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NEWS AND ANNOUNCEMENTS >>

**YLD Or International Law Section Select Upcoming Programming**

- September 12, 2017, International Law Section Program: Managing Cybersecurity Due Diligence in Technology M&A Transactions


- October 24-28, 2017, International Law Fall Conference, Miami, FL
Letter from Your YLD ILC Leaders

As we reach the end of the 2016-2017 bar year, the ABA YLD ILC leaders would like to extend our heartfelt gratitude for your support. Your contributions have enabled the committee to excel and address many of the myriad of changes affecting international law this year. Please find below a highlight reel of the past year and our thoughts looking forward to the 2017-2018 bar year.

Looking back

Resolutions

We are especially proud to report that one of our student scholars, Diriki Geuka, developed his law school paper on the retroactive application of the human trafficking laws in the United States in a resolution proposal for the YLD ILC. The ABA YLD selected and approved the resolution at a mid-year meeting. Then the YLD ILC co-sponsored an event with the Association of the Bar of the City of New York at the United Nations Headquarters in Vienna, Austria, based on the resolution. Abigail Bridgman spoke as a panelist at the event.

Newsletters

We have strived to provide a diverse selection of articles in our quarterly newsletters on all things international law.

As a recap, we started the year with the 2016 Fall newsletter, which covered Brexit, human trafficking, ISIS and the treatment of the Yazidi people, the enclave exchange between India and Bangladesh, trends in reasonableness standards in international law, North Korea and nuclear weapons, and the role of Yemen in Saudi Arabia and Iran relations.

Our 2016 Winter newsletter covered responses to looting of Syrian artifacts, the Torrens system in the Caribbean, and the U.S. legal framework regarding use of force.

Programs

We hosted, and cosponsored, in-person and webinar programs on a wide range of topics including the Zika virus, cyber security, human trafficking, Cuba relations in the era of President Trump, and the Rio Summer Olympics.

Mentor program with the ABA Section of International Law

In an effort to foster and support our members’ careers in international law, we rolled out a mentorship program that will link our members with seasoned practitioners in international law. We completed the planning and initial roll out of the program this year. We hope to grow the program next year, so please email aba.yldilc@gmail.com if you are interested in taking part.
Looking forward

The next year will come with changes as Abigail Bridgman steps down as Co-Chair. Her support, creativity, and dedication to the committee will be missed. Please find her farewell note below:

Special thanks to the ABA-YLD staff, leaders, and colleagues who have made it possible to serve. Lisa, Ian, Thomas, Matt, Viorel, Diriki, Sarah, Eric, Karthik, Chris, Abiola, Renee, Tara, Lauren, Hong (the list goes on), your individual and collective efforts have been the force behind the success of the committee. It has been a pleasure working with you and you can count on my availability for the YLD-ILC during the transition period and beyond to harness what we have accomplished and explore more initiatives. The ABA has given me an opportunity to hone my leadership skills, publish articles on issues that fascinate me, and also expand my personal and professional network.

We urge anyone who would like to become involved to reach out to us. There are many opportunities to contribute to the ILC, including serving as a Co-Chair, Vice Chair, or Content Editor; writing articles for the newsletter; proposing topics for in-person panels and webinars; drafting resolution proposals; and participating in our mentor program with the Section of International Law. We encourage you to reach out and participate because we believe all YLD ILC activities are helpful to your professional development. We are thankful for the contributions of our members, and we look forward to more in the coming year.

So please spread the word about the ILC, and thank you once again for giving us the opportunity to serve you!
Effective Advancement of Human Rights Starts at Home

By Kai Su

Human rights violations occur in every country in the world, but sometimes they are easily overlooked right in our own country. Our international legal system strives to protect human rights, and an effective way to build a strong international system is by starting with a strong foundation—then building from the ground up. This means states must address the issues that affect them locally before looking internationally.

The concept of human rights can seem vague or abstract to some people. What exactly are these rights? Does the law even recognize them? How are they enforced? These questions surrounding human rights law can leave us feeling overwhelmed or unsure about where to begin.

