

Immigration into the United States

Available Visas and Tax Consequences

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**Steven H. Hagen & Andrea Olivos-Kah
Harper Meyer Perez Hagen
O'Connor Albert & Dribin LLP**

**shagen@harpermeyer.com
aolivos-kah@harpermeyer.com**

May 13, 2010

Income Tax Residency

Consequences:

1. Income taxation on worldwide income
2. Reporting to U.S. as to:
 - a. All non U.S. bank accounts
 - b. All non U.S. entities

Income Tax Residency

Determination:

1. Green Card - Resident
2. In U.S. 183 days during calendar year
3. Deemed in U.S. for 183 day using formula
(1, 1/3, 1/6) . . . closer connection
4. Income Tax Treaties

Estate/Gift Tax Residency

Consequences:

1. 2010
2. Subject to Estate Tax on Value of Assets at Death or Gifted
3. Statutory Executor
4. IRS Filings

Estate/Gift Tax Residency

Determination:

1. Based on Domicile
2. Facts and Circumstances
3. Tax Treaties

B-1/B-2 Visa for Business Visitors

Eligibility Requirements:

1. Must apply with the U.S. Consulate of her/his country of nationality or residence.
2. Evidence of socio-economic links.
3. Must be coming to the United States to attend meetings to make investments.
4. Must not enter the U.S. labor force.
5. Entries to the U.S. must be for short-term period. The U.S. Department of Homeland Security Officers will see the record or history of travel at the port of entry.

B-1 – Difficulties in the Practical Application

- a. If foreign national is an owner of a U.S. Company should she/he obtain an ITIN to apply for an EIN for her/his U.S. Company or enterprise?
- b. Should foreign national obtain an ITIN to open up a corporate bank account?
- c. Should a B-1 visa holder file a report of world wide income with IRS, even if not the owner of a U.S. Company?

H-1B Visa for Professionals

Eligibility Requirements:

1. Work in a professional position.
2. U.S. Bachelor's degree or the equivalent.
3. Sponsor must be a U.S. entity.
4. Six-year maximum period of stay under H-1B, and any dependents will enter in H-2B status for same period.
5. Foreign national needs sponsorship for Legal Permanent Residency, long process due to national quotas.
6. May be restricted in the time of filing (current quota is 65,000 for general H-1B visas and 20,000 for Master's).

H-1B – Difficulties in the Practical Application

- a. Payroll tax purposes when foreign national does not yet have SSN?
- b. When does H-1B visa holder start to count time towards IRS reporting of individual income?
- c. Does H-1B visa holder file IRS Form 1040 as a resident or non-resident?

E-2 Visa Treaty Trader

Eligibility Requirements:

1. Foreign national must be from a treaty country and investment must be traced to country of nationality.
2. Investment must be substantial with the objective of generating a profit.
3. Foreign national must be seeking entry as investor to direct and supervise investment, not to compete with the U.S. Labor Force.
4. Must show either purchase of existing business or incorporation of a new U.S. entity along with commercial lease and business licenses.
5. Must show business plan and include hiring of employees including U.S. workers.
6. Foreign national may file extensions of status, with no limitation on stay in E-2 status, may also lead to Legal Permanent Residency or “Green Card”.

E-2 – Difficulties in the Practical Application

- a. How does a foreign national start up a U.S. Company without reporting world wide income with IRS?
- b. How does a foreign national obtain an EIN for the Company if s/he does not have an SSN or ITIN?
- c. Should a foreign national obtain an ITIN before obtaining E-2 visa status, or will that trigger an IRS reporting requirement?