

# *Exploring the E-2 Visa*

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Presenters:

- Becki Young, Co-Managing Partner, Grossman Young & Hammond
- Sandra Grossman, Co-Managing Partner, Grossman Young & Hammond
- Marco Scanu, Founder & CEO, Visa Business Plans
- Len Wolf, CPA, Director, The Wolf Group, P.C.

# Becki Young



Becki Young  
Co-Managing Partner  
Grossman Young & Hammond  
[byoung@grossmanyouth.com](mailto:byoung@grossmanyouth.com)  
301-917-6900

Becki Young, co-founder of Grossman Young & Hammond, is a seasoned business immigration attorney with over 20 years of experience in the field. She has facilitated the sponsorship of foreign professionals, trainees, interns and individuals of "extraordinary ability." She regularly provides immigration law advice to clients in a broad range of industries.

Ms. Young is an active member of the American Immigration Lawyers Association (AILA). She frequently speaks at legal, business and hospitality conferences, and regularly contributes insight through published articles and commentary. She is highly recommended by Chambers & Partners and recognized as a Leading Legal Practitioner in Corporate Immigration by Who's Who Legal. Grossman Young & Hammond is rated Tier 1 National and Washington, D.C. for Immigration Law by US News & World Report / Best Lawyers. She is also recognized as a "Best Lawyer" in immigration by Washingtonian magazine.

# Sandra Grossman



Sandra Grossman  
Co-Managing Partner  
Grossman Young & Hammond  
[sgrossman@grossmanyouth.com](mailto:sgrossman@grossmanyouth.com)  
240-403-0913

Sandra Grossman is a skilled litigator with significant experience in matters related to the practice of immigration law and international human rights law, including advocacy before the International Criminal Police Organization (Interpol). She is known for providing top-notch, personalized service to both individual and corporate clients with complex immigration cases and highly specialized needs. Sandra has successfully represented individuals in diverse aspects of immigration law before the immigration courts, the Board of Immigration Appeals, and the Federal District Courts. She also represents clients in the areas of deportation defense, detention and bond issues, the immigration consequences of criminal convictions, requests under the Freedom of Information Act (FOIA), waivers of inadmissibility, asylum, and adjustment of status and naturalization applications, among other matters.

Sandra is highly recommended by Lawdragon 500, Who's Who Legal and is recognized as a "Best Lawyer" in immigration by Washingtonian magazine.

# Marco Scanu



Marco Scanu  
Founder & CEO  
Visa Business Plans  
[info@visabusinessplans.com](mailto:info@visabusinessplans.com)  
888-657-3515

Since 2004, Mr. Scanu has been writing customized and effective business plans used for raising capital and immigration purposes. Drawing from his own experience as an immigrant and recipient of an O-1 visa in entrepreneurship and management of entrepreneurial ventures, Mr. Scanu has established himself as a successful consultant and business plan writer with international experience assisting clients across Asia, Europe, Africa, Latin America, and the United States.

Mr. Scanu is a business and executive coach with a globally-based practice coaching Fortune 1000 company executives, entrepreneurs, and professionals in 4 different countries and 10 different professions. He is a results-oriented consultant concentrating on effective strategic execution and management in high-growth companies. Mr. Scanu was Honorary Consul of the Republic of Italy (2001-2004) and is fluent in Spanish, Italian and English, and conversationally fluent in Portuguese.

# Len Wolf



Len Wolf, CPA  
Director  
The Wolf Group, P.C.  
[L.wolf@thewolfgroup.com](mailto:L.wolf@thewolfgroup.com)  
(703) 502-9500 x 111

As the founder of The Wolf Group, P.C., Len oversees the strategic direction the firm and provides guidance to the leadership team, working closely with both staff and clients. Since establishing the Firm in 1983, Len and his team have built a best-in-class, forward-looking international tax practice responsive to our clients and committed to success.

In his early years at The Wolf Group, Len focused the practice on serving the needs of the international community, including organizations such as The World Bank, International Monetary Fund (IMF), OAS, United Nations, NATO, and others. As a result, The Wolf Group has been the premier provider of tax services for international organization employees and retirees for nearly four decades.

In addition, Len has guided the firm in providing high-quality specialty expat and international tax services for individuals and privately held companies with international interests for more than 35 years.

# Agenda

- E-2 Basics
- E-2 Business Plans
- E-2 Taxation
- E-2 Consular Considerations
- Wrap up
- Q&A



# E-2 Basics

*The application must show that:*

1. The requisite treaty exists: see <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html>.
2. The individual and/or business possesses the nationality of the treaty country.
3. The applicant has invested, or is actively in the process of investing.
4. The enterprise is a real and operating commercial enterprise.
5. The applicant's investment is substantial.
6. The investment is more than a marginal one solely for earning a living.
7. The investor applicant is coming to the U.S. to "develop and direct" the enterprise.
8. The employee applicant is destined to an executive/supervisory position or possesses skills essential to the firm's operations in the U.S.
9. The applicant intends to depart the U.S. when E-2 status terminates.

