InfoPAK[SM]

Hiring Foreign Nationals in the United States

Association of Corporate Counsel

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The following materials are intended to provide information for U.S. companies seeking to hire foreign nationals. This information does not represent legal advice and should not be relied on as such nor do the opinions expressed in this material reflect the views of ACC or its lawyers unless so stated. This InfoPAK is not intended to be a comprehensive statement on the subject but, rather, a handbook that provides practical information for the reader. We hope that you find this material useful. Thank you for contacting the Association of Corporate Counsel.

This InfoPAK has been prepared and is being sponsored by the law firm of

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Contents

I. Introduction

There are various ways that a foreign national can immigrate to the United States:
(1) Through family-based immigration
(2) Through the diversity lottery program
(3) Through a grant of political asylum
(4) Through employment-based immigration.

Before considering whether to sponsor employment-based permanent residence, employers typically sponsor foreign nationals for temporary employment in an appropriate non-immigrant category. Accordingly, for purposes of this InfoPAK[SM], we will focus on employment-based immigration, which involves a corporation's sponsorship of a foreign national to work with the sponsoring company and live in the United States.

Company-sponsored employment authorization for foreign nationals can be divided into two categories:

(1) Non-immigrant status: a specific employer may seek authorization to hire a foreign national for a limited period of time; and
(2) Immigrant status or permanent residency: an employer may sponsor a foreign national for permanent residence. A permanent position for immigration purposes is defined as a "relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance of either of the United States employer or the individual, in accordance with law."[2]

Employers should be aware that permanent resident status does not restrict the foreign national's employment to the sponsoring company. This status, although considered "permanent," only continues as long as the individual maintains the intent to reside in the U.S. and is not convicted of certain crimes that are grounds for removal. Individuals may lose their permanent resident status involuntarily if the government establishes that permanent residency has been "abandoned."[3]

Permanent residents may eventually apply for United States citizenship. Becoming a citizen provides additional benefits such as the chance to sponsor family members for immigration, the right to vote, the ability to run for political office, the opportunity to work in positions that require a security clearance, and protection from deportation or removal. The basic requirements for U.S. citizenship through naturalization are five years of continuous residence in the United States, good moral character, and knowledge of the English language, American history and civics.

If a company wishes to hire and sponsor a foreign national, it usually starts by

employing the foreign national under a non-immigrant (temporary) employment-based visa status. Non-immigrants are admitted for a specific purpose and a temporary period of time. Most visa categories are defined in the Immigration and Nationality Act §101(a)(15), 8 U.S.C. §1101(a)(15). We commonly refer to visa categories by the letter and number that denotes their subsections in §101(a)(15) such as B-1, E-1, F-1, H-1B, J-1, L-1, and so on.

These visa categories have expiration dates and the sponsoring employer or the individual must renew the visa status within a certain period.[4] Further, many of the non-immigrant visa categories have a maximum period of validity after which they cannot be renewed. After their visa status has expired, foreign nationals must be able to rely on a different non-immigrant visa status or be in the process of gaining their permanent residency (or green card) status. If a company wants a foreign national to continue working without interruption the company must be time-conscious in filing extension petitions and initiating the immigrant (permanent) visa process.

The following sections contain visa-specific strategies for hiring and maintaining uninterrupted employment of foreign nationals. The visas categories addressed[5] are:

Non-immigrant Visas: H-1B, L-1A/L-1B, TN, O, P, and B-1/B-2, including VWP
Immigrant Visas/ Permanent Residency: EB-1, EB-2, and EB-3

II. Non-Immigrant Visa Classifications

A. H-1B (Professional Worker)

The most common non-immigrant category for temporary employment is the H-1B visa category. H-1B status is available to those individuals whose services are sought by a U.S. employer in a "specialty occupation." Specialty occupations are jobs that require at least a bachelor's degree or the equivalent in a specific field.

This visa category provides a mechanism for employers to hire temporary professional workers. This category covers a variety of occupational fields that normally require a bachelor's degree or equivalent in a professional field.[6] The key issues in determining eligibility for H-1B status are (a) whether the position is a specialty occupation and (b) whether the beneficiary meets the requirements for the specialty occupation.

Under the H-1B visa, the company can hire a foreign national for up to six years with an option to extend this temporary status beyond the six-year limit if the company is in the process of sponsoring the foreign national for permanent residence.

The following are the customary steps taken by companies when hiring a foreign national under the H-1B visa category.[7]

1. Initial Hiring Stage

a) New Employee File - Once the company has decided to hire a foreign national, the company should develop a file that includes his or her personal information.[8] The file should also include:

(i) A copy of the foreign national's resume with detailed descriptions of jobs held following completion of his or her baccalaureate studies, dates of employment and titles held;

(ii) A copy of any university-level educational degrees and/or diplomas received with major field of study indicated on the degree or photocopies of academic transcripts or a letter from the university confirming the foreign national's field of study, including an educational credential evaluation if the degree is from a foreign university;

(iii) A copy of the entire passports of the foreign national and his or her family if traveling to the U.S. (including any visa stamps);

(iv) A copy of I-94 card and any USCIS-issued documents relating to all prior stays in the U.S. (*i.e.*, Forms I-797, I-20, IAP-66, etc.);

(v) A copy of the offer letter confirming U.S. job location, title of the job to be performed, and salary;

(vi) A detailed job description including job duties and position requirements; and

