

H-visas

<< B-visas; article is fourth in a series

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by
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This article is the fourth in a series that addresses some practical matters regarding the criteria for various U.S. visa categories. The author is Hans A. van Velzen, a consultant with Van Velzen C.S. Belgium B.V.B.A., a company that assists European companies with their business establishments and business activities in the United States. Advisor with regard to the article is Thomas W. Simmons, Former Chief of the Business and Trade Services Branch, U.S. Immigration and Naturalization Service at Washington headquarters, USA. The subject of this article will be that of non-American employees performing business activities in the United States and the qualifications for and advantages of B-visas.

Under U.S. immigration law, nonimmigrants, unlike immigrants, enter the U.S. for a temporary period of time and are restricted to the activity consistent with their visa category. The B-visa category is important for foreign (non-U.S.) companies doing business in the United States.

The B-category can be divided into two categories, B-1, B-2 and one subcategory within the B-1 category: B in lieu of H. The B-1 subcategory is applicable to businesslike trips, whereas the B-2 subcategory is applicable to tourist visits. The B in lieu of H subcategory is applicable to businesslike trips for specialist assignments. All (sub) categories are subject to extensive rules and regulations. Mostly, B visas are issued as B-1/2.

B-visa issuance is subject to a one-step process; it requires visa adjudication at a U.S. Embassy or Consulate General. Before a Consular Officer at a U.S. Embassy or a U.S. Consulate General can issue a B-visa, the officer needs to be convinced about the temporary character of the business or tourist trip involved. Furthermore, among other conditions, the visa applicant has to have sufficient financial means while in the USA and may not generate any income from any U.S. source while in the USA.

This article gives examples of (1) how a fictitious Belgian company, exporting Belgian beer generates orders in the USA by their Belgian salesperson, and (2) how a Belgian management consulting firm fulfills the requirements of a contract with a U.S. client on-site. For practical reasons, this article focuses on aspects regarding B-1 business visas.

B-1: A Belgian company exporting beer to the U.S. market

King Beer from Westmalle recently entered the U.S. market. The decision to explore the U.S. market was made after consulting Export Vlaanderen and the Belgian Foreign Trade Board. King Beer heard about the success story of a white beer importer and brewery, based in Vermont, USA and initiated a U.S. market survey, which appeared to be positive for the products sold by the company.

Needing the salespersons they employ at the moment in Europe, they hire a new salesman who has profound experience in the 'beer industry'.

The salesman, Mr. Frank Deleysse will initially cover the whole U.S. market. He will be responsible for sales in the USA and for expanding the network of and relations with distributors.

King Beer in Belgium employs Mr. Deleysse. It is planned that Mr. Deleysse will leave for the U.S. mid 2000. He intends to stay in the United States for 4 to 5 months at a time, after which he will return to Belgium for a same period of time.

The company's legal advisors are contacted to assist on visa matters.

Conclusion

Mr. Deleysse may start soliciting orders in the USA without a visa, when staying less than 3 months. Belgium and the United States have signed a treaty, making it possible for Belgian nationals to enter the United States without prior visa issuance. A visa waiver form (I-94) needs to be signed while flying to the United States. A visa waiver may be used for purposes like temporary business or tourist visits. However, Mr. Deleysse may spend 3 or more months at a time in the USA. Therefore, King Beer is advised to apply for a B-1 visa. This kind of visa enables the bearer to stay in the USA for six months at a time, which will in any way cover the intended period of stay of Mr. Deleysse.

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In order to qualify for the B-1 visa, the (business visa) applicant must meet all of the following conditions.

- Having a residency abroad (outside the United States) that he or she does not intend to abandon;
- Having sufficient financial means while in the USA;
- Seeking admission to the USA for the sole purpose of engaging in legitimate activities relating to business or pleasure, and,
- Seeking admission for a limited period of time, usually not exceeding 6 months and consistent with the purpose of the trip.

A B-1 visa applicant must have the intention to leave the United States when the purpose of the trip is met. Immigrant intent will lead to ineligibility for this class of visa. Mr. Deleysse intends to stay for 4-5 months at a time, after which he will return to Belgium. He has no immigrant intent. This general condition is met.

Accordingly, the legitimacy of his activities under the B-1 visa category needs to be assessed. A B-1 visa holder may not be employed by any U.S. based company and may not be paid by such company. Activities may not involve local labor for hire or employment. A B-1 visa holder may come to the United States on such visa, to engage in commercial transactions, which do not involve gainful employment in the United States.

Mr. Deleysse will travel to and throughout the United States soliciting orders for King Beer, his Belgian employer. He is paid by his Belgian employer and will receive no remuneration from any company in the United States, while in the United States. This general condition is met.

Mr. Deleysse submits a visa application either in person, Monday through Friday from 9:30 to 12:00, or by mail to the U.S. Embassy Consular Section, 25 Blvd. du Regent, 1000 Brussels, along with his passport, a postal receipt evidencing payment of 1,800 BF for the visa application, the applicant's photo, a letter of explanation and other documents concerning the business enterprise, and the specialist's qualifications for the position. After a review of the file, which normally takes two days, a B-1 visa may be issued.

An approved B-1 application for an alien employed abroad may be valid for a period of up to 10 years; INS grants B-1 status usually for periods up to 6 months at a time. INS may extend status.

