

The Docket

Securing the Legitimacy of your Stay in the US

Employment, Visas and the USA

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With the economic downturn in mind, it seems like less and less can be done for Belgian entrepreneurs in or heading to the US.

Rest assured – nothing is less true.

Even in economically distressed times, Belgian companies apparently smell the scent of business.

But many questions follow. What to do when you're planning to start or expand your business in the US and your physical presence is required there? What are the possibilities at hand to secure a legitimate stay in the US, short- or long-term, strictly managerial or operational?

The most commonly used visa categories for foreigners providing services of a different (operational) nature in the US are E-1/2, L-1 and H-1B visas. Starting with the latter, H-1B visas are for the mere idealists who expect to

commence employment with a US company, based on specialty occupations that require theoretical or technical expertise in a specialized field and a bachelor's degree or its equivalent. Why mere idealists? H-1B visas are dependent upon an annual quota; the 2009/2010 fiscal year's quota or cap on the H-1B category's visas is set

at 65,000, covering applicants from almost all over the world, a number that normally is filled within a day after the H-1B opening season's date, April 1 of each year. Therefore, there's only a small chance for prospective H-1B employees being granted that status.

Are there still possibilities to start employment in the US?





What Alternatives are Available?

Substantial Trade with the US? E-1 Visas

E-1 visas may be issued to owners, managers and specialists of those companies having substantial trade with

the US. In order to qualify for substantial trade, such trade must have already been in existence and must involve numerous transactions over time.

Trade may include trade in goods, services and

technology. This includes insurance, transportation and communications services.

There must be an actual exchange of goods or services between the United States and Belgium. Trade must be international, title to goods and or services must pass from one treaty party to the other.

Substantial Investment in the US? E-2 Visas

E-2 visas may be issued to owners, managers and specialists of those companies who have invested substantially in a US enterprise. "Investing substantially" is dependent upon the capital required for the enterprise to become and remain operational, which varies per industry.



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The amount of investment made must be sufficient to successfully develop and direct the enterprise. A proportionality test is applied, which means the amount of privately invested funds put at risk is compared to the total amount of costs of setting up or purchasing the enterprise.

