

U.S. Visas for Business

This article is the first in a series, which will address some practical matters regarding criteria for various U.S. visa categories. The authors are Hans A. van Velzen, a consultant with Van Velzen C.S. Belgium B.V.B.A., a law firm which assists European companies with their business establishments in Europe and North America, and Rhonda J. Watson, Chief of the Visa Unit at the U.S. Embassy in Brussels, Belgium. The subject of this article will be trade with and investment in the United States and the qualifications for and advantages of the Treaty Trader and Treaty Investor visas.

Business Links regrets that due to last October's issue publishing delay, readers interested in applying for the Diversity Visa Lottery program (deadline October 31, 1998) faced a too short deadline. However, interested persons will be able to apply for this same program during the course of 1999. For further information, please contact the U.S. Embassy Consular Section.

U.S. VISA CATEGORIES

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 E visa is a very important visa category for foreign-owned companies because it is designed to enhance or facilitate economic and commercial interaction between the United States and the treaty country and the visa holder is endowed with a virtually limitless visa. This article gives examples of two fictitious companies expanding their businesses using the E-1 Treaty Trader and E-2 Treaty Investor visas.

Treaty Trader: Belgian company, expands trade with the United States

Infurno, a leading Belgian manufacturer and exporter of office furniture provides a large number of dealers in several countries with its products. Infurno is a family business, privately held by six persons, all relatives and all citizens of Belgium. 20% of Infurno's export, i.e., international trade, is with Japan, 30% is with the Netherlands, 40% is with the United States, and the remaining 10% is with other countries.

Demand for Infurno products in the United States skyrocketed, however, after the company was awarded a prestigious American prize for furniture design. Belgian managers, recognizing the opportunity for increased sales, decided to increase manufacturing productivity, estab-

lish a U.S. sales branch office, Infurno USA, and send one of their top salesmen to the United States. The owners of the Belgian company will all have the same ownership percentage in the U.S. company and will manage both the Belgian and the U.S. company. The salesman, a Belgian citizen, has specialized knowledge of the company's product, already serves the North American Free Trade Agreement (NAFTA) territory and maintains contacts with an extensive network of U.S. distributors and wholesalers, the main buyers of Infurno's products.

The salesman will be employed and paid by the newly established U.S. company, Infurno USA. Infurno management and the salesman agree that he will stay in the United States for four years and when he returns to Belgium, he will be offered a new job with the Belgian company.

Infurno also decided to decrease exports to Japan and the Netherlands in order to be able to serve increasing U.S. demand. As a result of its increased trade with the U.S., the Belgian company exports two containers of office furniture every month and its annual trade with the U.S. amounts to nearly \$2,000,000. International trade between the Belgian manufacturer and U.S. clients then amounts to approximately 60% of its total international trade.

Conclusion

Before the salesman can work legally in the U.S., he needs to apply and qualify for a U.S. visa. Infurno's attorneys recommend that the company to apply for an E-1 Treaty Trader status for the company and submit an E-1 visa application for the salesman (as a specialist). The attorney/consultant's recommendation is based on the fact that this class of visa may be issued for up to five years - which will cover the intended period of the salesman's stay, it is renewable and does not need prior INS approval, which shortens the time for approval processing.

Comment: U.S. Embassy, Brussels Consular Section and VVCS Belgium

In order to qualify for the E-1 visa, the following conditions must be met:

At least citizens of a single Treaty trader country must own 50% of the company.

Belgium is a Treaty country and, here, the U.S. company is 100% owned by Belgian nationals/citizens.

The owners of the U.S. business must either live outside the United States, or live inside the United States having been issued E-1 visas.

All owners live in Belgium.

An E-1 visa will only be issued to the owner/stockholder (the trader) or a key employee.

In this respect, the salesman may be seen as a key employee, a person with specialized knowledge of the company's products and the marketing of its products internationally.

An E-1 visa applicant must intend to leave the United States when the business is completed. Immigrant intent will lead to ineligibility for this class of visa.

The salesman intends to stay for a four-year period, after which he will return to Belgium. He has no immigrant intent.

Both the Treaty trader and the visa applicant need to have same nationality.

The U.S. company is considered to have Belgian nationality through stock ownership. Both the U.S. company and the specialist have Belgian nationality, so this criterion is also met.

There must be substantial trade between the United States and the visa applicant's home country.

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Substantial trade is measured on a case by case basis and depends on what is traded.

Trade between the United States and Belgium by Infurno exports amounts to \$2,000,000. Exports into the United States are ongoing and voluminous.