(vii) Hiring manager contact information. The hiring manager is a helpful resource to the immigration attorney because he or she can provide the necessary information pertaining to the company and the specifics of the job. Developing this file not only creates a paper trail (essential to maintaining immigration status and complying with immigration regulations) but it also can serve as a resource for the immigration counsel to use in preparing the petition.[9]

2. Preparing/Filing the Petition

a) Labor Condition Application (LCA)[10]

This is required for each H-1B non-immigrant. The purpose of the Labor Condition Application[11] is to ensure that neither U.S. workers nor foreign nationals are adversely affected by the wages and working conditions proposed in the H-1B petition. The LCA contains basic information about the proposed H-1B employment including the rate of pay, period of employment, and work location. By completing and submitting the LCA, the employer agrees to several attestations regarding the wages, working conditions, and benefits to be provided to the H-1B employee. The employer must document compliance with the LCA requirements in a public access file.[12]

b) Form I-129

Once the attorney receives the approved Labor Condition Application, as well as a copy of the foreign national's file, the attorney will need to complete certain USCIS forms such as the: Form I-129, Form 129H, Form I-129 H-1B Data Collection Supplement with original signature; and Form G-28 (Attorney Representation). In addition, the attorney will need to prepare documentation that establishes that the position, as well as the H-1B foreign national's credentials, meet the statutory requirements. This information collectively is often referred to as the petition and should be filed with USCIS.[13]

c) Processing Time

The processing time for a decision on the petition depends on the backlog at the USCIS service center where the petition is filed and may take between 60 and 120 days. Before filing a petition, employers are advised to check current processing times at the service center where the petition will be decided. Within approximately one to three weeks of filing the petition, you should receive a "Receipt Notice" from USCIS, which indicates the approximate processing time of approval or denial.

d) Filing Fee

The regular filing fee for this type of petition is $190 for standard processing, training fee of $750 (for employers with 25 or less employees) or $1,500 for employers with 25 or more employees and $500 anti-fraud prevention and detection fee made payable to the USCIS.[14] An employer may choose to use premium processing to expedite the case. The employer pays an additional $1,000 premium processing fee and files Form I-907. USCIS will then issue an approval notice or take other appropriate action on the petition within 15 calendar days

3. Compliance and Visa Maintenance

a) Approval of H-1B Petition

The petitioning employer will receive an approval notice (Form I-797). If the

foreign national is already in the U.S., and a change of status is approved, he or she may normally start working on the authorized start date in the approval notice. If the foreign national is overseas, he or she will use the original approval notice with Form DS-156 to apply for the H-1B visa with a consular officer at an American embassy or consulate.[15] The foreign national's immediate family members (spouse and unmarried children under age 21) will need to apply for the H-4 visa based on the principal foreign national's H-1B approval. Although a visa petition need not be filed for derivative beneficiaries who are outside the United States, the immediate family members (*i.e.*, spouse and children under the age of 21) need to show proof of relationship to the H-1B beneficiary through a valid marriage certificate for the spouse and birth certificates for the children.

b) The Foreign National's Stay in the U.S.

Once the foreign national has entered the U.S. with a valid H-1B visa, he or she may start working immediately. The spouse and children, however, are not allowed to work under the derivative H-4 status. As previously mentioned, the initial H-1B petition may be granted for up to three years, with an option to extend an additional three years. Any time not used is tolled and will be allotted to the foreign national until the maximum six-year period has been reached. When the initial three-year period is nearing its expiration, the company must file an H-1B extension with the appropriate USCIS service center if it wants to continue to employ the foreign national. With good advance planning, an extension can be filed and approved prior to the expiration of the foreign national's existing H-1B status.[16] However, even if an extension is not granted prior to the expiration of the initial three-year visa period, a foreign national can still remain on a company payroll as long as the extension was filed before the current H-1B petition expired. In this situation, while the foreign national can continue working and stay on payroll, the H-1B employee and his or her family cannot engage in international travel until they have received their H-1B extension approval notices from USCIS, which are required to obtain new visas at an appropriate U.S. consulate. Employers have certain obligations if an H-1B employee is dismissed during the H-1B period, including liability for the reasonable costs of return transportation of the beneficiary abroad (last place of residence) and the obligation to withdraw the H-1B petition. An employer's letter to the USCIS withdrawing the H-1B petition ensures that it is no longer obligated to comply with the LCA requirements, including the agreement to pay the required wage, for the employee who has been terminated.

c). H-1B Transfers

Because an approved H-1B petition is employer specific, companies that wish to hire a foreign national who already has H-1B status through another company will need to file a new petition. Despite having to file a new petition, a company still benefits from hiring someone who already has H-1B status through a different employer:

- First, that person is exempt from the H-1B annual cap of 65,000 because he or

she has been previously counted. Any person who has been counted against the cap within six years before the approval of the petition will not be counted again unless that person has been out of the country for more than one year and would have another full six years of eligibility.[17]

- Second, that person may be able to start working when the new H-1B petition is filed instead of having to wait for the petition to be approved. The statute providing for the increased portability of H-1B status authorizes the new employee who previously had H-1B status to start working upon the filing of a new petition if that person has been lawfully admitted into the United States, the employer has filed a new non-frivolous H-1B petition on the person's behalf during his or her period of authorized stay, and the H-1B beneficiary has not been employed without authorization.[18]

d). H-1B Annual Cap

The annual quota of H-1B visas available has become a critical part of the H-1B filing strategy since October 1, 2003, when the temporary increase to 195,000 available H-1B visas that began in fiscal year 2001 reverted back to 65,000 beginning in fiscal year 2004.[19] The 2007 cap was reached only a couple months into the 2007 fiscal year and it will almost certainly be reached as quickly in fiscal year 2008. Without legislative relief from the H-1B cap, companies will need to file new H-1B petitions on or near April 1, which is the earliest that new petitions may be filed before the new fiscal year begins each October 1.[20] In addition to those filed for individuals previously counted against the cap, H-1B petitions that are exempt from the cap include those filed by institutions of higher education or related nonprofit entities and by nonprofit or governmental research organizations.[21]

