BRANCACCIO & Associates

U.S. IMMIGRATION AND INTERNATIONAL LAW

Rome, September 23, 2019-11:00 a.m.- 12:45 p.m.

EMIGRATION TO THE UNITED STATES

STATISTICS PROVIDED BY THE ITALIAN CONSULATE IN MIAMI:

-The number of immigrants from Italy in Florida: **28,517** in 2014 ≥**41,841** in 2018;
-There are **35, 280 Italian residents** reported in Florida;
-There are **2,000.000 Italian American**s in Florida;
-Italian business travelers and tourists spent **$755,680.000** in 2017;
-Italian Export to the Southeastern coast consists of 27% Motor Vehicles;17% Furniture;15% glasses; 7% Pharmaceutical;
-There were reported **114 Italian firms in Florida**, 59 in Georgia, 32 in South Carolina,7 in Alabama,4 in Mississippi;

Italians created 8088 direct jobs in the Southeastern coast in 2018.

PRINCIPLES OF IMMIGRATION LAW:

U.S. immigration law is very **complex**. The Immigration and Naturalization Act **(INA)** is the body of law governing current immigration policy. U. S. immigration law is governed by the principle of **discretion**. It means that the judge or counselor officer has ample decision power in adjudicating or denying a case. Immigration to the United States is based upon the reunification of families, admitting immigrants with skills that are valuable to the U.S. economy, protecting refugees, and promoting diversity.

NEWEST CHANGES:

Public Charge Principle: This final rule amends DHS regulations by prescribing how DHS will determine whether an alien is inadmissible to the United States based on his or her likelihood of becoming a public charge at any time in the future, as set forth in the Immigration and Nationality Act. The rule defines the term "public charge" to mean an individual who receives one or more
designated public benefits for more than 12 months, in the aggregate, within any 36-month period.

Asylum Procedures: The new procedure put a heavier burden on applicants, cannot process the application within USA, judges can approve a very limited number of applications.

Strict Scrutiny: As consequence of The Buy American/Hire American policy the government set higher standards to approve visas, expanded its authority to look into each case, implemented existent laws strictly.

FAMILY PETITIONS:

The family-based immigration category allows U.S. citizens and LPRs (green card holder) to bring certain family members to the United States. Family-based immigrants are admitted either as **immediate relatives** of U.S. citizens or through the **family preference system**. Immediate relatives are:

- spouses of U.S. citizens;
- unmarried minor children of U.S. citizens (under 21-years-old); and
- parents of U.S. citizens (petitioner must be at least 21-years-old to petition for a parent).

Table 1: Family-Based Immigration System

Category	U.S. Sponsor	Relationship	Numerical Limit
Immediate Relatives	U.S. Citizen adults	Spouses, unmarried minor children, and parents	Unlimited
Preference allocation			
1	U.S. citizen	Unmarried adult children	23,400*
2A	LPR	Spouses and minor children	87,900
2B	LPR	Unmarried adult children	26,300
3	U.S. citizen	Married adult children	23,400**
4	U.S. citizen	Brothers and Sisters	65,000***

In order to be admitted through the family-based immigration system, a U.S. citizen or LPR sponsor must petition for an individual relative, establish the **legitimacy of the relationship**, **meet minimum income requirements, and sign an affidavit of support** stating that the sponsor will be financially responsible for the family member(s) upon arrival in the United States.

The spouses and children who accompany or follow the principal immigrants (those who qualify as immediate relatives or in family-preference categories) are referred to as derivative immigrants.

PROCESS WITHIN US AND CONSULAR PROCESSING

There are two paths to apply for an immigrant visa: **Consular processing is** the procedure of **applying for an immigrant visa (green card) through a U.S. Embassy** or Consulate in a foreign country. If the applicant is **outside** the U.S., the only path for immigrating to the U.S. is to use consular processing. If the applicant is in the U.S. the process is called **Adjustment of Status.**

PRO AND CONS OF CONSULAR PROCESSING

Consular processing takes approximately 4 to 12 months for immediate relatives. Because consular processing generally has a **shorter processing** time, it's preferred by some applicants over adjustment of status. What's more, consular processing has a lower risk of refusal**. Unlike USCIS officers, consular officers cannot refuse to issue a visa based on discretion.** This means that the consular officer must have specific, factual evidence for denying an application. However, cases that are denied are generally non-reviewable. In other words, it's a final decision.