More than 51% percent of the company's trade must be between a Treaty nation and the United States.

Belgian exports into the United States amount to 60% of total worldwide trade. By the same token, all imports into the United States originate in Belgium.

An application is submitted by mail to the U.S. Embassy Consular Section, 25 Blvd. du Regent, 1000 Brussels, along with 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 the substantial trade between Infurno and the U.S., stock ownership of the U.S. company, and the salesman's qualifications for the position. After a review of the file, which may take several weeks, an E-1 visa may be issued when the applicant submits his passport.

Treaty Investor: a Belgian company investing in the United States

A Belgian Information Technology company named IT Best, has a thorough and specialized knowledge of certain information technology program tools co-developed with another Belgian company. The company is looking to expand its market across Belgian borders and plans to enter the U.S. information technology market.

IT Best hires a consulting firm which does a market survey in the U.S.. The survey outcome is as expected — the U.S. market is ready for their product and services. The Belgian product is revolutionary and there is a shortage of specialists who are aware of these information technology tools or know how to use their product in the United States. The company's management decides to establish a U.S. subsidiary to exploit the market potential and plans to send one of its own Belgian specialists to the United States. The specialist will have responsibility for applying the particular specialty to U.S. projects at the client's site, training U.S. employees, and

being part of the company's management team. One of the Belgian company's directors and shareholders will manage the U.S. company's day-to-day operations.

Both the specialist and the manager have Belgian nationality. They plan to stay in the United States for a period of three years; their family members, who will not be employed in any way in the United States, will accompany them. The company expects to hire several American employees by the end of the year.

The company in the US will be set up as a regular corporation. Stock in this corporation will be held by the same holding company, which is holding all stock in the Belgian working company. The holding company is a Naamloze Vennootschap/Société Anonyme incorporated under Belgian law. Stock in the holding company is held equally by three directors/stockholders, all but one having Belgian nationality. The other director/stockholder has Swiss nationality and is living in Switzerland.

All Belgian directors are citizens of Belgium.

The company has already invested and put at risk approximately \$100,000 and intends to invest another \$100,000 in the first three years of operation.

Conclusion

The newly established U.S. company requires the management and specialized knowledge of its affiliated company in Belgium. Both the manager and specialist will earn income in the U.S. and both will need temporary employment visas. Their accompanying family members must also apply for derivative visas authorizing them to live in the U.S.

The company's consultant advises them both to apply for an E-2 status. This class of visa may be issued for up to five years, which will cover their intended period of stay, is renewable, and does not need prior INS approval, thus saving processing time.

Comment: US Embassy, Consular Section and VVCS Belgium

There are six main conditions for consideration of issuance of an E-2 visa:

At least citizens of a single Treaty investor country must own 50% of the company. Belgium has had a Treaty of Friendship, establishment, and navigation with the United States since 1963.

33,33% of the company is owned by a Swiss national, 66,66% by Belgian nationals. Belgium and Switzerland are both Treaty countries but the percentage calculation is made for only a single Treaty country. The U.S. company is indirectly owned by a holding company, the ownership of which is 66.66% Belgian which more than meets the 50% ownership requirement.

The investor must have made a substantial capital investment in the United States.

Generally, a \$200,000 investment would be considered substantial. What is considered a substantial investment, however, is measured on a case-by-case basis and depends on the type of business. A substantial amount of capital constitutes that amount this is (i) substantial in the proportional sense, i.e., in relationship to the total cost of either purchasing an established enterprise or creating the type of enterprise under consideration; (ii) sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise; and (iii) of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise. Whether an amount of capital is substantial in the proportionality sense is understood in terms of an inverted sliding scale; i.e., the lower the total cost of the enterprise, the higher, proportionately, the investment must be to meet these criteria.

Investment means that the investor must place capital, including funds and other assets, at risk in the commercial sense with the objective of generating a profit. The investor must be in possession of and have control over the capital invested or being invested. The capital must be subject to partial or total loss if investment fortunes reverse. Such investment capital must be the investor's unsecured personal business capital or capital secured by personal assets. The capital must be irrevocably committed to the enterprise. The applicant has the burden of establishing such irrevocable commitment given the particular circumstances of each case.

The US business must be actively engaged in the rendering of services or trade for profit. Items which qualify for trade include but are not limited to goods, services, technology, monies,

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international banking, insurance, transportation, tourism, communications, and some news gathering activities.

After having convinced the consul that Infurno's business will be active through the presentation of concrete evidence, this requirement is fulfilled.

The enterprise cannot 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.