B-1: A Belgian specialist on a U.S. assignment

AllTimeExcellent N.V./S.A.R.L. (abbreviated ATE) is based in Charleroi, Belgium. The company's business consists of strategic management consulting focused on larger scale multinational clients. ATE has clients throughout Europe. Recently, one of their clients acquired an American company. The Belgian client contracts ATE to streamline management operations according to Belgian HQ principles.

ATE presents a plan of operation and implementation to their client. A team of 3 consultants will be responsible for fulfilling the contract. One consultant will work on-site at the Belgian client's site, one consultant, Mr. Jean-Pierre Ducroix will work on-site at the American subsidiary's office and one consultant will work from ATE's office, coordinating and supervising operations, acting as liaison.

ATE is paid on a fixed price basis. The price includes travel and accommodation expenses of consultants involved. All consultants are paid and employed by ATE. Activities are controlled by ATE in Belgium; this company actually controls and coordinates all activities. ATE is fully responsible for streamlining the process.

All three of ATE's consultants working on this contract have a university degree, which is a precondition for employment at the company.

Conclusion

Before one of ATE's management consultants may start working with the U.S. company, he needs to apply, and qualify, for a U.S. visa. ATE's legal advisor recommends that the company submit a B-1 visa application. The advisor's recommendation is based on the prospective work involved. Embassy processing is estimated to take 2 to 7 working days. The company's legal advisor is contacted to take this matter further.

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In order to qualify for the B-1 visa as a business visitor, the applicant must establish that:

- All conditions as mentioned heretofore (residency abroad, sufficient financial means, admission for a limited period of time) are met; and that
- Admission to the USA is sought for the sole purpose of engaging in legitimate activities relating to business or pleasure.

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The consultant will seek admission for providing services as described. In this particular case, the consulting proposed is not involving employment or local labor for hire. Activities are considered employment or local labor for hire when an employer-employee relationship exists. Such relationship may exist when a U.S. employer pays an employee, controls the activities performed or otherwise may hire or fire a person or supervise the work performed by such person.

In this example, a Belgian, non-U.S. company employs the consultant; payment of salary is made on the Belgian consultant's bank account in Belgium. There is no employer-employee relationship with the U.S. Company. The Belgian client pays for the successful completion of the project. After completion, the consultant will return home. The Belgian consultant is solely responsible to his Belgian supervisor. The work provided by the Belgian consultant does not involve work normally provided by any of the U.S. company's employees. After having finalized the process analysis, the consultant returns to Belgium, where the final analysis and report are put together and presented to the Belgian contracting client.

B-1 visa applicants must intend to leave the United States and must maintain a residence abroad. Immigrant intent will lead to ineligibility for this class of visa. Mr. Ducroix has declared that he has no immigrant intent. Together with his girlfriend, he owns a house in Charleroi. His girlfriend will not accompany him to the United States. These two conditions are met.

In this particular situation, the consultant, Mr. Ducroix meets all requirements of a B-1 non-immigrant; these circumstances qualify for a B-1 on their own merits. Regarding the general businesslike nature of the B-1 visa category, one should be very cautious operating on such visa in the United States and ensure him or herself that the particular circumstance actually qualifies for B-1.

Here, the Belgian consultant applies for a B-1 non-immigrant visa at the consular section in Belgium. He applies, in person, Monday through Friday from 9:30 to 12:00 or by mail, to the Embassy Consular Section, 25 Blvd. du Regent, 1000 Brussels, along with his passport, a postal receipt evidencing payment of 1,800 BF for the visa application, the applicant's photo, a letter of explanation concerning the business enterprise, and the documentation that shows affiliation between the Belgian and the U.S. company, and the specialist's qualifications for the position. After a review of the file, which normally takes two days, a B-1 visa may be issued.

An approved B-1 application for an alien may be valid for a period of up to 10 years. Per year, one may usually stay in the United States for a period of up to 6 months at a time, which period may be extended with another period of 6 months, within the same year. The foregoing is with limitation and up to INS.

Summary

As the foregoing examples illustrate, the requirements for qualifying for a B visa may or may not be complex, depending on the specific activity to be performed in the United States and the circumstances under which the activity is or is to be performed.

In summary and general, the following distinction in activities and organizations involved can be made: work performed for and controlled by a non-U.S. employer, that does not involve gainful employment within the United States, may be classified as B-1.

Work performed for and controlled by a U.S. employer that does involve gainful employment (or local labor for hire) within the United States may not be classified as B-1.

A U.S. consular post determines whether the visa applicant is eligible for temporary residence in the United States. The INS, however, determines at a port-of-entry whether a foreigner is admissible for entry in the United States. Having fulfilled all conditions for residence and (non-U.S.) employment does not in itself imply admissibility to the United States.

For further information on how to structure your business enterprise and or business activities to qualify for a visa, you may wish to secure the services of a competent business or immigration consultant. For specific questions, you may refer to VVCS Belgium's website at: <http://vviworld.net/vvcs.be> or send an e-mail to vvcs.be@vviworld.net. For specific questions regarding the filing of an application at the U.S. Embassy in Brussels, you may refer to the Embassy's website at <http://www.usinfo.be>. For specific questions regarding the filing of an application at a competent INS Service Center, you may refer to the INS' website at <http://www.ins.usdoj.gov>. ❖

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