



Coffee & Consulting:

+++No relaxation in sight+++  
Backlog of immigration cases in the US

# Assigning people to the U.S.

## TO DO's

- Determination of the compensation
- Drafting the assignment contract / employment contract
- **Work permit / work visa in the US / visa appointment**
- Tax equalisation
- Request of Certificate of Coverage
- Taking out additional health insurance coverage; the Swiss health insurance needs to be kept while working abroad
- Moving
- Set-up in Payroll
- De-registration in Switzerland

## SAMPLE

Reto Meier is employed at Drinks Ltd in Zurich (Switzerland) as a senior product manager. He was supposed to go to the US on an assignment to the affiliated legal entity already as of 1 February 2022 for a period of 3 years.

However, he is still waiting for the work permit / visa.

Is there any solution for in between ?

# U.S. Embassies and Consular Posts – Updates

- COVID-19 continues to impact services: Most U.S. Embassies and Consular Posts abroad are functioning at reduced capacity
- Long waiting time for visa appointments at most posts
  - Monitor appointment calendars closely
  - Germany: most work visa appointment wait times are 1-2 months
  - Switzerland: E-1/E-2 review/adjudication times are 2-3 months
  - India: **Summer of 2023!!!**
- Emergency visa interviews are available but discretionary results and varies by posts
  - Medical emergency, Funeral/Death, Unanticipated and urgent business trip, ESTA denied
  - Must first secure an appointment before an expedite request can be submitted

## U.S. Embassies and Consular Posts – Updates – cont.

- DOS announced: expansion of interview waivers for certain nonimmigrant visa applicants
  - Through 12/31/2022
  - Petition-based nonimmigrant work visas and qualifying derivatives
  - Students (F and M visas) and Temporary Agricultural and Non-Agricultural Workers (H-2 visas)
  - Renewal in the same visa class within 48 months of prior visa's expiration
- Dropbox and visa application by mail (mainly India)
  - Some require biometrics appointment
  - Payment of visa fees, such as reciprocity fee
- Third-country national visa processing
  - Not home country/ country of residence
  - Some flexibility across Europe
  - More limited in most other places

# Options for Employees in the United States

- USCIS is continuing to adjudicate immigration filings from within the U.S. (i.e., nonimmigrant extension petitions, change of status applications, EAD work permit applications, green card and citizenship applications).
- Automatic Extension of Employment Authorization.
  - Up to 240 days for petition-based visa, such as H-1B, L-1, E visa, O-1, etc.
- Extremely Lengthy Processing Times.
- Burdensome Request for Evidence.

# Available Options if Visa Appointments are Unavailable

- Can an individual work remotely from Switzerland for US entity?
  - U.S. immigration generally adheres to “physical presence” rule
  - If individual is not physically located in the U.S., then they can generally perform “work” for a U.S. entity while located outside the U.S.
    - Tax, employment law, employment contract, benefit, etc. considerations
- Restrict Activities to Business Travel?



## B-1 or Visa Waiver Business Visitor (ESTA)



- To visit the U.S. for a short period of time to engage in legitimate business activities
- Must apply for B visa at U.S. Consulate unless Visa Waiver (ESTA)
- Issuance within the Consular Officer's discretion
- May NOT engage in employment in U.S. and may NOT be paid any U.S. salary. This is NOT a work visa.
- Non-immigrant intent required
- Time period in U.S. determined by CBP Officer – 1 week to 6 months (ESTA: maximum of 90 days)
- Extensions available through USCIS (ESTA: may not extend or change status)

## B-1 Legitimate Business Activities

- Solicit sales, negotiate contracts, or take orders for work to be performed outside the U.S.
- Procure goods, components, or raw materials for use outside U.S.
- Equipment installation pursuant to contract of sale that requires some after sales service or installation
- Litigation activities
- Engage in consultation with U.S. business associates
- Attend meetings, conferences, or seminars
- Undertake independent research
- Activities of a professional to arrange for employment in the U.S.
- Activities of a foreign investor to set up a U.S. investment





## Your Questions?

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## Your host Friederike V. Ruch, CEO

Ms. Ruch is specialized in the field of cross-border employee assignments for more than 20 years and advises internationally operating companies and executives on issues such as tax, social security and licensing law, on payroll and compensation as well as on structuring and optimizing the assignment management. Ms. Ruch is one of the most experienced experts in Switzerland in the field of international employee assignments and is the author of various specialist publications, such as the practical handbook "Expatriates-Inpatriates / Handbuch zur Entsendung von Mitarbeitern" (580 pages).



Friederike V. Ruch  
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