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Immigration 101

Introduction to U.S. Immigration

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Immigration 101

Topics Covered

- Overview of U.S. Immigration Law
- Key Terms
- Practical Tips

Immigration 101 – Overview of U.S. Immigration Law

❖ **Two Ways to Enter the U.S. lawfully**

- Option 1: Temporary visa aka nonimmigrant visa
- Option 2: “Green Card” aka lawful permanent residence (LPR)

❖ **Nonimmigrant Visa**

- The visa is for a limited period of time.
- There are many types including the following: B-1/ B-2 Visitor for Business / Visitor for Pleasure; E-1 Treaty Trader ; E-2 Treaty Investor; H-1B Specialty Occupation Visa; L-1 Intracompany Transferee; O-1 Extraordinary Ability; and TN under USMCA fka NAFTA

Immigration 101 – Overview of U.S. Immigration Law

- ❖ **Lawful Permanent Residence (LPR) aka “Green Card”**
 - There are many types of LPR options including family based immigration and employment based immigration
 - This permits the individual and his/ her family (spouse and child under 21 to live in the U.S. permanently.

Immigration 101 – Overview of U.S. Immigration Law

❖ **Nonimmigrant Visas (NIVs) – How to Apply**

- Generally, the applicant and his/ her family, if any apply at a U.S. Consulate outside the U.S.
- At present, there are significant processing delays because of limited appointments at U.S. consulates outside the U.S.
- This may involve multiple U.S. government agencies, e.g. U.S. Citizenship and Immigration Services, U.S. Department of State and U.S. Department of Labor.
- Some NIVs have time limits.

Immigration 101 – Overview of U.S. Immigration Law

- ❖ **Lawful Permanent Residence (LPR) aka “Green Cards” – How to Apply**
 - The process takes 14 to 32 months or longer.
 - This may involve multiple U.S. government agencies, e.g. U.S. Citizenship and Immigration Services, U.S. Department of State and U.S. Department of Labor.
 - This can lead to U.S. citizenship.

Immigration 101 – Key Terms

- **Visa** - A permit to enter the U.S.
- **Status** - This term determines what a person can do in the U.S., i.e. vacation, attend business meetings, or work. Lawful Permanent Residence (LPR) aka “Green Cards”
- **I-94** - This is an electronically issued document by U.S. Customs and Border Protection when a person enters the U.S.
- **Passport** - Each person from a foreign country must have one to enter the U.S.

Immigration 101 – Key Terms (cont.)

- ❖ **Overstay** - A person who overstays his/her authorized period of admission to the U.S.
- ❖ **Out of Status** - This relates to when a person is no longer authorized to remain lawfully in the U.S.

The Biden Administration & Recent Changes

- ❖ On January 19, 2021 President Biden reinstated restrictions for certain non-U.S. citizens travelling to the U.S. from the Schengen area, Ireland, UK, Brazil or South Africa
- ❖ Travel Restrictions will remain in effect indefinitely, subject to DHS Secretary review every 30 days.

The Biden Administration & Recent Changes (cont.)

- ❖ Anticipate routine extensions of Covid-19 related travel restrictions in place and introduction of new restrictions.
- ❖ January 26, 2021 – CDC now requires a negative Covid-19 test up to 72 hours before travel for all air passengers entering the U.S.

The Biden Administration & Recent Changes (cont.)

- ❖ U.S. consular posts have limited visa appointment availability. Scheduled appointments are routinely cancelled with limited exceptions. Many times it is necessary to make an expedited appointment request.

The Biden Administration & Recent Changes

- ❖ Travel Bans due to Covid-19 On January 19, 2021 President Biden reinstated restrictions for certain non-U.S. citizens travelling from the Schengen area, Ireland, U.K., Brazil or South Africa to the US.
- ❖ Exceptions exist for certain travelers or National Interest Exception.

The Biden Administration & Recent Changes

- ❖ U.S. Citizenship Act of 2021 – the proposed legislation contemplates significant changes but how/ when Congress will enact changes is uncertain.
- ❖ Cancellation of multiple Trump Administration Executive Orders.

The Biden Administration & Recent Changes

- ❖ Comprehensive Immigration Reform or Piecemeal Changes?
- ❖ DACA reopened and outlook for Dreamers.
- ❖ The one constant is there will be change.

The Biden Administration & Recent Changes (cont.)

- ❖ The immigrant process does work successfully. Immigration is mentioned specifically in the U.S. Constitution.
- ❖ **Delays** – With Covid-19, travel bans and limited visa processing, there have been significant delays.

Intersection of Estate Planning and U.S. immigration and Commercial/ Corporate law

- ❖ **Naturalization** - Is the client eligible to apply for naturalization as a U.S. citizen? What are the related estate planning opportunities?
- ❖ **Abandonment** - Assuming the client and/or his/her spouse are LPRs, they may lose LPR status if they live outside the U.S. What is the effect/ impact of abandonment on the client's U.S. and international estate planning?
- ❖ **Multiple nationalities**

Intersection of Estate Planning and U.S. immigration and Commercial/ Corporate law (cont.)

- ❖ **Sale of Client's Business and Undocumented Employees** - Does the client have any employees who are undocumented? What is the effect on the sales price and related representations and warranties?
- ❖ **Marriage to NRA** - Will the client marry a person who is an NRA and the impact on a Subchapter S election?

Tips to Assist Clients with U.S. visas

- ❖ **Plan ahead** - Being proactive and planning ahead is the best way to address and solve problems.
- ❖ Define short term and long term goals, i.e. U.S. citizenship.
- ❖ Have a passport valid for at least one year.
- ❖ Anticipate the need to extend visa status in the U.S., inability to travel outside the U.S. to renew visa, and consider alternate options/ solutions.

Tips to Assist Clients with U.S. visas (cont.)

- ❖ Assuming a nonimmigrant, if there will be any change in the client's employer, title, job duties, job location in the U.S., contact the client's U.S. immigration counsel in advance of the contemplated change to determine what changes may be needed.
- ❖ If possible, evaluate the client's long term U.S. plans to determine what estate planning options and U.S. immigration options may be available.

Tips to Assist Clients with U.S. visas (cont.)

- ❖ **Arrest** - In the unlikely event any client who holds a nonimmigrant visa or LPR status is arrested for any criminal matters, we recommend such person contact U.S. immigration counsel *immediately* because such arrest can impact (i) the client's eligibility to remain in the U.S, (ii) travel to/ from the U.S; and (iii) the client's ability to qualify for future U.S. nonimmigrant visas or LPR.

Tips to Assist Clients employees with U.S. visas (cont.)

- ❖ **Global Entry** - We do not recommend clients who hold a nonimmigrant visa and who work for a U.S. employer apply for and/or use Global Entry *at any time*, because this can result in the client being admitted in the incorrect visa status.
- ❖ If you have questions, contact the KRCL team and me.

A person wearing a blue suit jacket and a white shirt is holding a white rectangular sign with both hands. The sign has the word "Questions?" written in a red, sans-serif font. The background is a solid grey color. The top of the image has a dark grey header with a red triangle in the top right corner.

Questions?



Thank you!

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