



Starting a Business in the US as a Foreigner

What You Need to Know!

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Introduction

The United States has been viewed as the land of opportunity for years. Regardless of whether you want to open a restaurant, a shopping center, or anything else, starting a business in the United States makes a lot of sense. If you are not a US citizen, it does not require residency or citizenship. There are various things that you will need to know in order to start a business and we are here to help you.

ABOUT THE AUTHOR

Romy Jurado is one of the founders of Jurado & Farshchian, P.L. a business, real estate and immigration law firm. She focuses her practice on business law, including corporate and transactional matters with an emphasis on corporate formation, stock and asset sales, contract drafting, and business immigration. Romy is originally from Peru and moved to the USA with the dream of becoming an attorney and entrepreneur. Romy is actively involved in the community through her work as a Score certified mentor, and speaking at conferences to entrepreneurs and small business owners.

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Getting Started

It is important that you understand all of the details to starting a business in the United States, without being a resident. The United States, offers nonresident foreign nationals the opportunity to own their own business and obtain a nonimmigrant visa. This makes it possible to conduct business as any other business would, without living in the country.

There are several different visas that you can explore in detail. For example, the L-1 visa provides foreign nationals who have owned and operated a business outside of the United States for at least one year the opportunity to establish a subsidiary in the United States. There are various other visas in place that require a minimum amount of investment to ensure that you are able to conduct your business at the necessary level. The business cannot be marginal and the investment is typically substantial. This includes E-2 and EB-5 visas.

IN REGARDS TO THE VISAS, YOU MUST QUALIFY FOR THEM AND GET APPROVED FOR THEM. THERE IS A SIGNIFICANT AMOUNT OF PAPERWORK INVOLVED WHEN MAKING APPLICATION. IT REQUIRES PETITIONING FOR SUPPORT TO RUN THE BUSINESS AND THERE MAY BE SUCH THINGS AS FINANCIALS REQUIRED TO SHOW THAT THE BUSINESS IS NOT ONLY UP AND RUNNING BUT TURNING A PROFIT.

E-2 visas also require such things as a detailed business plan, a source of funds that is legal, and control of capital. The documentation is where many individuals run into problems, which is why it is advantageous to work with a law firm that can help with the visa application process.

The B-1 visa is a business visa that allows you to establish a business in the country and then attend board meetings as a director. You will be able to gain entry into the country for up to six months each time. With this, however, you are not able to manage or direct the operations of the business.

Once the visa is in place, you have the green light to proceed with starting your business in the United States.

Basic Steps

What You Must Do

All of this can be as easy or as complicated as you make it. There are no requirements in terms of what country you have to be from in order to be a business owner in the United States. It is strictly a matter of determining what visa works best for you and then beginning the process of establishing a business.

There are all sorts of legal implications regarding the visa that you obtain based upon entry, the way that you can operate your business, and overall employment authorization. By incorporating a subsidiary in the United States or affiliating your overseas company to a company that is already established in the country, you may have various opportunities to improve your involvement in your business.

Before you can make any decisions, you have to determine the level of involvement that you want within your business and what you are ultimately looking to accomplish by having a business in the United States. Once you determine this information, it will be easier to determine what visa will work best for you and your business.

ACTION PLAN

- ▲ **BUSINESS PLAN**
This is necessary for the visa and essential for the success of your business.
- ▲ **DETERMINE THE BEST VISA**
E-1, E-2, L-1, or EB-5.
- ▲ **START VISA APPLICATION**
Gather all of the necessary documents
- ▲ **INCORPORATE YOUR BUSINESS**
LLC, Corporation, Partnership, or S-Corp.
- ▲ **GET YOUR BUSINESS TAX ID**

Incorporating Your Business

What You Must know

There are various details that you need to know based upon the type of business that you are planning on starting. You don't want to find out that something is harder than you thought after you have already incorporated your business, so it's best to take the time to explore each item to see whether it applies to you or not.

It may be best to establish a business plan in terms of determining what you are going to be doing, whom you will be selling to, and how you are going to acquire all of the goods that you will be selling within your business.

Organizational options offer different tax structures and liabilities, which also include other details.

When you incorporate your business, you need to determine what structure is going to work best for you. When you are a foreign national, you have the same choices as anyone else.