4. Maintaining the LCA Forms and Public Access Files:

a) The Labor Condition Application (LCA) is intended to ensure that the employment of an H-1B worker does not adversely affect the working conditions of workers similarly employed in the area. The Department of Labor (DOL) must certify the LCA before the H-1B petition may be approved by the USCIS. To comply with DOL's regulations for H-1B employees, the employer should take the following steps:

(i) Obtain two original, certified LCA forms and the public access file materials to be completed and maintained by your office.

(ii) Sign the LCA forms, retain one, and submit one to USCIS with the H-1B petition.

(iii) Provide notice of the filing of the LCA to the collective bargaining representative, if any. If there is none, the employer must post notices of filing the LCA. The two additional LCA forms or notices of filing must be posted for 10 days in two conspicuous locations at the site where the employee will work. Appropriate locations for the posting

include, but are not limited to, locations in the immediate proximity of wage and hour notices. The posting must commence within 30 days of the date the LCA is filed with the U.S. Department of Labor and remain posted for ten days.

(iv) Maintain a public access file for every LCA filed. This file should be kept separate from other employment and Form I-9 records for the employee. The public access file must be maintained for at least one year after the period of employment indicated on the LCA, one year from the date the LCA was withdrawn, or, if a timely complaint is filed, until the complaint is resolved.

Best Practice Tip:

The Public Access File should include the following:

- Copy of the Certified LCA with cover pages.
- Completed and signed copies of the posted notice announcing the filing of the LCA.
- Actual Wage Memorandum with a clear explanation of the system used to set the actual wage for workers in the employee's occupation.
- Prevailing Wage Memorandum with a statement verifying the employee's current salary. The LCA certifies that this salary is the higher of the actual or prevailing wage level. The CIS-approved source used to determine the prevailing wage level should be listed.
- A description of the source of the prevailing wage determination for this LCA.
- Wage rate to be paid employee with updates as necessary.
- Summary of benefits offered to US workers in same occupation.

Note: It may be helpful to conduct regular audits of the LCA postings and public access files to ensure compliance.

H-1B Petition Checklist

The requirements for an H-1B petition are as follows[22]:

- Employer must be a U. S. person or entity.
- Employee's occupation must be a specialty occupation.
- Employee must be qualified for the specialty occupation and possess a bachelor's or higher degree (or its foreign equivalent, as determined by a person entitled to perform such evaluations) in a field related to the occupation.
- Wage paid must be 100 percent of the wage for equivalent positions in the geographic region where the employee will be working unless the occupation is covered under the Service Contract Act.
- Employee must have obtained any licenses, certificates, or degrees required for the specialty occupation.

To determine whether your job candidate meets these requirements, you will need to assemble and review the following documentation from the candidate:

- Passport (photo page plus any visas and entry stamps).
- Resume or curriculum vita (as detailed as possible).
- Marriage certificate.
- Spouse and children's passports.
- Copies of all transcripts, certificates, and degrees obtained since high school.
- 1-94 Departure Record (white card), Form I-20, and/or Form IAP-66 or DS-2019 (where available).
- Spouse and children's 1-94 Departure Records, Forms I-20, and/or Forms IAP-66 or DS-2019 (where available).

You will also need a detailed job description of the proposed employment from your human resources department.

The following chart summarizes the H-1B category:

Visa Type And Designation	Professional Worker in a Specialty Occupation (H-1B)
Governing Provisions Of Law	• INA § 101(a)(15)(H) • 8 USC § 1101(a)(15)(H), 1182(n), 1184(g),(i), and (m). • 8 CFR § 214.2(h); 22 CFR §§ 655.730-.760; 22 CFR § 41.53
Purpose And Usage	• Permits employers to fill professional level positions requiring at least a bachelor's degree in the professional field of endeavor. • Amenable to "dual intent" doctrine (non-immigrant and immigrant intent).

Summary Of Eligibility Requirements	• Job requires a person with at least a bachelor's degree to fill a "specialty occupation." • Alien beneficiary possesses equivalent of U.S. bachelor's degree or higher in a specific specialty and full state licensure (if license required to practice profession.) • Employer must offer prevailing wage that meets DOL criteria.
Application Procedure Eligibility for nonimmigrant visas varies significantly from one category to another. Most visas require the filing of a predicate petition with U.S. Citizenship & Immigration Services while a few visa categories require the alien applicant to apply directly to a U.S. Embassy abroad.	• Employer obtains prevailing wage determination for the offered position. • Employer files Form ETA-9035 (Labor Condition Application) and complies with internal posting and record-keeping requirements. • Employer files Form I-129 and essential supporting documents with USCIS Service Center that has jurisdiction over the area where the beneficiary will be performing services. • If alien beneficiary is overseas, he/she must present approval notice to U.S. Embassy or Consular Post in order to obtain visa. If in the U.S. in legal status, he/she must apply for change to H-1B.
Duration Of Status	Initial admission for up to three years with one extension for an additional three years (six years total). Additional extensions permitted if alien is beneficiary of Labor Certification Application which has been pending for one year.
Derivative Status For Eligible Family Members Of Principal Applicant	H-4

