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Investors: Do not pass border, do not collect $200

Industry ties may bar U.S.-bound travelers from entry

BY CHARLES FELDMANN

A variety of visas exist that allow investors and their workers alike to legally work within the United States for a predetermined amount of time. They vary in duration of the stay, as well as the intention behind the visa. Some visas are non-immigrant visas, where the intention is not to become a resident (E-1 and E-2). Others are dual-intent, which allows visa holders to change their mind and apply for a green card without jeopardizing their existing visa (L-1). Finally, there are immigrant visas for which the foreign worker intends from the start to become a permanent resident or citizen (EB-1C and EB-5).

Many of the popular investor visas differ in their requirements and each have their pros and cons. Some, like the E-1 and E-2 visas, require either the business to conduct substantial trade with the United States or the investor to risk some of their own money. E-series visa holders must be a key employee (executive, manager or specialist) and a citizen of a country with a relevant treaty with the U.S. Others, like the L-1, allow foreign companies to transfer employees to related companies, like a parent, subsidiary or affiliate, located within the U.S.

L-1A or L-1B visa holders must be managers or executives or possess specialized knowledge. The EB-1C requirements are similar to the L-1A visas for managers and executives, but the amount is limited to 40,000 visas per year. The last of the popular visas is the EB-5, which requires investment in a "new" business (created after November 29, 1990) with job-creation requirements (at least 10 full-time jobs) and a minimum investment of about $1 million to $2 million.

A common requirement for *all* visas, is that the applicant must otherwise be eligible for entry into the U.S. This is where marijuana investors and workers can run into hot water. Many immigration websites cry out a familiar "Just say no!" for those involved in the cannabis industry that are eying an investor visa. Most lawyers in the field point out that the agencies responsible for immigration into the U.S. are the Citizenship and Immigration Services (USCIS) and Customs and Border Patrol (CBP), both federal agencies, and marijuana is still illegal under federal law. Others point out that it may be possible to receive certain visas, such as an EB-5, if the business is lawful within the state in question.

> **MANY IMMIGRATION WEBSITES CRY OUT A FAMILIAR 'JUST SAY NO!' FOR THOSE INVOLVED IN THE CANNABIS INDUSTRY THAT ARE EYING AN INVESTOR VISA**

To see the federal government's stance on the matter, just look at a statement made by the CBP after marijuana became legal in Canada. According to that statement, if a customs officer determines that a Canadian worker is traveling to the U.S. for reasons "related to the marijuana industry," they can deny that worker entry into the U.S. Plus, the worker's property could be seized, they could be subject to fines and they could be apprehended by law enforcement.

While much of the advice from the U.S. government and third-party stakeholders all contain wiggle room — such as a person "may" be denied entry or "might" be let into the U.S. — the truth is that it is completely up to the CBP officer whether to admit any given traveler. And there is no appeals process once entry is denied. According to many in the industry, simply answering "yes" to having used marijuana in the past should not lead to being denied entry, but CBP officers have already used this tactic to block U.S.-bound travelers from entering the country.

Even more scrutinized are the businesses that deal with the growth or sale of marijuana. As it stands, it is unlikely that an investor visa will be granted for those looking to invest in marijuana enterprises. USCIS and CBP have stated they will deny entry to *any* visitors that are doing business in the marijuana industry. Some wiggle room does exist at the discretion of each customs officer; certain "cannabis-adjacent" industries like farming equipment, video surveillance and social media platforms may be safe harbors. However, if at any point a non-citizen admits to an immigration or border official to possessing or using marijuana or working in a business connected to the marijuana industry, their immigration status can immediately be at risk.

Hemp, on the other hand, is no longer considered a controlled substance and is not banned by federal law. The CBP website even goes so far as to say that the DEA no longer has authority to prevent hemp imports. So long as the business is solely focused on hemp or a related industry, and otherwise has no connection to marijuana besides its products stemming from the same plant, investors in the hemp industry should have no additional trouble when applying for visas.

U.S. federal law remains a minefield for potential cannabis investors, but savvy investors have already found ways to create nearly global supply chains and will continue to look for entryways into the U.S. market until the political landscape shifts in their favor.

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