



# Global Mobility: *Visa and Immigration Options for Spain – United States*

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# The Future of U.S. Immigration

- ▶ President Trump new immigration policy
- ▶ Focus on:
  - ▶ Protecting the Homeland
    - ▶ Limitations and restrictions on visas
  - ▶ Border Protection
    - ▶ “The Wall” along U.S.-Mexico border

# The Future of U.S. Immigration

- ▶ Focus on:
  - ▶ Undocumented immigrants
    - ▶ Deportation
  - ▶ Protecting U.S. workers
    - ▶ America First
    - ▶ American jobs
    - ▶ American wages

# Current Developments

- ▶ Immigration Enforcement
  - ▶ Deportation
  - ▶ Border Security
  - ▶ Employer Investigations
- ▶ Extreme Vetting
  - ▶ At U.S. Embassies and Consulates for visa applications
  - ▶ Restrictions and delays

# Current Developments

- ▶ Changing landscape
  - ▶ New restrictions
  - ▶ Legal challenges in court
  - ▶ Changes from the White House
- ▶ How can companies continue to do business, plan ahead, and operate?
  - ▶ Talent is global
  - ▶ Workforces must be mobile
  - ▶ What are the options?

# Nonimmigrant Visa Options

- ▶ E-1 Visa – Treaty Trader
- ▶ E-2 Visa – Treaty Investor
- ▶ L-1 Visa – Intracompany Transferee
- ▶ H-1B Visa – Professional
- ▶ B-1 Visa – Business Visitor
- ▶ WB – Visa Waiver for Business

## E-1 Visa – Treaty Trader

- ▶ Employer-specific
- ▶ No prior employment outside the U.S. required with company
- ▶ Trade Treaty must exist between U.S. and other country
  - ▶ Spain has a Trade Treaty with the U.S.
- ▶ No specific education requirement
- ▶ No specific salary requirement
- ▶ No annual quota
- ▶ Visa Applicant must be citizen of Spain

# E-1 Visa – Treaty Trader

- ▶ Visa applicant:
  - ▶ Individual trader
  - ▶ Employee of individual trader or trader company
    - ▶ Executives
    - ▶ Supervisors
    - ▶ Highly specialized essentially skilled employees
    - ▶ Not including “ordinarily skilled” employees



# E-1 Visa – Treaty Trader

- ▶ Majority ownership and control of the U.S. entity
  - ▶ At least 50% by Spanish citizens
  - ▶ Excludes U.S. Citizens and Permanent Residents (Green Card)
  - ▶ Direct or Indirect ownership
  - ▶ 50/50 Split – Negative control allowed
- ▶ 50/50 ownership split
  - ▶ U.S. company can qualify for two different treaty countries

## E-1 Visa – Treaty Trader

- ▶ Visa issued for up to 5 year validity
  - ▶ Indefinite extensions
  - ▶ Each U.S. admission for 2 years
- ▶ Dependents (spouse and children under age 21) eligible for E-1 visas
- ▶ Spouses are eligible for work permits
  - ▶ Must apply to U.S. Citizenship and Immigration Services after admission to U.S. in E-1 status
  - ▶ Work permit issued in 60 to 90 days

# E-1 Visa – Treaty Traders

- ▶ Application Options
  - ▶ Outside U.S. – Primary application at U.S. Embassies and Consulates
    - ▶ No U.S. Citizenship and Immigration Services advance approval required
  - ▶ Inside U.S. – Application to U.S. Citizenship and Immigration Services
    - ▶ Change or extend status in U.S.
    - ▶ If depart U.S., must apply for visa at U.S. Embassy or Consulate

# E-1 Visa – Treaty Trader

- ▶ Special requirements
  - ▶ Trade
    - ▶ Exchange, purchase, or sale of goods, services, or technology
  - ▶ Substantial
    - ▶ No minimum monetary threshold
    - ▶ Volume of trade
    - ▶ Number of transactions
    - ▶ Includes binding contracts
    - ▶ Continued course of trade

# E-1 Visa – Treaty Trader

- ▶ Special requirements
  - ▶ Principally with the U.S.
    - ▶ 50%+ of total volume of international trade
    - ▶ Of the U.S. company
    - ▶ Must consist of trade
    - ▶ Between the U.S. and Spain