It may be helpful to first summarize what exactly we mean when we talk about “human rights.” The most basic understanding of human rights are those rights inherent to the dignity of all human beings—regardless of nationality, race, gender, economic status, etc.—which the law recognizes and aims to protect. The goal behind protecting these rights is simple: to create a more free and just world.¹

Many human rights laws are grounded in international resolutions, such as the United Nations' International Bill of Human Rights.² This bill includes the Universal Declaration of Human Rights (UDHR) and two treaties—the International Covenant on Economic, Social and Cultural Rights³ and the International Covenant on Civil and Political Rights.⁴

Most recognition of human rights is found in international treaties, and the countries that ratify these treaties commit themselves to uphold international standards domestically.⁵ While major international issues such as genocide or human trafficking may seem remote to most Americans

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⁵ The United States has ratified the International Covenant on Civil and Political Rights treaty found in the International Bill of Human Rights.
in their day-to-day lives, human rights violations such as domestic violence and discrimination happen daily in our own communities.

It is by first addressing the human rights issues affecting our communities that we can more effectively build societies that provide protection to everyone under the rule of law. This advances the goal of creating a more free, just, and peaceful world.\(^6\)

Acknowledging human rights provides a strong moral and legal framework for social justice work in our communities. By starting with the goal of upholding the inherent rights of all humans, an array of social justice issues—such as discrimination, poverty, hunger, health, etc.—are naturally addressed because they are essential to the big human rights picture.

The justice gap is a big issue that must be addressed while working to advance human rights.\(^7\) Low-income people usually cannot afford legal representation. This inadequate access to justice compounds the existing problem of poor people being especially vulnerable to human rights violations. In situations like these, the justice gap is particularly concerning because basic human rights are at stake.

The Advocates for Human Rights, a nonprofit organization that works to implement international human rights standards and reinforce the rule of law, created a plan with measurable steps that cities can take to advance human rights locally.\(^8\) The first step is to define the human rights goals of the community. Then, cities must identify marginalized groups and analyze the root causes of the human rights issues affecting them. Finally, cities must identify the relevant stakeholders and create action plans to carry out their particular human rights goals.\(^9\)

Mayor William Bell of Birmingham, Alabama, is an example of a politician who has successfully taken a human rights approach to addressing issues in his city.\(^10\) In March 2015, Mayor Bell organized a daylong dialogue with multiple panels discussing key human rights issues. The panels served to foster conversation between Birmingham residents, advocates, and government officials. The goal was to encourage stakeholder participation in government decision-making and to build human rights into law and policy.\(^11\) Mayor Bell’s approach emphasizes the idea that local governments have to engage with the local community in order to create sustainable human rights solutions.

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\(^6\) The preamble of the UDHR states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.”


\(^8\) Id. at 90.

\(^9\) See the manual for a full detailed explanation of the steps and how to implement them.


\(^11\) Id. at 6-13.
Kai Su is a 1L at Stetson University College of Law where she will serve as President of the International Law Society for the 2017-2018 academic year. Kai earned her undergraduate degree in journalism from the University of Florida.
Refugee vs. Migrant, Some Important Distinctions

By: Ishrat Riya Khan

The words “Migrant Crisis” have been used countless times over the last few years as the topic has been a popular one in the news. One incident that brought even more attention to the matter was when a three-year-old child died while crossing the Mediterranean Sea fleeing from Syria in order to find safety in Europe.1 The photograph of this child lying on the beach has been viewed thousands of times and outraged the international community in 2015. This little boy was a Syrian refugee. Despite this incident and many other similar incidents which involved deaths of innocent human beings, there are still inconsistencies in the media about the label being used to describe these individuals. This recent human rights crisis has been labeled the “Migrant Crisis” around the world, but the terms are often inaccurately used.2 Many of these individuals that have been arriving primarily in Europe from Syria, Afghanistan, Iraq, and neighboring countries seeking safety and protection, are in fact refugees, and not simply migrants.3

The International Committee of the Red Cross and Red Crescent uses the definition provided by the 1951 Refugee Convention to define a refugee as “a person who meets certain eligibility criteria set out by international law. At the global level, the 1951 Refugee Convention defines a refugee as a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country.”4 In Contrast, the International Organization for Migration defines a migrant as “any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.”5 Some very important distinctions between a migrant and a refugee have also been pointed out by the UNHCR, the UN Refugee Agency. One of them is that a migrant often willingly leaves his or her home country for economic reasons to settle in a new

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place where he or she can pursue a better life, whereas, a refugee is displaced as a result of war and persecution and is seeking a safe haven somewhere else. The UNHCR emphasizes that choice of words matter when describing the two because States have certain human rights obligations towards refugees, but not towards migrants. The 1951 Refugee Convention defines a refugee as “a stateless person” and discusses the protections a state must provide a refugee. Thus, a State can deny entry to a migrant based on the State’s political reasons and immigration policies. As a result, the State may think it in its current best interest to choose the usage of “Migrant” if denying a refugee entry because otherwise it would raise some very serious human rights issues which are prohibited for the 148 states that are parties to the 1951 Refugee Convention.