PROCESSING TIMES

The time it takes to adjust status to permanent residence can take significantly longer than applying for an immigrant visa through consular processing. For an immediate relative, typical processing times may look like this:

Adjustment of Status
8-14 Months
Consular Processing
4-12 Months

Although it may take more time to obtain permanent residence through AOS, the obvious benefit is that the applicant completes the process in the United States. This allows the applicant to be with U.S. family members and even work (with the employment authorization) while waiting for a green card.

TRAVEL CONSIDERATIONS

While waiting for USCIS to approve the I-485 application, the adjustment of status applicant may travel outside the U.S. provided he or she has obtained the correct authorizations.

In most cases, the applicant must obtain an advance parole document. This is easily done by filing Form I-131, Application for Travel Document, concurrently with Form I-485 or at any time it is pending. Generally, an AOS applicant that leaves the United States without advance parole can be automatically considered to **have abandoned** the I-485 application and may not be able to re-enter the U.S. So obtaining the advance parole document prior to departing the U.S. is extraordinarily important.

Consular Processing

It may be much more difficult to visit the United States while an immigrant visa petition is pending. Though it's possible to get a B1/B2 visa, it shouldn't be expected. When the I-130 petition is filed, it signals to the U.S. government that the beneficiary intends to live in the U.S. permanently at some point in the future. As a result, the application for a nonimmigrant visa (such as a visitor visa) will receive additional scrutiny. Nonimmigrant visas are generally only issued to travelers that provide sufficient evidence that the visit will be temporary.

DECISIONS & APPEALS

Adjustment of Status

If an applicant is found to be ineligible, **USCIS must issue a denial notice**. USCIS may deny an adjustment of status case for discretionary reasons. That is, the USCIS officer may deny the adjustment of status application even if the applicants are otherwise eligible to adjust status but have negative factors that outweigh positive factors. Negative factors may include:

- Fraud in your initial application
- Misrepresentation in the initial application
- Preconceived intent to remain in U.S. when coming as a nonimmigrant
- Unlawful entry into the United States
- Overstaying the period you were legally allowed to be in the U.S.
- Criminal background, including any misdemeanors or felonies
- Other ineligibility factors

If an AOS case is denied, the applicant may challenge the denial through the administrative and/or judicial appellate processes.

Consular Processing

Consular processing has a lower risk of refusal. Unlike USCIS officers, consular officers cannot refuse to issue an immigrant visa based on discretion. **This means that the consular officer must have specific, factual evidence for denying an application.**

However, **consular cases for an immigrant visa that are denied are generally non-reviewable.** This means that the consular processing decisions for a green card are final.

90 DAYS RULE:

In September 2017, the U.S. Department of State made a significant change to its Foreign Affairs Manual (FAM). **Under the new 90-day rule, there's a presumption of fraud if a person violates his or her nonimmigrant status or engages in conduct inconsistent with that status within 90 days of entry.** This is a significant change from the previous 30/60 day rule, which allowed for the presumption only if the status violation or conducted occurred within **30 days of entry**. If a nonimmigrant attempts to adjust status during this 90-day period, the applicant should expect increased scrutiny of the application.

Exception for Immediate Relatives of U.S. Citizens

Based on two cases (the Matter of Battista and the Matter of Cavazos), immediate relatives of U.S. citizens who wish to apply for adjustment of status are exempt from the 30/60 day rule. **Nonetheless, this is still risky territory**. If the applicant entered the United States with a nonimmigrant visa (or visa waiver program or border crossing card) and want to adjust status as an immediate relative (or even get married) within 90 days of entry, MAKE CAREFUL OBSERVATIONS.

K VISA

A foreign citizen may use the K-1 fiancé visa to travel to the United States for the purpose of marriage to his or her U.S. citizen fiancé. Once married to the U.S. citizen sponsor, the foreign citizen may apply for permanent residence – represented by a green card — inside the United States.