EACH OF THESE REQUIRES DIFFERENT TAX FORMS AND THEREFORE YOU NEED TO TAKE THE TIME TO CONSIDER YOUR OPTIONS. THE VARIOUS WAYS OF INCORPORATING YOUR BUSINESS WILL REQUIRE YOU TO FILE FORMS WITH THE IRS ON A MORE FREQUENT BASIS. YOU WILL ALSO BE PAYING INCOME TAXES, TAXES FOR EMPLOYERS, AND OTHER BUSINESS TAXES THAT ARE REQUIRED OF ALL BUSINESSES.

Every legal structure has its own details to be addressed, but if you are not aware of these subtle legal issues, you could make the wrong decisions. Research the structure that you desire, and consult a professional attorney or business counselor.

There are also state taxes that you will need to learn about. Every state has different rules in terms of taxes, forms, and required levels of insurance. Florida is one of the most generous states while New York and Hawaii can be some of the most difficult due to the unemployment and temporary disability insurance requirements that are in place.

ENTITY CHOICE

▲ SOLE PROPRIETORSHIP

This is the simplest kind of business structure to establish and the vast majority of small businesses start out as sole proprietorships. It is run by the individual without outside investors, which is why the business owner is then called the sole proprietor. The business becomes an extension of the business owner.

▲ PARTNERSHIP

A general partnership is when two or more persons enter an agreement to share ownership and operate a business together. The owners are liable for the business, and there is little distinction between business and owner. While a formal written agreement is not necessary when forming a partnership, it is strongly advised; otherwise any dispute will be settled according to the law of the state where the partnership is primarily located.

▲ CORPORATION

A corporation is a business entity that is wholly separate from the shareholders who own it and considered by law its own entity. It will not dissolve when ownership changes. As its own entity it can be taxed, sued, or enter contractual agreements. The owners of the corporation are the shareholders who in turn elect a board of directors to oversee major changes or decisions.

▲ S-CORPORATION

An S-Corporation is different from a C-Corporation in that profits and losses are filed through the shareholder's personal tax return. The designation of an S-Corporation is created through an IRS tax election. The business remains its own separate entity limiting the owner's personal liability.

▲ LIMITED LIABILITY COMPANY

A Limited Liability Company is a hybrid of the operational flexibility and tax efficiencies of a partnership with the limited liability of a corporation. The life of an LLC is determined by the date the paperwork is filed. The owners of an LLC are called members and can be one or more persons, corporations, another LLC or even other entities.

Setting Up Your Business

When it comes to setting up your business, it can be a complicated matter, especially if you are not currently living in the United States. You will need to obtain such things as:

- ✓ Valid address the United States
- ✓ A Registered agent
- ✓ A Taxpayer Identification Number (ITIN)
- ✓ Business bank account

The valid address has to be a physical address. This can be an office, retail space, or some other space but needs to be an address where mail can be delivered. It cannot be a PO Box, so this is an area where you will need assistance, particularly if you are trying to start the business before actually arriving in the country.

A registered agent can receive service of process on your company's behalf.

A Taxpayer Identification Number is a 9-digit number that is in place of a Social Security Number. There is a Form W-7 that must be completed in order to receive the number. The form requires documents to substantiate the foreign national status as well as the true identity.

A business bank account will also need to be opened. This will allow you to conduct business separately from an individual account. Before you can open a bank account, you will need to obtain the Taxpayer Identification Number. From there, you will be able to choose the bank that you wish to create an account and transfer funds from a foreign account that you already have in place.

Beyond the basics of dealing with the international aspect of your business start-up, the set-up is the same whether you are a US citizen or a foreign national. You will need to do such things as write a business plan, finance your business, choose a location, determine the legal structure of your business, register a business name, register for taxes, obtain various business permits and licenses, and understand the responsibilities of being an employer in the United States.

EACH OF THESE RESPONSIBILITIES CAN BE DONE IN PERSON OR VIA THE PHONE/INTERNET. IT IS CRITICAL THAT YOU WORK WITH SOMEONE WHO HAS EXPERIENCE NOT ONLY WITH BUSINESS START-UPS BUT ALSO WITH HELPING FOREIGN NATIONALS ESTABLISH A BUSINESS IN THE U.S.

The most important aspect of starting a business in the United States is knowing the order of events. You cannot obtain licenses for your business until you have obtained the proper visa. You cannot apply for a bank account until you have already received your EIN. These steps need to be followed in order; otherwise it is going to slow the process down.

You will need to make sure you adhere to all of the various guidelines. Properly starting a business is a complicated matter regardless of whether you are a foreign national or not. Understanding the laws is critical to your success and working with an attorney can simplify the process considerably.

Importing Goods

If you are opening a business that requires importing goods from another country, you will need to familiarize yourself with the Department Of Commerce's trade information.