B. L-1 Visa Intra-Company Transferees - L-1A (Multinational Managers/Executives) & L-1B (Specialized Knowledge) Visa Categories

The L-1 intra-company transferee classification is a useful device for multinational companies that wish to transfer executives, managers, and employees with specialized knowledge from overseas to the United States. There are four statutory requirements that a U.S. company and foreign national employee must meet when filing the L-1 visa:[23]

- The foreign employee must have worked for the transferring company outside the U.S. for at least one continuous year over the last three years;[24]
- The employee must be an executive or a manager (L-1A) or have specialized knowledge (L-1B);
- The transferring company must be active before and after the transfer; and
- The U.S. company must be a parent, branch, subsidiary or affiliate of the transferring company abroad, and it must be doing business as an employer in the United States and in at least one other country through a qualifying relationship.

1. L-1A Multinational Managers/Executives

a) Initial Transfer to the U.S.

(i) Previous Job Requirements - The L-1A visa category is available for intra-company transferees[25] who have maintained a position as a manager or executive for a total of one year prior to filing the L-1A visa petition. [26]

(ii) Period of Stay in the U.S. - Under the L-1A visa category, the foreign national is usually granted an initial three-year period to work and live in the U.S. with two, two-year extension periods thereafter for a total of a seven years under this visa.[27]

b) Preparing/Filing the Petition

(i) Preliminary Documents – As with the H-1B, the company should create and maintain a file for the incoming foreign national for its own records as well as for the immigration attorney filing the petition.[28] In addition to the foreign national's personal information listed under the H-1B discussion, the file should also contain:

- A detailed description of U.S. and overseas job duties with a description of the specific function of the department managed by the foreign national including an explanation of the essential nature of the function;
- Types of discretionary decisions rendered with minimal supervision;
- Sales and profit goals;
- Budgetary authority; and
- Titles of subordinate staff and collaborating colleagues as well as organizational charts denoting the hierarchy of the various positions within the department.

(ii) Processing Time - Processing time for a decision on the petition depends on the backlog at USCIS and may take between 30 and 90 days.[29] Petitions are made on Form I-129 with the L supplement and filed at the appropriate USCIS service center. Within approximately one to three weeks of filing the petition, you should receive a "Receipt Notice" from USCIS with the file number and the estimated processing time.

(iii) Filing Fee - The regular filing fee for this type of petition is $190.00 payable to USCIS. There is also an additional anti-fraud and detection fee of $500.00 for all initial L-1 petitions, including change-of-status applications, and all Blanket L-1 Petitions made at U.S. consular posts abroad. For an additional $1000.00, USCIS provides premium processing for a decision within 15 calendar days of filing.

c) Compliance and Visa Maintenance

(i) After the L-1A petition has been approved, the company will receive an approval notice (Form I-797). If the foreign national is already in the U.S., he or she can normally start working upon the approval of the petition for the change or extension of status, subject to the authorized start date on the approval notice. If the foreign national is overseas, he or she uses the original approval notice to apply for an L-1A visa at the appropriate U.S. embassy or consulate in the same fashion as the H-1B. The foreign national's immediate family members may apply for L-2 visas based on the primary foreign national's L-1A approval and proof of their relationship through a marriage certificate for the spouse and a birth certificate for any children is required.

(ii) Once the foreign national has entered the U.S. in valid L-1A status, he or she can start working immediately. The L-2 spouse may apply for employment authorization using Form I-765. The employment authorization document may be issued for up to two years but no longer than the validity period of the underlying L-1 petition. L-2 children are not allowed to work. The initial L-1A petition is usually granted for a three-year period with the option to extend an additional four years (usually in two-year increments). Any time not used is tolled and will be allotted to the foreign national until the maximum seven-year period is reached. When the initial period is nearing its expiration, the company must file an L-1A extension if it wants to continue to employ the foreign national.

2. L-1B Specialized Knowledge

a) Job Requirements

The L-1B status does not require the foreign national to have held a management or executive position. Instead, the foreign employee must have held a position of specialized knowledge with the petitioning company's parent, affiliate, subsidiary or branch for one continuous year within the preceding three years. Specialized knowledge means "special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures."[30]

b) Period of Stay in the U.S.

Under the L-1B visa, the foreign national is granted an initial three-year stay. However, this status only allows for one extension for a two-year period for a maximum period of five years (as opposed to seven years for L-1A status). In all other regards, the L-1A and L-1B visas require the same information and provide the same privileges as set forth above.[31]

c) Blanket Petitions

The blanket L works as a pre-certification of the relationship between the qualifying entities in the U.S. and abroad. Executives, managers, and specialized knowledge professionals qualify for blanket L-1 classification. The individual L-1B covers a broader category of employees with specialized knowledge, not just specialized knowledge professionals. Companies that bring foreign nationals who qualify for the blanket L from abroad can save time and money by filing the individual L petition at the USCIS. A company qualifies to file a blanket L petition if it has obtained approval of petitions for at least 10 "L" managers, executives, or specialized knowledge employees during the previous 12 months or has U.S. subsidiaries or affiliates with combined annual sales of at least $25 million or has a U.S. work force of at least 1,000 employees.[32] With a blanket petition, intracompany transferees may apply for L-1 visas directly at U.S. consulates abroad without the prior approval by USCIS of an individual petition. Foreign nationals who applied for and received L-1 visas pursuant to a blanket petition before June 6, 2005 are "grandfathered in" under the former six-month overseas employment requirement and should remain eligible for L-1 extensions on this basis.

