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News & Types: Immigration Update

Is Your Business Trip Authorized Under B-1/Visa Waiver Program?

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Practices: Immigration

The B-1 visa (or ESTA/Visa Waiver Program) permits foreign nationals to engage in many business activities in the United States but has limitations that business visitors should understand prior to traveling.

WHAT B-1 COVERS

B-1 status allows commercial transactions which do not involve gainful U.S. employment (such as a merchant taking orders for goods manufactured abroad), negotiating contracts, consulting with business associates, attending conferences or conducting independent research. Other specific visitors, including corporate board members, religious workers, professional athletes and investors evaluating a U.S. investment, may also qualify under specific criteria.

TECHNICAL AND TRAINING VISITS

B-1 generally prohibits skilled or unskilled labor in the United States, but there are two narrow categories relevant to manufacturers and equipment sellers: (1) installing, servicing or repairing commercial or industrial equipment purchased from abroad under a sales contract requiring those services and (2) "specialized trainers" who transfer proprietary knowledge tied to foreign-sourced equipment. Both require unique knowledge not readily available within the United States and no compensation from any U.S. source.

KEY DISTINGUISHING FACTORS

The line between permissible B-1 business activity and prohibited "labor" is fact-specific and often misunderstood. Whether the individual will be paid in the United States is one of several questions to consider. Other factors include, but are not limited to:

- In what capacity does the individual act? On behalf of a foreign entity or a U.S. entity? As a board member or a corporate officer?
- Is the activity productive?
- Do profits accrue in the foreign country?
- Is the activity incidental to work principally performed outside of the United States?

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Given the fact-specific nature of these distinctions, individuals should carefully assess, whether their planned activities in the United States qualify as permissible B-1 business activity or require a different visa category before departure.

Determining whether a business trip falls within the scope of the B-1 visa or Visa Waiver Program often requires a careful review of the traveler's planned activities. If you have questions about compliance or visa options, please contact Miyuki Masuda or a member of Masuda Funai's Immigration Practice.

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