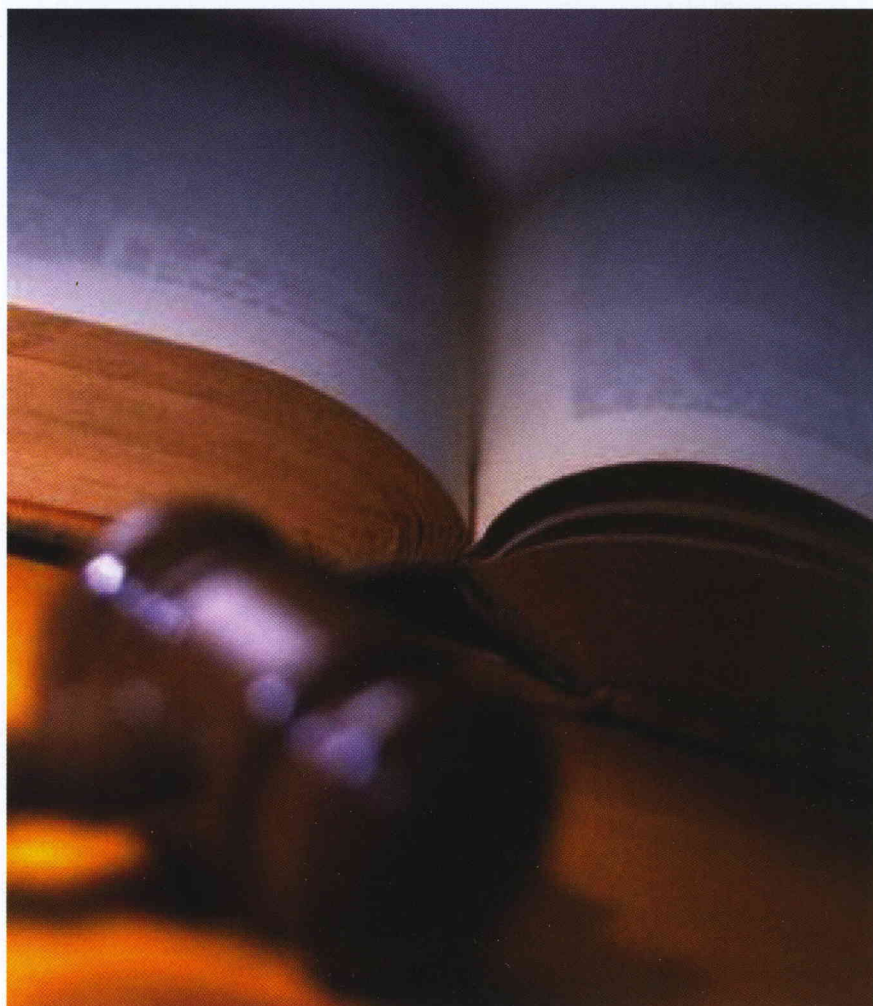
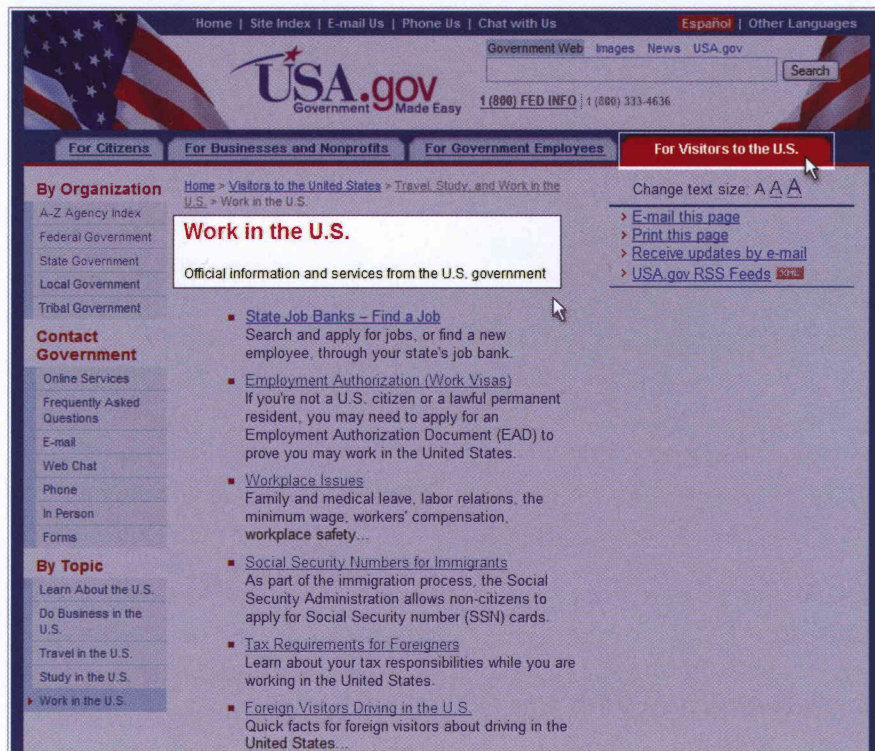
The investor must demonstrate the amount of investment made, including the legitimacy of funds invested. Funds have to be invested at risk in an active, commercial enterprise, with the purpose of generating a return.

General Conditions for Issuance of E-visas to Foreigners

Issuance of E-1 or E-2 visas to Belgian nationals is dependent upon the following conditions:

The visa applicant possesses the nationality of Belgium as a treaty country (treaty between the US and Belgium). Nationality of the applicant must be equivalent to the trading or the investment country. When it involves trade by a Belgian company, E-1 visas may only be issued to a visa applicant having Belgian nationality. The same counts for an E-2 application when it involves investment.