The following charts provide an overview of L-1A and L-1B status:

Visa Type & Designation	Intra-company Transferee – Executive or Managerial (L-1A)
Governing Provisions Of Law	INA § 101(a)(15)(L), 101(a)(44) 8 USC § 1101(a)(15)(L), 1101(a)(44) 8 CFR § 214.2(l); 22 CFR § 41.54
Purpose And Usage	For admission of executive or managerial employee of a qualifying related company in the U.S. Amenable to "dual intent" doctrine (nonimmigrant and immigrant intent).
Summary Of Eligibility Requirements	Alien has worked abroad for one continuous year (or six months under blanket L that was approved prior to June 6, 2005) within the preceding three years in an executive, managerial, or specialized knowledge capacity for a qualifying related business organization (parent, subsidiary, branch, affiliate, or joint venture partner). Alien must be coming to U.S. to work in an executive or managerial capacity for a qualifying related business entity.

Application Procedure Eligibility for non-immigrant visas varies significantly from one category to another. Most visas require the filing of a predicate petition with the appropriate USCIS service center while a few visa categories require the alien applicant to apply directly to a U.S. Embassy abroad.	Employer files Form I-129, L-Supplement, and supporting documents with the appropriate USCIS service center. (Under NAFTA, Canadian citizens may file or apply directly at port of entry). May obtain extensions by filing Form I-129, L-Supplement, and supporting documents with USCIS. Blanket petitions are allowed for employers where all entities are engaged in commercial trade, U.S. office has been doing business for one year or more, and entity has three or more domestic or foreign branches, subsidiaries, or affiliates, and at least 10 approvals, $25 million in annual sales, or U.S. workforce of at least 1,000 employees.
Duration Of Status	Initial admission for up to three years with an extension for an additional four years (seven years total). Initial admission limited to one year for alien beneficiaries coming to the U.S. to open a new office.
Derivative Status For Eligible Family Members Of Principal Applicant	L-2 status for spouse and children. L-2 spouse is eligible for employment authorization.
Visa Type & Designation	Intra-company Transferee – Specialized Knowledge (L-1B)
Governing Provisions Of Law	INA § 101(a)(15)(L) 8 USC § 1101(a)(15)(L) 8 CFR § 214.2(l); 22 CFR § 41.54
Purpose And Usage	For admission of specialized knowledge employee of a qualifying related company. Amenable to "dual intent" doctrine (non-immigrant and immigrant intent).
Summary Of Eligibility Requirements	Foreign national has worked abroad for one continuous year within the preceding three years in an executive, managerial, or specialized knowledge capacity for a qualifying related business organization (parent, subsidiary, branch, affiliate, joint venture).
Application Procedure Eligibility for non-immigrant visas varies significantly from one category to another. Most visas require the filing of a predicate petition with USCIS while a few visa categories require the alien applicant to apply directly to a U.S. Embassy abroad.	Employer files Form I-129 and supporting documents with USCIS. (Canadian citizens may file at port of entry). May obtain extensions by filing Form I-129, L-Supplement, and supporting documents with USCIS. Blanket petitions are allowed for employers that qualify but only for specialized knowledge professionals.

Duration Of Status	Initial admission for up to three years with an extension for an additional two years (five years total). If initially admitted in specialized knowledge category and then promoted to executive or managerial capacity, the employee must be an executive/manager for at least six months to qualify for a seven-year stay.
Derivative Status For Eligible Family Members Of Principal Applicant	L-2 for dependent spouse and children, and L-2 spouse is eligible for employment authorization.

C. TN Application (Canada and Mexico)

Under the North America Free Trade Agreement ("NAFTA"), qualifying Canadian and Mexican citizens can enter the U.S. to work temporarily at a professional level as TN non-immigrants. TN status can be granted for periods of up to one year and extended in one-year increments indefinitely. TN status is available only to Canadian and Mexican citizens who have job offers in the U.S. To qualify for TN status, the offered position must fit within one of the listed professions set forth in 8 C.F.R. Sec. 214.6(b)-(c) Appendix 1603.D.1.[33]

The following is a list of jobs considered professional under NAFTA.

1. NAFTA Professional Job Series List

Profession	Minimum Education Requirements And Alternative Credentials
Accountant	Baccalaureate or Licenciatura Degree or C.P.A, C.A., C.G.A., or C.M.A.
Architect	Baccalaureate or Licenciatura Degree or state/provincial license
Computer Systems Analyst	Baccalaureate or Licenciatura Degree or Post-Secondary Diploma or Post Secondary Certificate and three years' experience
Disaster Relief insurance Claims Adjuster (Claims Adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	Baccalaureate or Licenciatura Degree and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims or three years' experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims
Economist	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree or state/provincial license
Forester	Baccalaureate or Licenciatura Degree or state/provincial license