Requirements for a Fiancé Visa

Only the fiancé of a U.S. citizen is eligible for the K-1 fiancé visa process. The couple must:

- Be legally free to marry and intend to marry within 90 days of the fiancé's admission to the United States; and
- Have met each other in person within the two years immediately before filing the petition, unless the U.S. citizen petitioner establishes that either:

a)The requirement to meet in person would **violate strict and long-established customs of the foreign national's culture or social practice**, and that any and all aspects of the traditional

b)Arrangements have been or will be met in accordance with the custom or practice; or

c)The requirement to meet in person would result in **extreme hardship to the U.S. citizen**;

Adjustment of Status

Upon entry to the United States, the foreign citizen must marry the U.S. citizen within a 90-day period. The K-1 fiancé visa cannot be extended beyond 90 days. If there is no marriage, the foreign citizen is required to depart the United States by the 90th day.

IMMIGRANT VS NON IMMIGRANT VISAS
VISITOR VISAS-B-VISA:

Visitor visas are nonimmigrant visas for persons who want to enter the United States temporarily

for business (visa category B-1), for tourism (visa category B-2), or for a combination of both purposes (B-1/B-2)

B-1 Temporary Business Visitor

Applicants may be eligible for a B-1 visa if they will be participating in business activities of a commercial or professional nature in the United States, including, but not limited to:

- Consulting with business associates
- Traveling for a scientific, educational, professional or business convention, or a conference on specific dates
- Settling an estate
- Negotiating a contract
- Participating in short-term training

Eligibility Criteria

Applicants must demonstrate the following in order to be eligible to obtain a B-1 visa:

- The purpose of the trip is to enter the United States for business of a legitimate nature
- The plan to remain for a specific limited period of time
- Applicants have the funds to cover the expenses of the trip and stay in the United States
- Applicants have a residence outside the United States in which they have no intention of abandoning, as well as other binding ties which will ensure your return abroad at the end of the visit
- Applicants are otherwise admissible to the United States

Period of Stay: up to 6 months

Family of B-1 Visa Holders

Spouse and children are not eligible to obtain a dependent visa. Each of the dependents who will be accompanying or following to join applicant must apply separately for a B-1 visa and must follow the regulations for that visa.

Change of Status

If plans change while in the United States (for example, marriage a U.S. citizen or offer of employment), applicant may be able to request a change in your nonimmigrant status to another category through U.S. Citizenship and Immigration Services (USCIS).

The B-2 visa is a US visitor visa which allows applicants to enter the US for tourism, pleasure, or visit to friends and family. To qualify candidates must be going to the US for one of these purposes:

- Spend a holiday in the US.
- Tour various cities in the US.
- Visit friends or family.
- Participate in social events hosted by various organizations.
- Visit the country for medical treatments.
- Participate in events or contests related to music or sports, for which you will not receive payment.
- Enroll in short study courses for which you will not receive credit (ex. cooking classes)

B-2 Visa Eligibility Criteria

Applicant must meet the following eligibility criteria:

- Intent for visiting is compliant with the B2 visa allowed purposes of visit and intents to leave.

E-1 Treaty Traders

The E-1 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation) to be admitted to the United States **solely to engage in international trade on his or her own behalf.** Certain employees of such a person or of a qualifying organization may also be eligible for this classification.

General Qualifications of a Treaty Trader

To qualify for E-1 classification, the treaty trader must:

- Be a national of a country with which the United States maintains a treaty of commerce and navigation

- Carry on *substantial trade*
- Carry on *principal trade* between the United States and the treaty country which qualified the

treaty trader for E-1 classification. Items of trade include but are not limited to:

- Goods
- Services
- International banking/Technology
- Insurance
- Transportation
- Tourism

Substantial trade generally refers to the continuous flow of sizable international trade items, involving numerous transactions over time. There is no minimum requirement regarding the monetary value or volume of each transaction.

Principal trade between the United States and the treaty country exists when over 50% of the total volume of international trade is between the U.S. and the trader's treaty country. See 8 CFR 214.2(e)(11).

General Qualifications of the Employee of a Treaty Trader

To qualify for E-1 classification, the employee of a treaty trader must:

- Be the same nationality of the principal alien employer (who must have the nationality of the treaty country)
- Meet the definition of "employee" under the relevant law
- Either be engaging in duties of an executive or *supervisory character*, or if employed in a lesser capacity, have special qualifications.

Duties which are of an *executive or supervisory character* are those which primarily provide the employee ultimate control and responsibility for the organization's overall operation, See 8 CFR 214.2(e)(17) for a more complete definition.

