

# WHAT A COUNTRY!

Answers to FAQs About the Most Often Used Business Visas



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## About the Author



Elizabeth R. Bandon has been practicing immigration law for almost twenty years. The association of lawyers of her state has certified her as an “immigration expert.” Fewer than 100 lawyers have been honored with this Board Certification.

The Martindale-Hubbell Peer Review Rating System rated Ms. Bandon AV. This score – which is the highest rating possible - reflects the confidential opinions of both judges and other attorneys regarding Ms. Bandon’s legal ability and adherence to the highest level of professional ethics.

Clients publish anonymous reviews on the website AVVO. They have given her the highest rating (10.0 Superb) as well as the Client’s Choice award.

In 2013, the American Immigration Lawyers Association honored Ms.

Bandon’s article as one of the best magazine stories by an immigration lawyer. Her work has been mentioned in [The New York Times](#), [The Washington Post](#), Univision and other outlets. The Fort Lauderdale [Sun Sentinel](#) ranked her as one of the best immigration attorneys in Florida.

She founded Bandon Law to help victims of abuse make a life for themselves in the United States, whether they are victims of a person or a government. Clients live in many different parts of the United States and are citizens of over 80 countries.

Ms. Bandon graduated from the University of Pennsylvania Law School, considered one of the best in the nation. Ms. Bandon speaks Spanish and French. Before studying law, Ms. Bandon honed her writing skills at Boston University where she earned two degrees, one in Literature and another in Journalism.

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## Introduction

Detailed information about business visas can fill a 300-page book. This brochure answers the most frequently asked questions. If you want to know how immigration laws pertain to you personally, schedule a consultation.

## General Questions Applicable to All Visas

### **Can I stay in the U.S. until my visa is approved?**

Foreign nationals can remain in the United States so long as they have permission to do so. For example, a foreign national who is visiting the United States generally is allowed to stay for six months.



Some work visas require applications to be approved by the US Citizenship and Immigration Service (USCIS) before the embassy will schedule an interview. If the foreigner remains in the United States while USCIS processes

the application, that will not jeopardize the visa being granted.

Importantly, a visa is approved in the US Embassy or Consulate after an in-person interview. Thus, at some point, the foreign national will need to travel outside the United States to obtain visa approval.

### **Can I work for a different company once the visa is approved?**

Visas are granted for a specific purpose. Work visas are granted for a specific company.

If a person decides to work for a different company, an immigration attorney will prepare an application to transfer the visa to that second company.

### **What happens if my visa is denied at the U.S. embassy?**

Blandon Law informs clients of all possible risks before a visa interview So they can make an informed decision as to whether they wish to attend the interview or provide us with additional evidence.

That said, if a visa is denied at the US Embassy, there are options including requesting a legal opinion letter or re-filing for another visa.

### **Can my family work in the United States, as dependents on my visa?**

Only a spouse and children under the age of 21 years can come to the United States as dependents of the principal visa holder.

The visa type they have will determine whether they are allowed to work in the United States. For example, spouses of H1B visas are not allowed to work in the United States but spouses of investors (E-2 visas) are.

Immigration attorneys will explain the benefits of each type of visa so the family can choose what is the best option for all members.

### **Do I need a lawyer?**

In a word, yes. Visa cases are won – or lost – depending on the documents submitted. It would be a mistake to assume that USCIS interprets the law the same way that the applicant does. Here are a few examples of prior clients who we helped with evidence:

- A treaty trader visa (E-1) applicant is asked to provide proof that the money she will use for the new business comes from a legal source. The applicant provides bank statements to show that a distant relative deposited the money in her bank account, as the money was a gift from the relative. The case would have been denied. Additional documents were needed from the distant relative to prove legal source of funds.
- An uncle wants to hire his recent-college-graduate niece to manage a restaurant with an H-1B visa, because she speaks Spanish and can oversee the staff. The applicant provides documents relating to the employees, showing most were born in Spanish-speaking countries. The case would have been denied: Speaking a second language is not considered a business need requiring an employee with a bachelor's degree. Additional documents were needed to prove that the restaurant had other business purposes for the new employee.

For 20 years, we have worked exclusively in immigration law. Our experience is at your service.

## Treaty Investor Visas (E-2)

### **What kind of investment do I need to get the visa approved?**

The investor visa program is not limited to any specific industry. Successful clients have invested in fish farms, gasoline stations, real estate, and retail stores. The key is to find an investment that will generate about 7 to 10 full-time jobs within a period of five years.

Foreigners who are interested in applying for permanent residence will need to generate 10 jobs.

### **How much money do I need to invest to get the visa?**

Blandon Law will not take an investor case where the investment is under \$100,000. Although there is not a minimum, the investment needs to be *substantial* and that six-figure amount demonstrates to immigration that there is a serious intent to create a successful business in this country.

### **What does “substantial investment” mean?**

A foreigner who is seeking an investor visa must make a substantial investment. In other words, the investor will not rely on those funds to live or maintain his or her family in the country. Verse, an applicant will need to demonstrate that they have various sources of income in addition to the enterprise that was purchased or is being created.

