Making Money in the U.S. Legally
Summary:

- If it looks like a job,
- If it feels like a job
- If it takes time like a job
- If it generates income like a job, then,

It’s Probably WORK!
Hello!
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Myth #1
If You Receive “Income,” You ARE “Working”
### Working & Income are Two Very Different Things!

<table>
<thead>
<tr>
<th>Dept of Homeland Security</th>
<th>Department of Labor</th>
<th>Internal Revenue Service</th>
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<tbody>
<tr>
<td>Definition of “work”</td>
<td>Definition of “volunteer” (not work)</td>
<td>Definition of passive v. active “income”</td>
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<tr>
<td>CFR Sec 274a.1(h)</td>
<td>Fact Sheet #71 - 7 Factor Test</td>
<td>Active work = 500 or more; “regular, continuous, substantial” time &amp; effort</td>
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Click Here
Passive Income

NOT “Active” Work - Make Money in your SLEEP!

(Do Not Need USCIS Work Authorization)
The investor can be asleep & earning passive income!

Derived from a capital investment, to purchase an asset, and then the asset’s positive cash flow produces a return on the investment (even though the investor provides no services or labor); The investor is passive! / Earning “income?” YES! / Working? NO, You are ASLEEP!

Example 1
You Invest and receive income from sale of, or dividends from, or interest paid on, or ownership of: stocks / bonds / currency / Bitcoin

Example 2
You Own a Business and get dividends (Distributions of Profit) from a business venture in which the investor “invests” capital, & owns, but to which the investor provides no services or labor.
Myth #2

If I Don’t Receive “Income,” I’m Not “Working”
ACTIVE Work

MAY, or MAY NOT, generate income meaning, you could be working even if you are not paid

(Need USCIS Work Authorization)
**Black & White: Violation Without Authorization**

**Active Income** is received from any arrangement that results in the payment of wages, salary or other compensation in exchange for services rendered, labor provided, etc.

**Example 1**
You design, code & sell a website you made for a business you own  **Active Income & Work**

**Example 2**
You serve as a Computer Consultant at Apple in exchange for a paycheck  **Active Income & Work**

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**Check your IRS Forms 1040 NR**

**Active Income: Line 8**

**Passive Income: Lines 9, 10, 14**

**Active? or Passive? Lines 13, 18**
Know Your 1040 NR

Line 8: Active Income

Lines 9 & 10 Passive Income

Line 13?

Line 14: Passive Income

Line 18?
Work Defined by Category of “Income”

Work is any arrangement that results in the payment of wages, salary or other compensation in exchange for services rendered.

“Active” Work Generates Active Income

“Active” Work Does NOT Generate Passive Income

INCOME & WORK ARE INTERCONNECTED

BUT THEY ARE VERY DIFFERENT
WHAT is “WORK”?

WHATEVER THE EVIDENCE SAYS IT IS!

Only the Evidence (paperwork & witnesses) determines, AFTER THE FACT, if the student performed work.
Are you Working?

**Most Safe, Conservative view:** You are “working in the USA” and need work authorization if:

- You are doing **ANY** work on U.S. Soil for **ANY**one or **ANY** company located **ANY**where on Earth.

- Even if working in the USA, online for a foreign company, and are paid to a foreign bank account

**Risk is Yours:** Know the consequences for breaking the rules - This risk could ruin your U.S. Immigration Life
Myth #3

F-1 Student’s Cannot Own a Business.
Entrepreneur? Can Invest, Own, But Can’t Work without Authorization

Planning vs. Operating a Business - You can: register company in your name, obtain licenses (normal “Owner activities”) and then it begins getting grey
- Services and moneys
- Using institutional address
- Updating LinkedIn

While in the U.S. vs While abroad - Where and When you do the work
- Stick Close to Conservative view, but have a realistic view of risk
- Recommend an attorney
- Document, document document!
Myth #4

“But I’m Volunteering” or “It’s Just a Side Hobby” so it isn’t work!
IS THE ACTIVITY:

- a “Hobby,” or is it “Income from Work?”
- “Volunteer Internship,” or is it “Illegally Working for $0.00 per Hour?”

Look to the IRS 9 Factor Test & Other Rules

Look to the USDOL 7 Factor Test Rules
How many hours do you “spend”? How much money is generated?

Examples: A “Hobby” or “Income from Work?”

- Bitcoin: Digital Currency Investing
- Investing in Stocks / Bonds / etc
- Creative Hobbies:
  - Posts on YouTube (ads)
- Online Gambling/Trivia or Cash Apps (HQ)
Dangers of Instagram

Product placement
Promotional fees
Contracts/ Agreements
“Brand Ambassador”
“Influencer”
“OnlyFans”
“Free” merch
Giveaways

IS IT WORK? Evidence (paperwork & witnesses) determines AFTER THE FACT if the student performed work.
Hours “spent”? / Amount of money generated? Level of Involvement?

Example:

“Passive Income” or “Income from ‘Active’ Work?”