Special qualifications are skills which make the employee's services essential to the efficient operation of the business. These include, but are not limited to:

- The degree of proven expertise in the employee's area of operations
- Whether others possess the employee's specific skills
- Whether the skills and qualifications are readily available in the United States

E-2 Treaty Investors

The E-2 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation) to be admitted to the United

States when investing a substantial amount of capital in a U.S. business. Certain employees of such a person or of a qualifying organization may also be eligible for this classification.

General Qualifications of a Treaty Investor

To qualify for E-2 classification, the treaty investor must:

- Be a national of a country with which the United States maintains a treaty of commerce and navigation
- Have invested, or be actively in the process of investing, a substantial amount of capital in a bona fide enterprise in the United States
- Be seeking to enter the United States solely to develop and direct the investment enterprise. This is established by showing at least 50% ownership of the enterprise or possession of operational control through a managerial position or other corporate device.

An *investment* is the treaty investor's placing of capital, including funds and/or other assets, at risk in the commercial sense with the objective of generating a profit. The capital must be subject to partial or total loss if the investment fails. The treaty investor must show that the funds have not been obtained, directly or indirectly, from criminal activity.

A *substantial amount of capital* is:

Substantial when is sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise

A *bona fide enterprise* refers to a real, active and operating commercial or entrepreneurial undertaking which produces services or goods for profit.

Marginal Enterprises

The investment enterprise may not be marginal. A marginal enterprise is one that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family.

General Qualifications of the Employee of a Treaty Investor

To qualify for E-2 classification, the employee of a treaty investor must:

- Be the same nationality of the principal alien employer (who must have the nationality of the treaty country)

- Meet the definition of "employee" under relevant law
- Either be engaging in duties of an executive or supervisory character, or if employed in a lesser capacity, have special qualifications.

Period of Stay

Qualified treaty traders and employees will be allowed a maximum initial stay of two years. Requests for extension of stay may be granted in increments of up to two years each. **There is no maximum limit** to the number of extensions an E-1/2 nonimmigrant may be granted. All E-1/2 nonimmigrants, however, must maintain an intention to depart the United States when their status expires or is terminated.

Terms and Conditions of E-1/2 Status

A treaty trader/investor or employee may only work in the activity for which he or she was approved at the time the classification was granted. An E-1/2 employee, however, may also work for the treaty organization's parent company or one of its subsidiaries as long as the:

- Relationship between the organizations is established
- Subsidiary employment requires executive, supervisory, or essential skills
- Terms and conditions of employment have not otherwise changed.

Family of E-1/2 Treaty Traders-Investor and Employees

Treaty traders/investors and employees may be accompanied or followed by spouses and unmarried children who are under 21 years of age. Their nationalities need not be the same as the treaty trader/investor or employee.

L-1A Intracompany Transferee Executive or Manager

The L-1A nonimmigrant classification enables a U.S. employer to transfer an **executive or manager** from one of its affiliated foreign offices to one of its offices in the United States. This classification also enables a foreign company which does not yet have an affiliated U.S. office to send an executive or manager to the United States with the purpose of establishing one.

General Qualifications of the Employer and Employee

To qualify for L-1A classification in this category, the employer must:

- Have a **qualifying relationship** with a foreign company (parent company, branch, subsidiary, or affiliate, collectively referred to as *qualifying organizations*); and

- Currently be, or will be, ***doing business*** as an employer in the United States and in at least one other country directly or through a qualifying organization for the duration of the beneficiary's stay in the United States as an L-1.

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

To qualify, the named employee must also:

- Generally have been working for a qualifying organization abroad **for one continuous year within the three years i**mmediately preceding his or her admission to the United States; and
- Be seeking to enter the United States to provide service in an ***executive* or *managerial capacity*** for a branch of the same employer or one of its qualifying organizations.

Executive capacity generally refers to the employee's ability to make decisions of wide latitude without much oversight.

Managerial capacity generally refers to the ability of the employee to supervise and control the work of professional employees and to manage the organization, or a department, subdivision, function, or component of the organization.

New Offices

For foreign employers seeking to send an employee to the United States as an executive or manager to establish a new office, the employer must also show that:

- The employer has secured **sufficient physical premises** to house the new office;
- The **employee has been employed as an executive or manager for one continuous year** in the three years preceding the filing of the petition; and
- The intended U.S. office will support an **executive or managerial position** within one year of the approval of the petition.