Graphic Designer	Baccalaureate or Licenciatura Degree or post-secondary diploma and three years experience
Hotel Manager	Baccalaureate or Licenciatura Degree in hotel/restaurant management or post-secondary diploma or post-secondary certificate in hotel/restaurant management and three years' experience in hotel/restaurant management
Industrial Designer	Baccalaureate or Licenciatura Degree or post-secondary diploma or post-secondary certificate, and three years' experience
Interior Designer	Baccalaureate or Licenciatura Degree or post-secondary diploma or post-secondary certificate, and three years' experience
Land Surveyor	Baccalaureate or Licenciatura Degree or state/provincial/federal license
Landscape Architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the province of Quebec)	L.L.B., J.D., L.L.L., B.C.L., or Licenciatura degree (five years) or membership in a state/provincial bar
Librarian	M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura degree was prerequisite)
Management Consultant	Baccalaureate or Licenciatura Degree or equivalent professional experience as established by a statement of professional credential attesting to five years' experience as a management consultant or five years' experience in a field of specialty related to the consulting agreement
Mathematician (including statistician and actuary)	Baccalaureate or Licenciatura Degree
Range Manager/Range Conservationist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree
Scientific Technician/ Technologist	Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics and (b) the ability to solve practical problems in any of those disciplines or the ability to apply principles of any of those disciplines to basic or applied research
Social Worker	Baccalaureate or Licenciatura Degree
Sylviculturist (including forestry)	Baccalaureate or Licenciatura Degree
Technical Publications Writer	Baccalaureate or Licenciatura Degree or post-secondary diploma or post-secondary certificate and three years' experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counselor	Baccalaureate or Licenciatura Degree
Medical/Allied Professionals	
Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or state/provincial license
Dietitian	Baccalaureate or Licenciatura Degree or state/provincial license

Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States)	Baccalaureate or Licenciatura Degree or post- secondary diploma or post-secondary certificate and three years' experience
Nutritionist	Baccalaureate or Licenciatura Degree
Occupational Therapist	Baccalaureate or Licenciatura Degree or state provincial license
Pharmacist	Baccalaureate or Licenciatura Degree or state provincial license
Physician (teaching or research only)	M.D., Doctor en Medicina or state/provincial license
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree or state/provincial license
Psychologist	State/provincial license or Licenciatura degree
Recreational Therapist	Baccalaureate or Licenciatura Degree
Registered Nurse	State/provincial license or Licenciatura degree
Veterinarian	D.V.M., D.M.V., or Doctor en Veterinaria or state/provincial license
Scientist	
Agricultural (Agronomist)	Baccalaureate or Licenciatura Degree
Animal Breeder	Baccalaureate or Licenciatura Degree
Animal Scientist	Baccalaureate or Licenciatura Degree
Apiculturist	Baccalaureate or Licenciatura Degree
Astronomer	Baccalaureate or Licenciatura Degree
Biochemist	Baccalaureate or Licenciatura Degree
Chemist	Baccalaureate or Licenciatura Degree
Dairy Scientist	Baccalaureate or Licenciatura Degree
Entomologist	Baccalaureate or Licenciatura Degree
Epidemiologist	Baccalaureate or Licenciatura Degree
Geneticist	Baccalaureate or Licenciatura Degree
Geochemist	Baccalaureate or Licenciatura Degree
Geophysicist (including Oceanographer in Mexico and the United States)	Baccalaureate or Licenciatura Degree
Horticulturist	Baccalaureate or Licenciatura Degree
Meteorologist	Baccalaureate or Licenciatura Degree
Pharmacologist	Baccalaureate or Licenciatura Degree
Physicist (including Oceanographer in Canada)	Baccalaureate or Licenciatura Degree
Plant Breeder	Baccalaureate or Licenciatura Degree
Poultry Scientist	Baccalaureate or Licenciatura Degree
Soil Scientist	Baccalaureate or Licenciatura Degree
Zoologist	Baccalaureate or Licenciatura Degree
Teacher	Baccalaureate or Licenciatura Degree
College	Baccalaureate or Licenciatura Degree
Seminary	Baccalaureate or Licenciatura Degree
University	Baccalaureate or Licenciatura Degree

2. Initial Hire and Transfer to the U.S.

Necessary Documents - Once the company has decided to hire a Canadian or Mexican national, it should prepare an internal file like the ones prepared for the H-1B and L-1 visas. The company should then prepare a TN packet.
Canadian citizens may apply for admission in TN status directly at a U.S. class A port of entry, a U.S. international airport, or a U.S. pre-flight inspection station. Mexican citizens no longer need to be beneficiaries of approved I-129 petitions filed by their employers at the Nebraska Service Center. Mexican TN applicants may now apply directly for TN visas at U.S. consulates. The content of the TN packet is different for a Canadian (visa-exempt) or a Mexican citizen:

e) For Canadians:

- Proof of Canadian citizenship;
- A copy of the applicant's college degree and employment records which establish his or her qualifications for the prospective job;
- A letter from the foreign national's prospective U.S.-based employer that describes the proposed duties and establishes that the position is on the NAFTA list. The letter should also describe the salary, length of employment (no longer than one year) and educational qualifications for the job to show that the Canadian citizen meets the requirements for the profession.; and
- Filing fee of U.S. $50 at the airport or U.S. $56 at the land borders.
  Canadian citizens are not required to obtain a visa but instead receive TN status at the port of entry. Upon approval and admission in TN status, the Canadian citizens receive a Form I-94, Arrival/Departure Record, valid for up to one year, which should indicate "multiple entry." The TN status will only be granted if the period of stay is temporary.

f) For Mexicans:[34]

- A Mexican passport;[35]
- A statement from the employer or other documentation that describes the purpose of the proposed entry, the proposed job duties, and how the proposed position qualifies as one of the listed professions. The statement should also describe the salary, the anticipated length of employment (no longer than one year), and the Mexican citizen's educational qualifications or appropriate credentials that make him or her qualified for the profession;
- Documentary evidence of professional qualifications;
- Letters from previous employers demonstrating that the beneficiary meets any experience requirement of the profession;
- Evidence of compliance with DHS regulations; and
- The visa application fee of $100 as indicated on the schedule of consular fees.[36]