# E-1 Visa – Treaty Trader

- ▶ Permanent Resident (Green Card)
  - ▶ Fast track for “Multinational Executives and Managers”
  - ▶ Expedited process
  - ▶ Skip regular process requiring employer to show shortage of qualified U.S. workers
  - ▶ Dependent Green Card to spouse and children under age 21

## E-2 Visa – Treaty Investor

- ▶ Employer-specific
- ▶ No prior employment outside the U.S. required with company
- ▶ Investment Treaty must exist between U.S. and other country
  - ▶ Spain has an Investment Treaty with the U.S.
- ▶ No specific education requirement
- ▶ No specific salary requirement
- ▶ No annual quota
- ▶ Visa Applicant must be citizen of Spain

# E-2 Visa – Treaty Investor

- ▶ Visa applicant:
  - ▶ Essential role in the U.S. enterprise
  - ▶ Individual investor to develop and direct the investment
  - ▶ Employee of individual investor or investor company
    - ▶ Executives
    - ▶ Supervisors
    - ▶ Highly specialized essentially skilled employees
    - ▶ Not including “ordinarily skilled” employees



## E-2 Visa – Treaty Investor

- ▶ Majority ownership and control of the U.S. entity
  - ▶ At least 50% by Spanish citizens
  - ▶ Excludes U.S. Citizens and Permanent Residents (Green Card)
  - ▶ Direct or Indirect ownership
  - ▶ 50/50 Split – Negative control allowed
- ▶ 50/50 ownership split
  - ▶ U.S. company can qualify for two different treaty countries

## E-2 Visa – Treaty Investor

- ▶ Visa issued for up to 5 year validity
  - ▶ Indefinite extensions
  - ▶ Each U.S. admission for 2 years
- ▶ Dependents (spouse and children under age 21) eligible for E-2 visas
- ▶ Spouses are eligible for work permits
  - ▶ Must apply to U.S. Citizenship and Immigration Services after admission to U.S. in E-2 status
  - ▶ Work permit issued in 60 to 90 days

# E-2 Visa – Treaty Traders

- ▶ Application Options
  - ▶ Outside U.S. – Primary application at U.S. Embassies and Consulates
    - ▶ No U.S. Citizenship and Immigration Services advance approval required
  - ▶ Inside U.S. – Application to U.S. Citizenship and Immigration Services
    - ▶ Change or extend status in U.S.
    - ▶ If depart U.S., must apply for visa at U.S. Embassy or Consulate

# E-2 Visa – Treaty Investor

- ▶ Special requirements
  - ▶ Active investment
    - ▶ Irrevocable commitment of funds
    - ▶ Actual active investment
    - ▶ Not passive investment
      - ▶ Uncommitted funds in bank account
      - ▶ Stocks
      - ▶ Undeveloped land
    - ▶ Land development vs. land investment

# E-2 Visa – Treaty Investor

- ▶ Special requirements
  - ▶ “Substantial“ investment
    - ▶ No minimum monetary amount
      - ▶ Standards for new or existing businesses
    - ▶ Proportionality test
      - ▶ Measured against the type of business
      - ▶ Small and medium businesses
      - ▶ The lower the cost of the enterprise, the higher proportionally the investment must be to be considered “substantial”

# E-2 Visa – Treaty Investor

- ▶ Special requirements
  - ▶ “Substantial“ investment
    - ▶ Investment can be in process
      - ▶ Start-up company
    - ▶ Investors own resources
    - ▶ “At risk” in the commercial sense

# E-2 Visa – Treaty Investor

- ▶ Special requirements
  - ▶ Cannot be “marginal”
    - ▶ To only support the investor and his family
    - ▶ Must create job opportunities for U.S. workers
      - ▶ Direct employees
      - ▶ Outside contractors
  - ▶ Must have a significant impact upon the U.S.