- Owning Real Estate
- Buying & Flipping Houses
- AirBnb/ Loanables/SparkPlug?
But I’m volunteering!

The US Department of Labor uses the provisions of the FLSA to determine what constitutes a volunteer. The following guidelines apply:

USDOL 7 Factor Test

Time & Intent:
- Civic, charitable or humanitarian purposes?
- Your own benefit?
- Regular working hours or insubstantial time

Taking “American Jobs”
- Penalty, pressure or promise of advancement?
- Same duties as regular, paid employees?
- Expectation of compensation in the future?
But I’m volunteering!

The US Department of Labor provides guidance for religious, charitable, and nonprofit organizations, schools, institutions, and volunteer workers in their Field Operations Handbook (10/20/93):

- Members of civic organizations - shelter or workshop
- Civic organizations - hospitals or nursing homes services for the sick or the elderly
- Parents - school library or cafeteria
- Parents - drive a school bus to carry a football team or band on a trip
- Driving vehicles or folding bandages for the Red Cross
- Children with disabilities or disadvantaged youth, needy working mothers
- Youth programs as camp counselors, scoutmasters, or den mothers
- Soliciting contributions benefit programs for such organizations
- Individuals volunteering other services needed to carry out their charitable, educational, or religious programs.
But I’m volunteering!

The activities outlined, performed under such circumstances, do not create an employee-employer relationship under USDOL rules.

However, for immigration purposes, US immigration authorities MAY consider any position, if normally occupied by a paid employee or worker, as "employment," even if uncompensated.

(Matter of Hall, 18 I & N Dec. 203 (BIA 1982)).
Unpaid “Volunteer” Internships

Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act
(Effective Jan 2018)

- Determines if interns/ students should be paid under the Fair Labor Standards Act (FLSA).
- The Test for Unpaid Interns and Students Courts have used the “primary beneficiary test” to determine whether an intern or student is, in fact, an employee under the FLSA.
- Examine the “economic reality” of the intern- employer relationship
- Which party is the “primary beneficiary” of the relationship.
- Flexible test, and no single factor is determinative.
- Depends on the unique circumstances of each case.

7 Factors
Not Work | Related to Income

. . . . BUT IS IT LEGAL

- Honorarium (Hobby Or Professional)
- Moving currency across an int’l border. (Currency and Foreign Transaction Reporting Act)
- Investing in Cannabis Companies
- “Means-Tested Public Benefits”, avoiding “Public Charge”
- Tax Fraud - Accidentally or Purposely mis-filing your taxes: WRONG; 1040 EZ - RIGHT: 1040 NR
Work & Your Future
Lots and lots of Grey . . .
AND only the Evidence (paperwork & witnesses) determines *AFTER THE FACT* if the student performed work without authorization!

POE, Consulates, USCIS Applications
DOL Audits
Back Pay Lawsuits
Unlawful Presence Retroactive
Myth #5
I’m too smart . . . they will never catch me . . .
But it's my friend's business, they just need my help...

But I'm getting paid in cash...

But I'm not hurting anyone....

No one can catch me!!
Evidence, including Tax Filings
How Passive Investment Income or a Hobby could be interpreted as Active Work Producing Income:

**USCIS:**
Student Seeks Work Visa
Work Visa Holder Seeks LPR
Resume, taxes...etc, must match Authorization

**POE & Consulate: “Interviews” & “Cell Phone Checks”**
Red Flags from conversation about employment without authorization
“I got a job at a gas station”
Jimmy John’s Work Schedule in Email ON Mobile Phone
Tax forms indicate an employer-employee relationship (Uber, AirBnb)
Sketchy employers (YOU ARE BEING Exploited)

- Arguments with employer or associates
- Jealous or oblivious colleagues
- Dissatisfied customers
- Anti-Immigration Activists
- IRS records from employer
- Back wages (After the fact)
- Comfortable speaking about working - Let something slip
- Evidence on social media, linkedin, website, news article, cell phone at POE
- Resume during AOS
- All in the clear.... then previous employer gets audited by IRS or raided by ICE.
When is it a STATUS Violation?

DSO did not find out about or report violation...
Institution doesn't consider it a violation....
Employer didn’t realize it was a violation.....

STATUS Violations can be determined years after the fact by USCIS.
Review: Are You Working?

Examples: A “Hobby” or “Income from Work?”

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- Local Trivia & Turtle Races?
- Online Gambling/Trivia or Cash Apps (HQ)
- Athletic/ Beauty/ Business Competitions
- Busking
Review: Are You Working?

Example: “Passive Income” or “Income from Work?”

- Buying & Flipping Houses
- Buying & Flipping Automobiles
- Crowdfunding/ Fan Funding Campaigns?
- AirBnb/ Loanables/SparkPlug?
- Herbalife/Advocare
- Hosting E-Games
- Selling Backyard Chicken Eggs
- Mexican steel business (home on the weekends)
- Remote work inside Foreign Embassy (Is it US soil?)
- Blood/ Sperm/ Egg Donations
Thanks!

Any questions?

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