It is important to note that the responsibilities a State has under the Refugee Convention differ if they are only a party to the 1967 Protocol to avoid any criticism over admitting refugees. In 1967, the Protocol was added amending the geographical limitations of the Convention. The Protocol also allows a State to use its own national laws when faced with issues regarding the admittance of refugees. The United States is such a State that’s only a party to the Protocol and prefers its own federal laws to govern over protection and admission of refugees, including where to apply restrictions. Therefore, despite the disapprovals the United States has faced over its admission of a comparatively smaller number of refugees in the past few years, as a party only to the Protocol, it is not bound by all of the obligations of the Refugee Convention.

Despite the plethora of resources mentioned above that are readily available to define and explain the differences between refugees and migrants, the media still fails to correct itself when reporting on the topic of refugees. The news outlet al-Jazeera has criticized other media and State officials for using the word “Migrant” where “Refugee” should apply allegedly to avoid providing protections to the refugees. BBC News has countered with an explanation that they’ve simply used the Oxford English Dictionary definition for “Migrant,” which can be easily confused with the definition of a “Refugee.” BBC further included the Oxford English Dictionary definition of the word “migrant,” which is defined as “one who moves, either temporarily or permanently, from one place, area, or country of residence to another.” BBC News has blamed this mix-up as simple error and has concluded that it is acceptable to use the terms interchangeably since “Migrant” is a neutral word. However, BBC and other news outlets should use both the definitions for “migrant” and “refugee” separately and appropriately as they

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7 Id.
8 CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES, UNHCR-The UN Refugee Agency (last visited March 15, 2017).
9 Supra. FN 6.
10 Id.
11 Supra. FN 8.
12 Id.
13 Id.
16 Id.
17 Id.
are understood in the international human rights context. Reporting properly and accurately is an obligation that news outlets must bear since they are the biggest information sources the general public turn to, which imposes a duty of trust that is placed on them by the people that rely on them for accurate information. Whereas State officials can give themselves more flexibility to define terms how they think best suits their national interests, news outlets are usually held to a different standard by the public to relay the news accurately.

There are often various reasons for why a State may choose to shape and define terms catering to what it feels suits its current national interests. However, it must still be reminded of its obligations if it is a member of the 1951 Refugee Convention to admit refugees regardless of its national interests. Using inaccurate terms to define Refugees may continue to remain an issue for both the media and the States but both must still be held to their responsibilities to these people who need help and protection. Both the media and States can start this process by ending the misuse of the definitions and mislabeling “refugees” as “migrants.”

The statistics are sobering. In 2015, 65.3 million people, both migrants and refugees, were forcibly displaced around the world.\(^{18}\) 21.3 million of these people are refugees.\(^{19}\) 10 million of these stateless people are “migrants” that have been denied a nationality and access to basic rights such as education, healthcare, employment and freedom of movement.\(^{20}\) Nearly 34,000 people are displaced per day. Only 107,100 refugees have been resettled.\(^{21}\)

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\(^{19}\) Id.

\(^{20}\) Id.

\(^{21}\) Id.
Treaty Investor (E-2) Visa – A Reliable Option to Work in the U.S.

By Dmytro M. Biryuk

Many nonresident aliens aspiring to work in the United States have never heard of the U.S. treaty investor (E-2) visa. Some underestimate its advantages.

This article describes the E-2 visa (aka the U.S. business/investment visa) and how it benefits those coming to work in the U.S.

You might have already heard about some common American visa options below.

Dependent Options

First, there is a diversity visa (green card) lottery. Selection is random and chances to win are tiny. One can play this lottery for many years, if not a lifetime, without any luck.

Second, there is an H-1B visa. It is a non-immigrant visa that allows U.S. companies to employ graduate-level workers in specialty occupations. It is, nevertheless, difficult to find a U.S. employer to sponsor that visa. With the Trump administration, obtaining an H-1B visa may get even tougher.1

Third, there is an L-1 visa. It is a non-immigrant visa available to employees of an international company with offices in both the U.S. and abroad. The L-1 visa thus largely depends on employment in a foreign country and subsequent transfer to a related U.S. company.

Independent Option

Instead of waiting, what if one could act immediately? Instead of depending on employment, what if a nonresident alien could set up and run his/her own business in the U.S.? Most importantly, what if one’s move to the U.S. would depend only on him/herself, rather than a godsend or employer?