Period of Stay

Qualified employees entering the United States to establish a new office will be allowed a **maximum initial stay of one year. All other qualified employees will be allowed a maximum initial stay of three years.** For all L-1A employees, requests for extension of stay

may be granted in increments of up to an additional two years, until the employee has reached the maximum limit of seven years.

Family of L-1 Workers

The transferring employee may be accompanied or followed by his or her spouse and unmarried

children who are under 21 years of age.

L-1B Intracompany Transferee Specialized Knowledge

The L-1B nonimmigrant classification enables a U.S. employer to **transfer a professional employee with specialized knowledge relating to the organization's interests** from one of its affiliated foreign offices to one of its offices in the United States. This classification also enables a foreign company which does not yet have an affiliated U.S. office to send a specialized knowledge employee to the United States to help establish one.

General Qualifications of the Employer and Employee

Employer *See* qualifications of employer L1A.

Employee must also:

- Generally, have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding his or her admission to the United States; and
- Be seeking to enter the United States to provide services in a specialized knowledge capacity to a branch of the same employer or one of its qualifying organizations.

Specialized knowledge means either special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures (See 8 CFR 214.2(l)(1)(ii)(D)).

- The employee will not be principally controlled or supervised by such an unaffiliated employer; and the work being provided by the employee is not considered to be labor for hire by such an unaffiliated employer.

New Offices

For foreign employers seeking to send an employee with specialized knowledge to the United States to be employed in a qualifying new office, the employer must show that:

The employer has secured sufficient physical premises to house the new office; and

- The employer has the financial ability to compensate the employee and begin doing business in the United States.

Period of Stay

Qualified employees entering the United States to establish a new office will be allowed a **maximum initial stay of one year. All other qualified employees will be allowed a maximum initial stay of three years**. For all L-1B employees, requests for extension of stay may be granted

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in increments of up to an additional two years, until the employee has reached the maximum limit of five years.

Family of L-1 Workers

The transferring employee may be accompanied or followed by his or her spouse and unmarried children who are under 21 years of age.

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O-1 Visa: Individuals with Extraordinary Ability or Achievement

The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry and has been recognized nationally or internationally for those achievements.
The O nonimmigrant classification is commonly referred to as:

- O-1A: individuals with an extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion pictures or television industry)
- O-1B: individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry
- O-2: individuals who will accompany an O-1, artist or athlete, to assist in a specific event or performance. For an O-1A, the O-2's assistance must be an **"integral part"** of the O-1A's activity. For an O-1B, the O-2's assistance must be **"essential"** to the completion of the O-1B's production. The O-2 worker has critical skills and experience with the O-1 that cannot be readily performed by a U.S. worker and which are essential to the successful performance of the O-1
- O-3: individuals who are the spouse or children of O-1's and O-2'

Evidentiary Criteria for O-1A

Evidence that the beneficiary has received a major, internationally-recognized award, such as a Nobel Prize, or evidence of at least (3) three of the following:

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor

- Membership in associations in the field for which classification is sought which require outstanding achievements, as judged by recognized national or international experts in the field
- Published material in professional or major trade publications, newspapers or other major media about the beneficiary and the beneficiary's work in the field for which classification is sought
- Original scientific, scholarly, or business-related contributions of major significance in the field

- Authorship of scholarly articles in professional journals or other major media in the field for which classification is sought
- A high salary or other remuneration for services as evidenced by contracts or other reliable evidence
- Participation on a panel, or individually, as a judge of the work of others in the same or in a field of specialization allied to that field for which classification is sought
- Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation

If the above criteria do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Evidentiary Criteria for O-1B

Evidence that the beneficiary has received, or been nominated for, significant national or international awards or prizes in the particular field, such as an Academy Award, Emmy, Grammy or Director's Guild Award, or evidence of at least (3) three of the following:

- Performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts or endorsements
- Achieved national or international recognition for achievements, as shown by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications
- Performed and will perform in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials.
- A record of major commercial or critically acclaimed successes, as shown by such indicators as title, rating or standing in the field, box office receipts, motion picture or television ratings and other occupational achievements reported in trade journals, major newspapers or other publications
- Received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in which the beneficiary is engaged, with the testimonials clearly indicating the author's authority, expertise and knowledge of the beneficiary's achievements

- A high salary or other substantial remuneration for services in relation to others in the field, as shown by contracts or other reliable evidence

If the above standards do not readily apply to the beneficiary's occupation in the arts, the petitioner may submit comparable evidence in order to establish eligibility (this exception does not apply to the motion picture or television industry).