Both the Treaty investor and the visa applicant need to have same nationality.

The US company is considered to have Belgian nationality through stock ownership. Both the director/stockholder and the specialist have Belgian nationality.

The applicant must be in a position to develop or direct the enterprise or must be a manager, executive, or highly trained and specially qualified (essential) employee. An E-2 visa will only be issued to the investor or a key employee of the US business.

In this example, both of the investors and a specialist—who may be considered an essential employee—may apply for an E-2 visa.

All E-2 visa applicants must intend to leave the United States when the business is completed.

Both the director/stockholder and the specialist only intend to stay for a three-year period, after which they will return.

Summary

As the foregoing examples illustrate, the requirements for qualifying for an E visa are complex, but the business rewards can be significant in expanding a company's profit margin. For further information on how to structure your business enterprise to qualify for an E visa, you may wish to secure the services of a competent business consultant or immigration attorney. For specific questions regarding the filing of an application at the U.S. Embassy in Brussels, you may refer to our internet website at www.usinfo.be. ♦

For more information or clarification contact the authors.

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U.S. Business/Tourist Visas

U.S. VISA APPLICATION FEE NOW PAYABLE AT ALL BELGIAN POST OFFICES

The United States Embassy Consular Section announces that effective November 30, 1998 the nonimmigrant visa-processing fee of BF 1800 will no longer be collected at the U.S. Consular Section.

Beginning December 1, this fee must be paid at any Belgian post office. The postal receipt evidencing payment of the nonimmigrant visa processing fee must include the payer's name and should be attached to the visa application at the time of submission.

U.S. BUSINESS/TOURIST VISA APPLICATIONS

Beginning December 1, 1998 Belgians or European Union Nationals Resident in Belgium may submit their visas in person OR they may utilize our mail-in procedure OR they may submit their applications through a travel agency which is a member of either the Union Professionnelle des Agences de Voyages or the Vereniging Vlaamse Reisbureaus. Applications that do not meet the following criteria will not be accepted for adjudication:

1. Post office receipt proving payment of BF 1800 non-immigrant visa processing fee.
2. Completed application form (OF-156) for each applicant.
3. Passport or Travel Document.
4. One photograph attached to the application, no more than six months old, passport size and style.
5. IF THE APPLICANT IS EMPLOYED OR SELF-EMPLOYED: A letter from the applicant's employer (or proof of self-employment) indicating position, salary, and length of employment. Minor children (non-university age) of applicants in this category may apply with proof of their parent's employment or self-employment. A school letter is not necessary. University-age children, who claim to be students, must present proof of their enrollment in school:

OR

IF THE APPLICANT IS AN ADULT, NEITHER EMPLOYED NOR A STUDENT: Proof of the source of financial support for the applicant's day-to-day existence in Belgium. Children and spouses of such applicants must also provide proof of support.

OR

APPLICANTS WITH PREVIOUS U.S. VISA(S): Passport(s) containing their previous U.S. visa(s). A photocopy of the visa page is not sufficient.

SUMMARY:

Mail-in applications that fail to meet the above documentary requirements will not be accepted. Each applicant must submit post office NIV processing fee receipt, passport, application, photo. AND ONE OF THE FOLLOWING THREE ITEMS: 1) an employment letter, or 2) proof of financial support or 3) prior U.S. visas. If these requirements are not met, the Embassy will not accept the application for processing. In all cases, the Consular Officer may request a personal interview, additional information or documentation as deemed necessary.

HOW TO OBTAIN AN APPLICATION FORM:

You may download an application form from our website at: www.usinfo.be OR you may come in person to 25 Bd. du Regent, 1000 Brussels.

RETURN MAIL:

Supply a self-addressed stamped envelope large enough to return your passport and supporting material. Affix at least BF 200 postage to the envelope to expedite the return of your passport by REGISTERED MAIL or BF 50 for regular mail. We are unable to return passports by courier service due to workload constraints. Mail your application to the address above.

Please bear in mind that although most applications will be processed within 2 days of receipt, internal processing requirements may cause delays of up to 5 working days. It is your responsibility to send your application to the U.S. Embassy far enough in advance for processing and mailing.

Applicants are reminded NOT TO MAKE IRREVOCABLE TRAVEL PLANS PRIOR TO OBTAINING A VISA. For further information, please contact the:

U.S. EMBASSY
Non-immigrant Visa Unit
Bd. du Regent 25
1000 Brussels, Belgium
Recorded Telephone Message: +32-2-508-2530
E-mail to: jas-cons@usinfo.be
<http://www.usinfo.be>