The E-2 investor visa is a significantly more reliable option than H-1B or L-1 for aliens looking to invest in the U.S. It is a non-immigrant business visa that allows an individual to enter and work in the U.S. based on an investment that he/she will control there.2

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U.S. Treaty Countries

The U.S. treaty investor visas (the full name for the E-2 visas) are for citizens of countries with which the U.S. maintains treaties of commerce and navigation.³

There are 80 treaty countries. These countries include, for example, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Egypt, Germany, Italy, Japan, Kazakhstan, Luxembourg, Mexico, Netherlands, Norway, Poland, Singapore, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, and many others.⁴

Treaty Investor Benefits

A U.S. treaty investor is an alien who invests a substantial amount of capital into an enterprise and comes to the U.S. to develop and direct that enterprise.⁵

E-2 particularly benefits aliens able to procure investment funds or other assets. For these potential investors, the E-2 visa is convenient because there is no requirement to hire any employees from the outset.

Once an investor receives the E-2 visa, the treaty investor and his/her family may live in the U.S. during the period authorized by the Department of Homeland Security.

The investor’s spouse and unmarried children under 21 years old as well as the enterprise’s employees may receive dependent E visas. They are not required to have the same nationality as that of the investor.

Notably, the investor’s dependents may work in the U.S. once they receive a relevant authorization. Upon approval, the E-2 spouse may work anywhere.⁶ This is a great advantage of the business visa.

Additionally, the investment visa has no cap. So, it is available to an unlimited number of investors.

Term of Stay

Unlike H-1B and L-1, the E-2 visa allows aliens to stay in the U.S. for as long as their business lasts. This could be, for example, two, ten, twenty, or more years.

Treaty investors may initially get a maximum stay of two years. They may then receive extensions in increments of up to two years each. The number of extensions an investor may get is unlimited.⁷

⁷ Id.
A treaty investor who travels abroad may get an automatic two-year period of readmission when returning to the U.S. This generally does not require any additional filing.\(^8\)

**E-2 Visa Requirements**

To become a treaty investor and get an E-2 visa, an alien must ensure that:

1. Relevant treaty exists between the U.S. and his/her country of nationality;
2. He/she has already invested or is actively investing;
3. His/her investment is substantial, and funds are committed irrevocably;
4. The investment is more than marginal solely for earning a living;
5. His/her U.S. enterprise is real and operating commercially;
6. He/she is in a position to develop and direct his/her enterprise; and
7. He/she intends to depart the U.S. when his/her E-2 status ends.\(^9\)

An investment is defined as a placing of capital, including funds and/or other assets, at commercial risk with the goal to generate a profit. The capital must be subject to partial or total loss if the investment fails.\(^10\)

Moreover, the treaty investor must show that the funds have not been obtained from criminal activity.\(^11\)

**Own Business Options**

To invest, an alien can open or buy a business in the U.S. In other words, his/her investment can be greenfield or brownfield. Any type of business can qualify.

If an alien purchases a U.S. business, he/she should make sure that the share/asset purchase agreement is contingent upon his/her obtaining the E-2 visa. Such a condition precedent would tie contractual performance to investment visa success.

**Investment Amount**

The point that many overestimate or wonder about is how much to invest. Interestingly, there is no minimum investment amount. It largely depends on the type of your business. While it is normally $100-150K, the investment amount can be much less. For a small service business, for example, the investment amount may even be as low as $50-70K.

The higher the amount, though, the easier it is to get the investment visa. Conversely, the lesser the amount, the more scrutiny the investor visa application gets. Similarly, a lower investment amount usually requires investing a higher percentage prior to applying for the investor visa.

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\(^8\) Id.


\(^11\) Id.
Application Fee and Timeframe

The E-2 visa application fee amounts to $205.\textsuperscript{12}

Depending on circumstances, the application review and adjudication may take around three months.\textsuperscript{13}

Conclusion

As you see, the E-2 visa allows aliens to work – running their own businesses – in the United States. With a U.S. immigration lawyer on board, they can start right away.

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\textsuperscript{14} \textit{See the website of Biryuk Law Firm PLLC at https://www.biryuklaw.com.}
\textsuperscript{15} \textit{See the video blog of Biryuk Law Firm PLLC at https://www.biryuklaw.com/category/blog/.}
Questions about joining our committee or writing in our Newsletter should be directed to aba.yldilc@gmail.com, abigail.bridgman@gmail.com, lmays@sheppardmullin.com, or eric.chung@whitecase.com.