3. Presenting the TN Packet to the Pre-Flight Inspection or Port of Entry Officers

a) The foreign national and his or her family should present the TN

packet to the immigration officer at the port of entry with the appropriate fee.

b) The foreign national should also present his or her educational documentation in accordance with the TN professional category requirement; proof of Canadian or Mexican citizenship (*i.e.*, passport biographic data page, birth certificate, etc); and USCIS documents relating to any and all prior stays in the U.S. (*i.e.*, Forms I-797, I-20, IAP-66, DS-2019, etc.).

c) Once these materials have been reviewed by the U.S. Customs and Border Protection (CBP) officer, the foreign national and his or her family should be processed and allowed to enter the U.S. for a period of one year to work for the sponsoring U.S. employer.

4. Compliance and Visa Maintenance

a) After the foreign national and his or her family have been processed at the Canadian or Mexican border and they have entered the U.S., the foreign national can work for one year. Canadians or Mexicans already in the U.S. may apply to extend their TN status by filing Form I-129 with the required supporting documentation at the appropriate USCIS Service Center. Canadian citizens may alternatively apply for a new TN admission with the supporting documents at a port of entry. TN status can be extended for an additional year indefinitely at the discretion of the USCIS or CBP officer.[37] Because the presumption of immigrant intent applies to TN visitors, a consular officer or immigration officer may find that the applicant no longer has "nonimmigrant intent" and deny a petition to extend or to be readmitted in TN status.

b) If the foreign national is pursuing permanent residence, the employer may want to file a different non-immigrant visa petition so that the foreign national can remain in the U.S. for a longer period of time. Again, it is essential that the immigration lawyer and sponsoring company pay attention to deadlines to ensure that the foreign national's work-authorized status remains valid.

c) Although the U.S. employer can extend a foreign national's TN status indefinitely, the immigration officer has the discretion to deny the extension if the officer deems the extensions to be excessive and considers the position to be of a more permanent nature. If a prospective foreign national employee meets the requirements for TN status, the hiring company may want to bring that foreign national in under TN status and subsequently change his or her status to H-1B which is a dual intent category allowing the beneficiary to pursue permanent residence while in temporary status. Because of H-1B cap issues, and the recent procedural changes for Mexican citizens, the TN is an important tool for U.S. employers because of the expedited application procedures but it may in some cases

be just the first step in an immigration strategy.

The following chart provides a summary of the TN category:

Visa Type & Designation	Business Professionals Under the North American Free Trade Agreement (NAFTA) (TN-1 Status)
Governing Provisions Of Law	• INA § 214(e) • 8 USC § 1184(e) • 8 CFR § 214.6; 22 CFR § 41.59
Purpose And Usage	• For Canadian and Mexican citizens in specified professions to enter U.S. in one-year increments. • Can be an alternative to H and L status when restrictions apply. • Canadian citizens are visa exempt. A Mexican citizen seeking TN status must apply for and be issued a visa.
Summary Of Eligibility Requirements	• The activity must be listed on NAFTA Schedule 2. See 8 CFR § 214.6. • Foreign national possesses the academic requirements listed for the profession on NAFTA, Appendix 1603D.1.
Application Procedure Eligibility for non-immigrant visas varies significantly from one category to another. Most visas require the filing of a predicate petition with USCIS but a few visa categories require the alien applicant to apply directly to a U.S. Embassy abroad.	Canadian citizens: • At port of entry, he/she must provide proof of Canadian citizenship, evidence that the intended activity is one of the activities listed on NAFTA Schedule 2, evidence of educational credentials, proof of license to practice in the profession (if license is required), supporting employer letter, and any other supporting documentation. If already in U.S. in another status, he/she may apply for change of non-immigrant status on Form I-129. Mexican citizens: • Apply for TN visa at embassy and follow requirements for Canadian citizens applying at port of entry.
Duration Of Status	Initial period of up to one year with extensions of one year.
Derivative Status For Eligible Family Members Of Principal Applicant	Treaty Dependent (TD)

D. O-1 Visa (Individuals of Extraordinary Ability)

The O-1 classification is available for foreign nationals who are considered by their peers to be at the top of their fields. O-1 beneficiaries in the sciences, arts, education, business, or athletics must have extraordinary ability "demonstrated by sustained national or international acclaim."[38] If your company would like to hire an esteemed senior business executive or an internationally renowned scientist, the O-1 category may be useful for several reasons:

- Having an approved O-1 makes it more likely that the beneficiary will be successful in pursuing employment-based immigration as a priority worker.
- The O-1 category may be an attractive alternative to the H-1B because there is no cap, no prevailing wage requirement, and no overall time limit in the classification.
- The O-1 may also be especially helpful to business people lacking professional degrees.

USCIS requires significant documentation to prove that the foreign national is indeed an individual of extraordinary ability. When a USCIS officer is reviewing the O-1 petition, he or she looks for letters of support from experts and at least three forms of proof of outstanding achievement, including the following:

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field;
- Membership in associations which require outstanding achievements of their members as judged by recognized national or international experts;
- Published material in professional or major trade publications or major media articles about the individual;
- Participation on a panel or individually as a judge of the work of others;
- Original scientific, scholarly, or business-related contributions of major significance;
- Authorship of scholarly articles in professional journals or other major media;
- Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation; or
- Previous or current high salary or other remuneration for services evidenced by contracts or other reliable evidence.