It can be advantageous to work with a licensed customs broker so that you have an import plan in place. Documentation will be required for importing all of the goods that you bring into the United States. There are licensing requirements and

procedures that need to be followed. To familiarize yourself more about the laws and regulations involved, you will want to work directly with an attorney, custom broker, or read up on the laws on your own. The method in which you are bringing products over to the United States, such as via rail, truck, or airplane will determine some of the laws that you must adhere to.

Tax Codes

You will be required to follow US tax code throughout the operation of your business in the United States. Violating taxes of any kind, including sales, income, and payroll, can result in a variety of penalties and fees. The IRS has a guide that is detailed and specific for international business. The taxes that you pay and the taxes that you charge your customer are going to be determined based upon the type of business that you are running.

WHEN YOU HAVE EMPLOYEES, YOU WILL NEED TO MAKE SURE YOU ARE WITHHOLDING TAXES AS LEGALLY REQUIRED FOR FEDERAL AND STATE TAXES AS WELL AS SOCIAL SECURITY TAXES.

When you are selling items of a specific category, you will need to collect sales tax to submit to the state. This is done as a quarterly requirement and you will need to collect not only for the state but also for the county that you are in. This requires filing for a specific tax form prior to collecting any taxes from customers.

There are also other taxes that you will need to pay quarterly or at year-end based upon how you have set up your business and how you have profited throughout the year. You will want to familiarize yourself with all of the taxes that you need to pay and work closely with an accountant and your attorney who can assist you with the details on an ongoing basis.

Licenses and Permits

Various licenses and permits will need to be obtained based upon the type of business that you are opening.

You will need to file a business license with the state that you are conducting your business. If you are opening a location under a name other than your formal name, you will also need to obtain a DBA (Doing Business As) document from the state as well.

Any location that allows consumers to enter will require site permits as well. These are provided by the county and will require inspections based upon the type of business that you are opening. The laws will vary from restaurants to offices, and everything in between. Inspections may need to take place on a quarterly or annual basis to ensure that you are doing everything as required by law. Tattoo parlors, restaurants, and various other establishments are going to be inspected with more frequency than others are.

The location will need to meet certain requirements, such as handicap access, bathrooms, running water, and various other details as well. When you choose a location for your business, it is important that you consider these things to avoid as much red tape as possible.

Other licenses and permits that you may need to consider include:

- ✓ Agricultural permit
 - ✓ Liquor license
 - ✓ FAA license
 - ✓ Federal firearms license
 - ✓ Fish and wildlife permit
 - ✓ Maritime transportation license
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- ✓ FCC license
- ✓ DOT permits

Some of these licenses and permits will need to come from the federal government, while others will come from the state or county. One of the most difficult aspects of starting a business in the United States is determining what licenses and permits need to be obtained and where to obtain them from. If you open a business without the necessary licenses and permits, it can result in penalties, fees, and your doors being closed until you obtain the necessary documentation.

This can all be avoided by working with an attorney that understands the requirements of your business. You will want to contact one as soon as possible to ensure that you have everything that is needed before you open your doors to the general public.

Financing

When you set up your business in the United States, you want to make sure that you have the finances available to establish your business in every regard. This includes having the money for a location, inventory, marketing, and everything else. During the visa application process, you may be required to prove that you have the financials already in place.

THERE ARE VARIOUS FINANCING OPPORTUNITIES THAT YOU MAY BE ABLE TO EXPLORE AS WELL. VARIOUS GRANTS CAN BE OBTAINED FOR BUSINESSES, INCLUDING FOREIGN NATIONALS. ONCE YOU HAVE A TAXPAYER IDENTIFICATION NUMBER, YOU MAY ALSO BE ABLE TO OBTAIN BUSINESS LOANS FROM BANKS.

Additionally, there are various tax credits and incentives that you should explore from the Small Business Administration. These include various foreign tax treaties that can make it easier for you to conduct business in the United States and reduce the amount of taxes that you pay at the end of every year.

If you do not have a substantial amount of startup money, this is something that you will need to consider to determine whether you are going to face problems when establishing your business in the United States. If you need assistance, there may be some available to you, though it is likely to depend on where you incorporate and what kind of business you are establishing.

When you are ready to get started, you will want to make sure you have a business lawyer working alongside of you. The law firm of Jurado & Farshchian, P.L. has experience with business start-ups and entrepreneurs as well as business immigration. Call us today at (305) 921-0440, send us an email Attorney@jflawfirm.com or visit www.jflawfirm.com for more information.