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## E-2 Basics



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## E-2 Basics



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# E-2 Basics

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## E-2 Business Plans

# It's ALL about the audience!



Immigration Officers (USCIS) and Consular Officer (U.S. Consulates) review business plans AND approve/deny visas

The top 3 college majors are...

- Criminal justice
- Homeland security
- International law



Immigration/Consular Officers ARE NOT:

- CPAs
- Bankers
- Investors



# How the audience decides...

- 20-30 minutes to review cases!
- They DON'T care about complex financial projections
- They want to understand your business
- They want to make sure that your business meets the E-2 law

*"Great communicators make their audiences feel smart!"*



# What's a business plan?

Narrative



Financials

Cash Flow Statement												
<b>Operating Cash Flow</b>												
Net Earnings	2,474	11,791	21,075	26,713	28,227	26,543	24,401	25,209	52,749	61,839	70,146	79,323
Plus: Depreciation & Amortization	19,500	18,150	17,205	16,544	16,080	13,132	13,786	14,211	14,487	14,667	14,783	14,859
Less: Changes in Working Capital	9,003	1,702	775	903	827	3,175	5,062	5,768	(2,613)	2,041	2,664	2,931
<b>Cash from Operations</b>	<b>12,971</b>	<b>28,239</b>	<b>37,505</b>	<b>42,354</b>	<b>43,480</b>	<b>36,500</b>	<b>33,125</b>	<b>33,652</b>	<b>64,623</b>	<b>74,464</b>	<b>82,265</b>	<b>91,251</b>
<b>Investing Cash Flow</b>												
Investments in Property & Equipment	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
<b>Cash from Investing</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>
<b>Financing Cash Flow</b>												
Issuance (repayment) of debt	-	-	(20,000)	-	-	-	-	(20,000)	-	-	-	-
Issuance (repayment) of equity	70,000	-	-	-	-	-	-	-	-	-	-	-
<b>Cash from Financing</b>	<b>70,000</b>	<b>-</b>	<b>(20,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(20,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Net Increase (decrease) in Cash</b>	<b>67,971</b>	<b>13,239</b>	<b>2,505</b>	<b>27,354</b>	<b>28,480</b>	<b>21,500</b>	<b>18,125</b>	<b>(1,348)</b>	<b>54,643</b>	<b>59,464</b>	<b>67,265</b>	<b>76,251</b>
Opening Cash Balance	-	67,971	81,210	83,715	111,069	139,550	161,050	179,175	177,827	232,675	292,140	359,405
<b>Closing Cash Balance</b>	<b>67,971</b>	<b>81,210</b>	<b>83,715</b>	<b>111,069</b>	<b>139,550</b>	<b>161,050</b>	<b>179,175</b>	<b>177,827</b>	<b>232,675</b>	<b>292,140</b>	<b>359,405</b>	<b>435,657</b>

Charts and Graphs												
Revenue	102,007	118,066	131,345	142,341	150,772	165,849	182,434	200,678	220,745	242,820	267,102	293,812
Gross Profit Margin (%)	62%	59%	63%	63%	62%	58%	53%	50%	64%	69%	69%	69%

Operating Cash Flow	12,971	28,239	37,505	42,354	43,480	36,500	33,125	33,652	64,623	74,464	82,265	91,251
Investing Cash Flow	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)
Financing Cash Flow	70,000	-	(20,000)	-	-	-	-	(20,000)	-	-	-	-

Revenue & Gross Profit Margin

Cash Flow

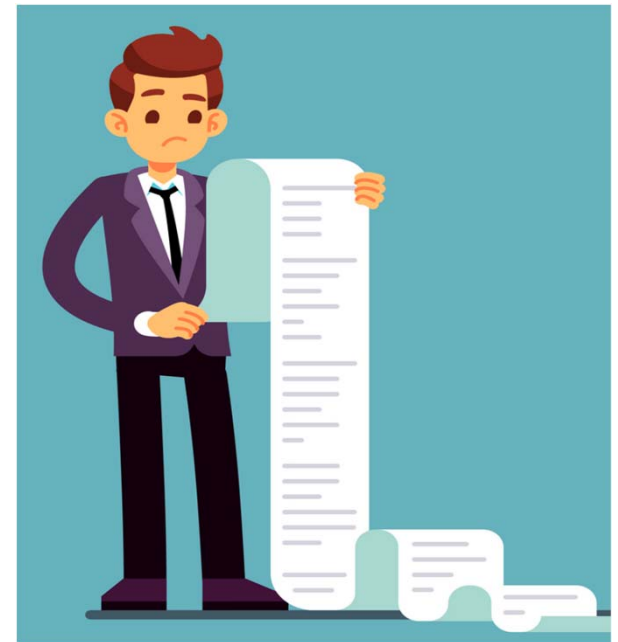
# What's an IMMIGRATION business plan?