Consultation

A written advisory opinion from a peer group (including labor organizations) or a person with expertise in the beneficiary's area of ability. If the O-1 petition is for an individual with extraordinary achievement in motion picture or television, the consultation must come from an appropriate labor union and a management organization with expertise in the beneficiary's area of ability.

Contract between petitioner and beneficiary

A copy of any written contract between the petitioner and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed. USCIS will accept an oral contract, as evidenced by the summation of the elements of the oral agreement. Such evidence may include but is not limited to: emails between the contractual parties, a written summation of the terms of the agreement, or any other evidence which demonstrates that an oral agreement was created.

Itineraries

An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities,

Agents

A U.S. Agent may be the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or a person or entity authorized by the employer to act for, or in place of, the employer as its agent.

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H-1B Visa Specialty Occupations:

This visa category applies to candidates who wish to perform services in a specialty occupation in professional fields. The H-1B visa is a US work visa that allows companies to employ workers in specialty occupations where a graduate university is required. It is also called a Person in Specialty Occupation Visa. This means that the candidate can obtain this type of visa if qualifies and is accepted in a specific job position which has the following requirements:
Possession of an advanced educational degree such as:

- Bachelor's Degree (or equivalent degrees)
- Master's or Doctoral Degree
- Advanced training or vocational skills (examples include fashion models)
- Qualify to work in research and development projects of the US Department of Defense

Who Can Obtain an H-1B Visa?

The H-1B work visa is initiated by a US employer. The employer has an open job position and they cannot find an American employee who is qualified enough to complete the work. This can be any position that requires higher education degrees or that is specialized enough in skills that not many people can do it successfully.

Examples of job positions might be:

- IT specialists.
- Architects.
- Accountants.
- Professors.
- Doctors.
- Lawyers, etc.

The employer receives applications from various candidates and if the requirements for the job are fulfilled by a foreign employee, then the US H-1B visa process is initiated.

A US employer is defined as a company or corporation which has an IRS (Internal Revenue Service) number. Since the H-1B visa process starts with a US employer, they have to be able to meet some requirements specified by the country. The process is also otherwise known as H1B visa sponsorship.

Labor Condition Application (LCA)

This application includes certain attestations, a violation of which can result in fines, bars on sponsoring nonimmigrant or immigrant petitions, and other sanctions to the employer. The application requires the employer to attest that it will comply with the following labor requirements:

- The employer will pay the beneficiary a wage which is no less than the wage paid to similarly qualified workers or, if greater, the prevailing wage for your position in the geographic area in which you will be working.
- The employer will provide working conditions that will not adversely affect other similarly employed workers. At the time of the labor condition application there is no strike or lockout at the employer place of business

Period of Stay

As an H-1B nonimmigrant, the candidate can be admitted for a period of up to **three years**. Time period may be extended, but generally cannot go beyond a total of six years.

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H-1B Cap

The H-1B visa has an annual numerical limit "cap" of 65,000 visas each fiscal year. The first 20,000 petitions filed on behalf of beneficiaries with a U.S. master's degree or higher are exempt from the cap. Additionally, H-1B workers who are petitioned for or employed at an institution of higher education or its affiliated or related nonprofit entities or a nonprofit research organization, or a government research organization are exempt from the cap.

H VISA HOLDER IS ELEGIBLE FOR GREEN CARD AND EVENTUALLY CITIZENSHIP

Green Cards and Permanent Residence in the U.S.

