

# NAFSA

Association of  
International Educators Region VIII

## Can They Do That?

What Is and Is Not Permissible Activity for  
Those Admitted in B Visa or Visa Waiver Status

4:00 - 5:15pm

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Virginia Tech

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# Ian Leuschner

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- Ian worked as an employment-based immigration paralegal for several years before attending law school. After graduating from the University of Pittsburgh School of Law, Ian practiced employment-based immigration law until joining Virginia Tech in July of 2008.
- As the Director for International Support Services, Ian is responsible for coordinating the university's permanent residency, or green card, program for faculty and staff.

# Elise A. Fialkowski, Esq.

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- **Elise Fialkowski** is a partner of Klasko, Rulon, Stock & Seltzer, LLP and has been providing immigration assistance and solutions to leading universities, research institutions, multinational corporations, and individuals for over 20 years.
- Elise has particular expertise in worksite enforcement and she leads our worksite compliance group. Elise regularly counsels clients regarding I-9 compliance, E-Verify, Social Security no-match letters and H-1B Labor Condition Application (LCA) compliance. She works with employers to develop proactive compliance programs and assists employers with internal audits and training. Elise has also successfully represented companies facing I-9 and H-1B LCA audits and investigations.
- Elise has long been active in AILA having served as Chair of the Philadelphia Chapter and on national committees such as TSE/VSE Liaison committees. She currently serves on AILA's TSC Liaison Committee and Philadelphia USCIS Liaison Committee.
- Elise has been named in *Pennsylvania SuperLawyers*, *The International Who's Who of Corporate Immigration Lawyers* and the *International Who's Who of Business Lawyers*. A Phi Beta Kappa graduate of the University of North Carolina at Chapel Hill, Elise received her law degree from the Villanova University School of Law (J.D., magna cum laude, 1991).



# Stephen Sechrist

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- Steve oversees visa and related services for international students, faculty, and visiting scholars as well as programming designed to further the cultural integration of populations at the College of William and Mary.
- Prior to joining William and Mary, Steve worked in the Office of International Services at Indiana University and served as an immigration officer in the INS.

# Resources/Background

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- Statute – INA 101(a)(15)(B)

- “An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure”

# Resources/Background

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*(cont'd)*

- Regulations – 8 C.F.R. Section 214.2(b), 22 CFR Section 41.31(b)(1) and 8 CFR Section 217
  - B-1 Business Visitor “conventions, conferences, consultations and other legitimate activities of a commercial or professional nature. It does not include local employment or labor for hire”
  - B-2 Visitor for Pleasure “legitimate activities of recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social or service nature”

# Resources/Background

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*(cont'd)*

- Visa Waiver Program/ ESTA – 8 CFR Section 217 –  
Currently 38 designated countries, see  
<http://travel.state.gov/content/visas/english/visit/visa-waiver-program.html>
- Foreign Affairs Manual - 9 FAM 41.31

# Visitor General Requirements

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- No immigrant intent
- Residence abroad they do not intend to abandon
- Sufficient funds to cover expenses while in the US
- Entering the US for a temporary period
- Seeking admission for the sole purpose of legitimate business activities (B-1) or pleasure (B-2)



# Length of Stay

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## ■ B-1 or B-2

- ☐ May be admitted “for not more than one year”; eligible for extensions of not more than 6 months each
- ☐ Generally given 6 month admissions, 1 year possible!
- ☐ Can request change to different status
- ☐ B1/B2 visa issue and admission

## ■ Visa Waiver Program

- ☐ 90 day maximum
- ☐ Cannot extend or change to different status

# Permissible Business Activities

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- General Business Activities (9 FAM 41.31 note 8)
  - Engage in commercial transactions, which do not involve gainful employment in the United States;
  - Negotiate contracts;
  - Consult with business associates;
  - Litigate;
  - Participate in scientific, educational, professional, or business conventions, conferences, or seminars; or
  - Undertake independent research

# Impermissible Activities

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## ■ Studying at a US university

- ☐ Issues with entry on B visa and change to F-1
- ☐ B visa holder cannot begin study UNTIL change of status approved (8 CFR Section 214.2(b)(7))
- ☐ “Incidental” v. primary purpose (9 FAM 41.31 note 13.6)
- ☐ Campus guidelines/practices

## ■ “Local employment”

- ☐ Examples/what is work?
- ☐ Spouses traveling to US on B – remote work?

# Remuneration – B-1 Visitor

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- 9 FAM 41.31 note 11
- General Rule
  - **May not** receive a salary from a U.S. source
  - **May** receive reimbursement for expenses incidental to the temporary stay: travel expenses, meals, lodging, laundry, and other basic services

# Remuneration – B-1 Visitor

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*(cont'd)*

- Honorarium for academic activities (INA 212(q))
  - Activities last no longer than 9 days at each institution
  - Organization providing the honorarium is “(A) an institution of higher education . . . or a related or affiliated nonprofit entity; or (B) a nonprofit research organization or a Governmental research organization,....” INA 212
  - Honorarium is for services conducted for the benefit of the institution or entity; **and**
  - Alien has not accepted such payment or expenses from more than five institutions or organizations over the last six months



# B-2 Permissible Activities

- Tourism
- Accompanying family members who do not qualify for dependent status 9 FAM Note 14.4
  - May ask for one year at admission; extensions in 6 month increments
- Medical treatment

# Specific Examples

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## ■ **Medical Clerkships** – 9 FAM 41.31 N 10.4-1

- Medical students from foreign medical schools entering the US for an “elective clerkship” that is part of their foreign medical degree, for which they are not being paid by the US hospital.
  - DOES NOT include graduate medical training such as a residency or fellowship program (which usually require J-1 visas)

## ■ **Intern** – 9 FAM 41.31 N 10.4-2

- Business or professional
- Merely and exclusively to observe
- Alien must pay his/her own expenses
- FLSA/other considerations

# Specific Examples

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- “Volunteers”
- Independent/collaborative research
- B-1 in lieu of H-1B or H-3 9 FAM 41.31 N 11



# Hypotheticals

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- ***Visiting Lecturer I:*** University wants to bring in expert on international law from South Africa. While he is here he will be giving some public talks with various different departments over the course of two days and, the next month, will teach a one week short course at the law school. During his six-month trip, he will not visit any other universities but he, and his wife who will accompany him, plan to do some sightseeing and visit friends.

# Hypotheticals

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*(cont'd)*

- ***Visiting Lecturer 1***

- ☐ Is this work?
- ☐ What limitations are there on his remuneration?
- ☐ Is he eligible for a B1?
- ☐ What visa should his wife apply for?

# Hypotheticals

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(cont'd)

- **Visiting Lecturer II:** Same hypo, but giving a lecture for a private, for-profit organization while on the same trip (and thus in B-1 status).
  - Any different limitations on remuneration?

# Questions?





# For Further Information

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