The Belgian company expatriating the applicant must possess the nationality of the treaty country. Such nationality is determined by the nationality of the ultimate individual owner(s)



of the company (the ultimate stockholder(s)). A company having Belgian stockholders

owning a majority of (voting) stock of the company is considered to have Belgian

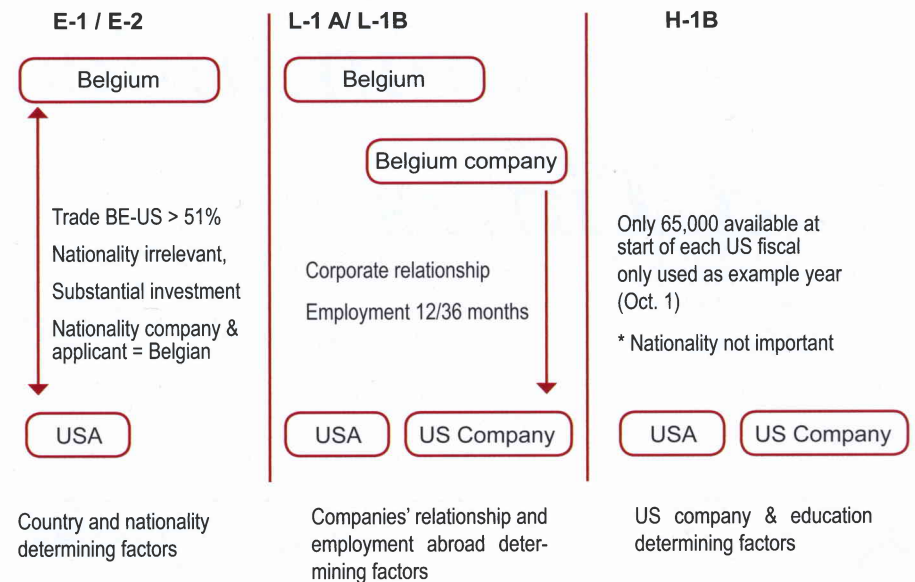
nationality for E-visa purposes. **In graphics**

An E-visa applicant needs to have the same nationality as the expatriating employer.

E-visas may be issued for a period of up to five years and may be renewed, when all conditions for renewal are met.

Temporarily Transferred from your Belgian Employer to a US Subsidiary? L-1 Visas.

If and when an application for an E-visa appears not to be feasible – i.e., due to the lack of equivalence in nationality of the investor/trader and the applicant – one may look at the possibility of applying for an L-1 visa, the category for intra-company transferees. This is a two-tier process. First, a work permit petition needs to be lodged with USCIS, the US-based government agency that handles such petitions and, after approval, issues US work permits to foreigners. After approval of the petition, the Belgium resident applicant needs to make an appointment at the US Embassy in Brussels in order to apply for a visa, thereby undergoing a



mandatory visa interview by a consular officer.

L-1 visas are merely issued to managers and specialists of Belgian companies temporarily transferring those people to a US-based subsidiary or affiliate. L-visas may be issued for a period of up to one year (when opening a new office) or three years (if the US company has existed for more than one year), with possible renewal to an aggregate of five years (L-1B, for specialists) or seven years (L-1A, for managers and executives).

General Conditions Upon an L-1 Transfer

Before one can successfully apply for issuance of an L-1 visa, the visa applicant must demonstrate that he or she has been continuously employed by the Belgian-based company for at least 12 months during the past 36 months. Furthermore, the Belgian company transferring the applicant must have some kind of corporate relationship with the US based company, i.e., must be a subsidiary or affiliated company.



Van Velzen C.S. is an international legal service provider, assisting clients with setting up business operations in the United States, including applications for business related work visas. For more information call 03-314 0326 or visit <http://vviworld.net>

General note

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