# E-2 Visa – Treaty Investor

- ▶ Permanent Resident (Green Card)
  - ▶ Fast track for “Multinational Executives and Managers”
  - ▶ Expedited process
  - ▶ Skip regular process requiring employer to show shortage of qualified U.S. workers
  - ▶ Dependent Green Card to spouse and children under age 21



# L-1 Visa – Intracompany Transferee

- ▶ Employer specific
- ▶ Sponsored employee must be employed outside the U.S. by the foreign company
  - ▶ 1 continuous year out of prior 3 years
    - ▶ Not including time in the U.S
    - ▶ Time in the U.S. does not interrupt the continuous 3-year period
  - ▶ In “executive,” “managerial,” or “specialized knowledge” position
  - ▶ Transfer to the U.S. to fill “executive,” “managerial,” or “specialized knowledge” position

# L-1 Visa – Intracompany Transferee

- ▶ Citizen of any country
  - ▶ Not required to be citizen of Spain
- ▶ No specific education requirement
- ▶ No specific salary requirement
  - ▶ Salary can be paid by U.S. company, by foreign company, or by any combination of the U.S. and foreign companies
- ▶ No annual quota

# L-1 Visa – Intracompany Transferee

- ▶ 3 categories of L-1 intracompany transferees
  - ▶ L-1A – Executives
  - ▶ L-1A – Managers
  - ▶ L-1B – Specialized Knowledge personnel

# L-1 Visa – Intracompany Transferee

- ▶ Maximum cumulative L-1 (including H-1B) time per employee
  - ▶ L-1A – Executives
    - ▶ 7 years maximum (physically in the U.S.)
  - ▶ L-1A – Managers
    - ▶ 7 years maximum (physically in the U.S.)
  - ▶ L-1B – Specialized Knowledge personnel
    - ▶ 5 years maximum (physically in the U.S.)

# L-1 Visa – Intracompany Transferee

- ▶ Dependents (spouse and children under age 21) eligible for L-2 visas
- ▶ Spouses are eligible for work permits
  - ▶ Must apply to U.S. Citizenship and Immigration Services after admission to U.S. in L-2 status
  - ▶ Work permit issued in 60 to 90 days

# L-1 Visa – Intracompany Transferee

- ▶ Requires advance approval in U.S. by U.S. Citizenship and Immigration Services
- ▶ Approval periods
  - ▶ Existing companies
    - ▶ Up to 3 years initially
    - ▶ Extensions in 2-year increments
  - ▶ Start-up companies
    - ▶ Up to 1 year initially
    - ▶ Extensions in 2-year increments

# L-1 Visa – Intracompany Transferee

- ▶ Ownership/Control
  - ▶ 50%+ ownership
  - ▶ Effective control
    - ▶ With less than 50% ownership

## L-1 Visa – Intracompany Transferee

- ▶ If in the U.S. can apply with U.S. Citizenship and Immigration Services for:
  - ▶ Change of status to L-1A or L-1B
  - ▶ Extension of L-1A or L-1B status
- ▶ If outside the U.S. must apply at U.S. Embassy or Consulate for:
  - ▶ Visa to be readmitted to the U.S. in L-1A or L-1B status



# L-1 Visa – Intracompany Transferee

- ▶ Foreign company must be related to the U.S. company
  - ▶ Same company
  - ▶ Parent
  - ▶ Subsidiary
  - ▶ Affiliate

# L-1 Visa – Intracompany Transferee

- ▶ Qualifying organization
  - ▶ Doing business in the U.S. and other country
  - ▶ During the entire period of the transfer

# L-1 Visa – Intracompany Transferee

- ▶ Permanent Resident (Green Card)
  - ▶ Fast track for “Multinational Executives and Managers”
  - ▶ Expedited process
  - ▶ Skip regular process requiring employer to show shortage of qualified U.S. workers
  - ▶ Dependent Green Card to spouse and children under age 21

# H-1B Visa – Professional

- ▶ Employer-specific
- ▶ No prior employment outside the U.S. required with company
- ▶ Citizen of any country
  - ▶ Not required to be citizen of Spain

# H-1B Visa – Professional

- ▶ Dependents (spouse and children under age 21) eligible for H-4 visas
- ▶ Spouses are not eligible for work permits
  - ▶ Exception: Employee's final stage of Permanent Resident process is long-delayed
    - ▶ Must apply to U.S. Citizenship and Immigration Services
    - ▶ Work permit issued in 60 to 90 days