## **Do I need to open, or buy, the company before applying for my visa?**

The investor visa will not be issued to someone who has an *intent* to invest. In order to demonstrate that the investment is real, the applicant must have an address, a telephone, and other indicators showing that on the day the visa is granted, the company will be open for business.



A good example is the hiring of employees. The employees do not need to be actively working before the visa is granted. However, employment contracts must have been signed, salaries must have been agreed to, and the employees must be ready to show up for work on the day the visa is granted. As it is sometimes difficult to arrange for such perfect timing, Blandon Law advises investors to hire a manager to begin operations prior to the visa interview date.

## **Does the E-2 Visa require an investment of \$1 million dollars?**

An E-2 visa does not require an investment of \$1 million. A person who wishes to obtain legal permanent residency through the E-B5 program, including residency for spouse and children under 21 years of age, must invest at least \$1.8 million as of November 2019.

Foreigners who invest in Targeted Employment Areas only need to invest half of that amount, meaning \$900,000.

## **How long does it take to get the visa approved?**

The Department of State will take less than two months to review the documents submitted with an E-2 visa. The processing of the actual visa, including the interview at the embassy or consulate, will take less than two weeks.

## Questions About Other Types of Work Visas

### **I know someone (a friend or relative) who is willing to sponsor me for a work visa. What is the next step?**

The employer must demonstrate a need to employ the foreigner and an ability to pay the salary.



In other words, the sponsor needs to provide documents which demonstrate why this job must be filled. The type of documents will depend on the type of visa. An employer would need to show how many employees are on payroll if the employer is claiming that the foreigner will be working as a manager of employees (for an L-1A visa). If the employer is hiring the foreigner as an operations manager (for an H-1B visa), the employer needs to demonstrate that there are existing organizational processes, quality and productivity issues.

The easiest way to demonstrate ability to pay the salary is for the employer to provide Blandon Law with a copy of the most recent corporate tax return. The net income must be greater than the annual salary. If the employer has not filed a corporate tax return, they must do so prior to filing for a business visa.

## **Can someone sponsor me for any type of job as a way to stay here (even as a housekeeper, home health aide, babysitter, server, cook)?**

A visa category exists for almost every type of job. For example, a cook can receive training in business management on an H-3 visa if she or he will then be transferred to an affiliated company in a foreign country. Similarly, an exchange visitor in a J visa can work in a hotel or restaurant.

Foreigners interested in these types of jobs generally need to apply through a sponsoring program, as opposed to directly by an employer. Of course, if the foreigner is in the United States and wishes to change status to a business visa, they need to be here in legal status.

## **After graduating from higher education and finishing with Optional Practical Training (OPT), how do I stay here with a work visa?**

One of the best options for young professionals is the H-1B visa. The employer must need someone with a bachelors degree or the equivalent, and the foreigner must have that degree. Because these visas can easily take 5 months or more to process, the student must see an immigration attorney while in OPT status. If OPT expires, the student will need to return to the home country and wait for the visa interview.

## **Besides consular processing, what are my options to apply for a business visa?**

Foreigners who are in the United States with another status (such as student or pleasure visitor), can apply for a change of status (COS) with the US Citizenship and Immigration

Services. The greatest benefit of filing a COS is that the foreigner can remain in the US in a period of authorized presence while Immigration decides the case. The bad news is that USCIS will usually take much longer to process a COS than the Department of State will take to process a visa at an embassy or consulate.

In addition, if the foreigner travels outside the US after the COS is granted, they will still need to consular process a business visa. For example, a Colombian with a visitor visa (B2) who was granted a COS to professional (H-1B) status can remain in the United States and work for three years. However, if they leave the country during that period and enter without consular processing for the H-1B, they will be allowed to enter only as a visitor (B2). This is because that is the only visa in the passport. Thus, the Colombian will not be allowed to work in the U.S. until they AGAIN file for another COS and get that approved.

## **How do I adjust status to become a permanent resident?**

A foreigner can obtain legal permanent resident status in one of several ways. They can file based on a family relationship, and employment relationship, investment, or under protection laws, such as asylum.

Simply stated, a person's current status in the United States does not "transform" into a green card. If a foreigner is in the United States with an O-1 visa (persons with extraordinary abilities), he or she will still need to apply for legal permanent resident status as an alien of extraordinary ability.



Immigration will not grant the green card simply because they previously granted the visa under a similar law.

A foreigner who is outside the United States can also obtain legal permanent residence. They are granted *immigrant* visas by the Department of State. A few months after they enter the United States with the immigrant visas, the green card arrives in the mail.

### **Will Blandon Law prepare the business plan?**

Investors use business plans to demonstrate the expected growth of the current company during the five-year period of the validity of the visa.

Blandon Law does not prepare the business plan. However, we work closely with companies that specialize in business plans for immigration purposes.

Blandon Law will, of course, review the draft of the business plan. We will suggest changes to make sure it accurately provides the strongest chance of success for the investor.

## **Conclusion**

We hope you have enjoyed this free eBook. Check out [www.Blandon-Law.com](http://www.Blandon-Law.com) to take the first step to make your immigration goals a reality.