EB-1: Permanent Workers – Extraordinary Ability/Outstanding Professor/Multinational Executive

Applicants may be eligible for an employment-based, first-preference visa if they have an **extraordinary ability, are an outstanding professor or researcher, or are a multinational executive or manager.**

Extraordinary Ability - applicants must be able to demonstrate extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim. Achievements must be recognized in the field through extensive documentation. No offer of employment is required. First, candidates must meet three out of the listed criteria below:

- Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- Evidence of a significant one-time achievement (i.e. Pulitzer Prize, Oscar Award, Olympic Medal)
- Evidence of membership in associations in the field for which classification is sought which require outstanding achievement of their members, as judged by recognized national or international experts in their disciplines or fields

- Evidence of published material about the applicant in professional or major trade publications or other major media relating to applicant' work in the field for which classification is sought and includes the title, date, author, and any necessary translation of the material

- Evidence that applicant has participated in judging the work of others in your field or allied field for which classification is sought, either individually or on a panel

- Evidence of applicant' original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to your field

- Evidence of applicant' authorship of scholarly articles in the field, published in professional or major trade publications or other major media

- Evidence that applicant' work in the field has been displayed at artistic exhibitions or showcases

- Evidence of applicant' performance in a leading or critical role in organizations or establishments with distinguished reputations

- Evidence that applicant commands a high salary or other significantly high remuneration in relation to others in the field

- Evidence of applicant commercial successes in the performing arts

Outstanding Professors and Researchers - Applicants must demonstrate international recognition for your outstanding achievements in a particular academic field. Applicants must have at least three years of experience teaching or researching in that academic area. Applicants must include documentation of at least two items listed below and an offer of employment from the prospective U.S. employer:

- Evidence of receipt of major prizes or awards for outstanding achievement

- Evidence of membership in associations that require their members to demonstrate outstanding achievement

- Evidence of published material in professional publications written by others about the alien's work in the academic field

- Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field

- Evidence of original scientific or scholarly research contributions in the field

- Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

Multinational Manager or Executive - Applicants must have been employed outside the United States for at least one year by a firm or corporation during the three years preceding the petition and applicants must be seeking to enter the United States to continue service for that firm or organization.

Employer Criteria for Multinational Manager or Executive:

- Petitioning employer must be a U.S. employer.
- Employer must have been doing business for at least one year, as an affiliate, a subsidiary, or as the same corporation or other legal entity that employed alien abroad.

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Employment-Based Immigration: Second Preference EB-2

Applicants may be eligible for an employment-based, second preference visa if they are a member of the professions holding an advanced degree or its equivalent, or a foreign national who has exceptional ability. Below are the occupational categories and requirements:

Eligibility Criteria

Sub-Categories	Description	Evidence
Advanced Degree	The job you apply for must require an **advanced degree** and you must possess such a degree or its equivalent (a baccalaureate degree plus 5 years progressive work experience in the field).	Documentation, such as an official academic record showing that you have a U.S. advanced degree or a foreign equivalent degree, *or* an official academic record showing that you have a U.S. baccalaureate degree or a foreign equivalent degree and letters from current or former employers showing that you have at least 5 years of progressive post-baccalaureate work experience in the specialty.
Exceptional Ability	You must be able to show **exceptional ability** in the sciences, arts, or business. Exceptional ability "means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business."	You must meet at least three of the criteria below.*
National Interest Waiver	Aliens seeking a national interest waiver are requesting that the Labor Certification be waived because it is in the **interest of the United States**. Though the jobs that qualify for a national interest waiver are not defined by statute, national interest waivers are usually granted to those who have exceptional ability (see above) and whose employment in the United States would greatly benefit the nation. Those seeking a national interest waiver may self-petition (they do not need an	You must meet at least three of the criteria below* and demonstrate that it is in the national interest that you work permanently in the United States.

	employer to sponsor them) and may file their labor certification directly with USCIS along with their Form I-140, Petition for Alien Worker.	

Criteria

- Official academic record showing that applicants have a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to your area of exceptional ability
- Letters documenting at least 10 years of full-time experience in the occupation
- A license to practice your profession or certification for your profession or occupation
- Evidence that applicants have commanded a salary or other remuneration for services that demonstrates your exceptional ability
- Membership in a professional association(s)
- Recognition for applicants achievements and significant contributions to your industry or field by your peers, government entities, professional or business organizations
- Other comparable evidence of eligibility is also acceptable.

Spouse and children under the age of 21 may be admitted to the United States

Employment-Based Immigration: Third Preference EB-3

Applicants may be eligible for this immigrant visa preference category if they are a skilled worker, professional, or other worker.