# H-1B Visa – Professional

- ▶ Requires advance approvals in U.S. from Department of Labor and U.S. Citizenship and Immigration Services
- ▶ Maximum cumulative H-1B (including L-1) time per employee
  - ▶ 6 years (physically in the U.S.)
    - ▶ Exception: Employee's final stage of Permanent Resident process is long-delayed
- ▶ Approval periods
  - ▶ Up to 3 years
  - ▶ Extensions up to 6 years, unless exception

# H-1B Visa – Professional

- ▶ Professional
  - ▶ Requires U.S. bachelor's degree or equivalent
    - ▶ Equivalent foreign degree
      - ▶ Determined to be equivalent to U.S. bachelor's degree (4 years)
    - ▶ Equivalent work experience
      - ▶ 3 years related work experience equivalent to each 1 year academic studies in field
      - ▶ 12 years of related work experience is required to be equivalent to a 4-year U.S. bachelor's degree
- ▶ Salary must meet Department of Labor “prevailing wage”

# H-1B Visa – Professional

- ▶ H-1B “cap” (quota)
  - ▶ Per fiscal year -- October 1 to September 30
  - ▶ 65,000 regular H-1B's per fiscal year
  - ▶ 20,000 exemptions for employees with U.S. advanced degrees
- ▶ Once 65,000 H-1Bs and 20,000 U.S. advanced degree exemptions reached
  - ▶ No additional H-1B approvals for start dates in that fiscal year
  - ▶ Unless exempt from “cap”



# H-1B Visa – Professional

- ▶ H-1B “cap” exemptions
  - ▶ Employee
    - ▶ Previously counted against the H-1B cap or U.S. advance degree exemption in last 6 fiscal years and
    - ▶ Not left the U.S. for more than 1 year after attaining H-1B status
  - ▶ Employers who are
    - ▶ Institutions of higher education
    - ▶ Nonprofit entities related to or affiliated with institutions of higher education
    - ▶ Nonprofit research organizations
    - ▶ Government research organizations

# H-1B Visa – Professional

- ▶ H-1B Portability
  - ▶ Simplifies mobility of H-1B employees
  - ▶ Once an H-1B employee is counted against the H-1B cap or U.S. advanced degree exemption
    - ▶ H-1B employee can start new employment
    - ▶ Upon new employer filing non-frivolous H-1B petition with U.S. Citizenship and Immigration Services
    - ▶ Subject to final approval of new employer's H-1B Petition by U.S. Citizenship and Immigration Services

# H-1B Visa – Professional

- ▶ H-1B Portability requirements
  - ▶ Employee is lawfully admitted to the U.S.
  - ▶ New employer's H-1B Petition is filed prior to the expiration of the employee's authorized stay
  - ▶ Employee has not been employed without authorization

# H-1B Visa – Professional

- ▶ H-1B Petitions can be filed up to 6 months prior to start date
  - ▶ H-1B filing window – first 5 business days of April for October 1 start date
- ▶ H-1B lottery – When demand exceeds FY H-1B cap and U.S. advanced degree exemptions
  - ▶ Random lotteries used to select eligible H-1B regular petitions and U.S. advanced degree exemptions
  - ▶ For FY-2018, approximately 199,000 H-1B Petitions filed

# B-1 Visa – Business Visitor

- ▶ B-1 Visa (Business Visitor) and WB (Visa Waiver Business ESTA)
  - ▶ Employed outside the United States
  - ▶ Residence outside the United States
  - ▶ Traveling to U.S. on behalf of foreign employer
  - ▶ Salary paid by foreign employer
  - ▶ Cannot be employed in the U.S. by U.S. employer
  - ▶ Cannot provide services to U.S. company in the U.S.
  - ▶ Permitted – Meetings, consultations, taking sales orders

# B-1 Visa – Business Visitor

- ▶ B-1 Visa (Business Visitor)
  - ▶ Maximum period of admission 6 months
  - ▶ Extensions are possible from U.S. Citizenship and Immigration Services
- ▶ WB (Visa Waiver Business - ESTA)
  - ▶ Maximum period of admission 90 days
  - ▶ No extensions permitted

# Avoiding Immigration Problems

- ▶ Work visas to the U.S. requires advance planning and immigration lawyer consultation
- ▶ Avoiding an immigration problem is less expensive than fixing an immigration problem
  - ▶ If it can be fixed
- ▶ Delays in global mobility of employees impact the business performance and success