(Basic)  
Financials

Income Statement (\$)	
Line Item	2020
Sales	\$35,000
Cost of Sales	\$23,000
Gross Profit	\$12,000
Operating Expense	\$5,000
EBIT	\$7,000
Interest Expense	\$2,000



Narrative



# What's an IMMIGRATION business plan?



Narrative:

- What?
- How?
- When?
- Vision?
- Why?

# What's an IMMIGRATION business plan?



1. Investment: money spent – commitment => viability!
2. Job creation: direct and indirect
3. Investor income: make more money than you can spend to live in the U.S.



## E-2 Taxation

# E-2 Taxation

## E-2 Visa Holders – Tax Residence/Substantial Presence Test (SPT)

- SPT is met if the sum of the following exceeds 182 days:
  - # of days in U.S. in current year, plus
  - 1/3 of days in U.S. in prior year, plus
  - 1/6 of days in U.S. in 2nd prior year
- Residence period begins on first day of presence in U.S. in current year
  - .... but consider 10 day de minimis rule



# E-2 Taxation

## Implications of Tax Residence/Nonresidence

- U.S. residents are taxed on worldwide income.
- U.S. nonresidents are taxed only on U.S. source income. Salaries and wages are sourced where the services are rendered.
  - E-2 visa holders who do not meet the SPT (i.e. nonresidents) are taxed on salaries and wages earned for all days they provide services in the U.S. unless exempt by treaty.

# E-2 Taxation

## *Treaty Exemptions for Salaries and Wages*

- Treaties apply to taxpayers who are tax residents of a country with which the U.S. has an Income Tax Treaty.
- Treaties typically provide for exemption from U.S. taxation if:
  - Taxpayer is present in the U.S. <184 days during the tax year (or any 365 day period in some Treaties), and
  - Taxpayer's salary is paid by foreign (non U.S.) employer and not "borne by" U.S. permanent establishment of foreign employer.
- . . . But must check specific Treaty

# E-2 Consular Considerations



# E-2 Consular Considerations

1. Consular Processing vs. Change of Status
2. Matters related to inadmissibility
3. Status of Consulates





## E-2 Consular Considerations

### *Consular Processing vs. Change of Status*

There are two ways to file for the E2 – either through a change of status in the US or through E2 visa consular processing. What are the pros and cons?

# E-2 Consular Considerations

## *Process for applying before consulates:*

Post-specific and Treaty-specific.

- Review each consulate's submission instructions carefully.
- Know the differences between treaties.
- Prepare for the interview.



# E-2 Consular Considerations

## DS-160 Questions & Inadmissibility Concerns

- Potential Inadmissibility Concerns:
  - Have you ever been refused a US visa?
  - Do you have a social media presence?
  - Do you have any communicable diseases/physical disorders etc.?
  - Have you ever been arrested or convicted for any crime or offense?
  - Do you have any charges or arrests related to money laundering/drug trafficking?
    - Are you, your spouse, or child an individual who has violated any controlled substance trafficking law, and knowingly benefited from trafficking activities in the last five years?
  - Applicants are subject to LEA background checks and the “**Google test**”

# E-2 Consular Considerations

## DS-160 Questions & Inadmissibility Concerns

- **INA §221(g)(3) Nonissuance of Visas** According to the Foreign Affairs Manual (FAM), all non-immigrant visa applications must either be issued or refused.
- **Reason to believe...** lacks an INA definition and its standard or threshold is not defined... but the regulatory definition demands determinations based on facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa.
  - In some cases a Non-Immigrant Waiver under INA **212(d)(3)** may be possible.

# E-2 Consular Considerations

## Visa Validity

- How long will the visa be valid for? Examples:
  - Mexico is up to either 12 or 48 months depending on visa application fee.
  - Argentina is up to 60 months.
  - Spain is up to 60 months .
- Consulate has discretion to limit the validity period.
- E-2 visa holders get a 2-year admission every time they enter the U.S.

# E-2 Consular Considerations

## Status of Consulates

- Posts provide interview capacity depending on category. Cases are transferred to post on a first-in, first-out manner based on the date the applicant became documentarily qualified.
- Whether a consulate is processing E-2s varies by post.
  - Routine visas remain suspended in Argentina and most posts in Mexico.
  - Expedited appointments available at the consulate's discretion.

Wrap-Up



Questions?