- "Skilled workers" are persons whose job requires a minimum of 2 years training or work experience, not of a temporary or seasonal nature

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- "Professionals" are persons whose job requires at least a U.S. baccalaureate degree or a foreign equivalent and are a member of the professions
- The "other workers" subcategory is for persons performing unskilled labor requiring less than 2 years training or experience, not of a temporary or seasonal nature.

Eligibility Criteria

Sub-categories	Evidence	Certification
Skilled Workers	•You must be able to demonstrate at least 2 years of job experience or training • You must be performing work for which qualified workers are not available in the United States	Labor certification and a permanent, full-time job offer required.
Professionals	• You must be able to demonstrate that you possess a U.S. baccalaureate degree or foreign degree equivalent, and that a baccalaureate degree is the normal requirement for entry into the occupation • You must be performing work for which qualified workers are not available in the United States • Education and experience may not be substituted for a baccalaureate degree	Labor certification and a permanent, full-time job offer required.
UnskilledWorkers (Other Workers)	You must be capable, at the time the petition is filed on your behalf, of performing unskilled labor (requiring less than 2 years training or experience), that is not of a temporary or seasonal nature, for which qualified workers are not available in the United States.	Labor certification and a permanent, full-time job offer required.

Note: While eligibility requirements for the third preference classification are less stringent, you should be aware that THE PROCESS IS LONGER.

Spouse and children under 21 may be admitted to the United States.

EB-5 Immigrant Investor Program

USCIS administers the EB-5 program, created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under a program initially enacted

as a pilot in 1992, and regularly reauthorized since then, investors may also qualify for EB-5 classification by investing through regional centers designated by USCIS based on proposals for promoting economic growth. All EB-5 investors must invest in a **new commercial enterprise**, which is a commercial enterprise:

Commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to:

- A sole proprietorship
- Partnership (whether limited or general)
- Holding company
- Joint venture
- Corporation
- Business trust, or
- Other entity, which may be publicly or privately owned.

Job Creation Requirements

An EB-5 investor must invest the required amount of capital in a new commercial enterprise that will create full-time positions for at least 10 qualifying employees.

- For a new commercial enterprise not located within a regional center, the full-time positions must be created directly by the new commercial enterprise to be counted.
- For a new commercial enterprise located within a regional center, the full-time positions can be created either directly or indirectly by the new commercial enterprise.
- A **qualifying employee** is a U.S. citizen, lawful permanent resident or other immigrant authorized to work in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or a person residing in the United States under suspension of deportation. This definition does not include the immigrant investor; his or her spouse, sons, or daughters;
- **Full-time employment** means minimum of 35 working hours per week.

Capital Investment Requirements

Capital means cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. Note: The immigrant investor must establish that he or she is the legal owner of the capital invested. Capital can include the immigrant investor's promise to pay (a promissory note) under certain circumstances.

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Required minimum investments are:

- General. The minimum qualifying investment in the United States is $1,8 million.

- Targeted Employment Area (High Unemployment or Rural Area). The minimum qualifying investment either within a high-unemployment area or rural area in the United States is $900,000.

  A **targeted employment area** is an area that, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

  Immigrant Investor Regional Centers

  As of June 3, 2019, there are 884 approved regional centers.

- Constitute USCIS endorsement of the activities of that regional center;
- Guarantee compliance with U.S. securities laws; or
- Minimize or eliminate risk to the investor.

U.S. Citizenship

Applicants must meet certain requirements to become U.S. citizens either at birth or after birth.

To become a citizen at birth, applicants must:

- Have been born in the United States or certain territories or outlying possessions of the United States, and subject to the jurisdiction of the United States; OR
- had a parent or parents who were citizens at the time of your birth (if you were born abroad). Please be aware newest changes.

To become a citizen after birth, applicants must:

- Apply for "derived" or "acquired" citizenship through parents
- Apply for naturalization(3 years for immediate relatives of US citizens- 5 years for employment based candidates)

Dual Citizenship

For information on dual citizenship, visit the U.S. Department of State Services Dual Nationality website. Italians do not lose their Italian citizenship if they obtain their US citizenship.

The Value of Citizenship

Deciding to become a U.S. citizen is one of the most important decisions in an individual's life. If you decide to apply to become a U.S. citizen, you will be showing your commitment to the United States and your loyalty to its Constitution. In return, you are rewarded with all the rights and privileges that are part of U.S. citizenship.

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