters of Citizens
- 4.** Brothers and Sisters of Adult Citizens



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# **The End Thank You**

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