In addition to providing documentation that the foreign national has at least three of the aforementioned forms of evidence, USCIS also requires a written advisory opinion from a U.S.-based organization considered to be a peer group with expertise in the field (for example, for health professionals, the American Health Association). A consultation from a labor union is required before an O petition can be decided. If there is no labor union, the consultation requirement is waived.

Many acclaimed foreign nationals, including business people sought for their management skills, may not be able to meet the stringent documentary requirements for O-1 classification. Because of the rigorous O-1 documentary requirements, employers may choose to file an H-1B petition instead of an O-1 petition because the H-1B standards are more clearly defined. As referenced above, however, by qualifying for O-1 classification, the beneficiary should qualify on the same basis for permanent residence in the employment-based first preference category.

1. Initial Hire and Transfer to the U.S.

After hiring a foreign national under the O-1 visa option, the employer should

prepare an internal file like those done for other non-immigrant visa categories. This particular visa category requires substantially more documentation than other temporary visas; therefore, most of the preliminary work will be devoted to retrieving evidence of the foreign national's national and/or international acclaim. The company and its immigration lawyer should explain to the foreign national each type of documentation USCIS will need to approve the petition and request as much evidence in this regard as possible.

2. Preparing/Filing the Petition

Assuming the employer has hired outside immigration counsel to file the O-1 visa petition, the following steps should be used in preparing the petition:

a) The outside law firm sends the foreign national a letter explaining the O-1 requirements, including the filing procedures and "extraordinary ability" criteria.

b) The employer's HR representative or the foreign national sends evidence (including a list of five to ten expert referees and a peer group) to the law firm for review. Note: Current job description, salary and description of the foreign national's expertise in laymen's terms should also be included.

c) The law firm conducts a conference call with the company's HR contact or the foreign national to define the area of extraordinary ability, discuss the evidence, and give the firm's assessment of the case.

d) All original articles, publications, presentations, awards, finalized expert letters and any other outstanding evidence are sent to the firm.

e) The law firm drafts the non-immigrant petition and a detailed petitioning letter of support from the employer to be filed with UCIS. The letter of support explains to the reviewing officer how the individual evidence meets the requirements and how the job can only be filled by an individual with extraordinary ability.

f) The law firm sends the employer's letter of support to the foreign national for review and comment.

g) After approval by the foreign national, the law firm sends the employer's letter of support and immigration forms to employer for review and signature.

h) When the forms and letter are signed by the employer and returned, the immigration attorney files the O-1 visa petition with USCIS.

The processing time for a decision on the O-1 petition depends on the backlog at the USCIS service center and may take between 90 and 120 days. Within approximately two weeks of filing the petition, the employer should receive a "Receipt Notice" with the estimated processing time. The regular filing fee for this type of petition is $190 made payable to USCIS. For an additional $1000, USCIS provides premium processing for a decision within 15 calendar days of filing.

3. Compliance and Visa Maintenance

After the O-1 petition has been approved by USCIS, the employer will receive an approval notice (Form I-797) allowing the foreign national to work in the U.S. for an initial period of up to three years. The USCIS officer adjudicating the case ultimately has discretion to determine the length of authorized stay but the O-1 is renewable indefinitely. An original approval notice must also be sent to the foreign national so that he or she may process the O-1 visa at the U.S. consulate in the same fashion as the H-1B. The foreign national's family should also be granted admission to the U.S. under derivative O-3 visa status based on the primary foreign national's O-1 approval. Please note, however, that the immediate family (*i.e.*, spouse and children under the age of 21) will need to show proof of relationship such as valid marriage certificate for spouse and birth certificates for children.

Once the foreign national has entered the U.S. with a valid O-1 visa, he or she can start working immediately. However, the spouse and children in the O-3 category for O-1 dependents are not allowed to work. As previously mentioned, the initial O-1 visa is usually granted for a period set by the adjudicating USCIS officer, with the option to extend indefinitely. When the initial period is nearing its expiration, the company must file an O-1 extension to continue the foreign national's employment.

The following chart contains a summary of the O-1 category:

Visa Type & Designation	Individuals of Extraordinary Ability or Achievement (O-1) Aliens Accompanying Individuals of Extraordinary Ability or Achievement (O-2)
Governing Provisions of Law	• INA § 101(a)(15)(O) • 8 USC § 1101(a)(15)(O) • 8 CFR § 214.2(o); 22 CFR § 41.55
Purpose and Usage	• O-1: For artists, athletes, entertainers, business people, and others with extraordinary abilities. • O-2: For persons integral to the performance of O-1 aliens in the arts, motion pictures, television, and athletics.

Summary of Eligibility Requirements	• O-1: Alien must possess extraordinary ability and show sustained national or international acclaim. Scientists, educators, businesspersons, and athletes must demonstrate level of expertise showing they have risen to very top of their field of endeavor. • O-2: Employer must show that O-2 alien will enter U.S. for the sole purpose of assisting O-1 alien's performance; is an integral part of the performance; has critical skills and experience that U.S. workers cannot perform; and has a foreign residence they do not intend to abandon.
Application Procedure Eligibility for non-immigrant visas varies significantly from one category to another. Most visas require the filing of a predicate petition with USCIS but a few visa categories require the alien applicant to apply directly to a U.S. Embassy abroad.	• Must obtain advisory opinion from an appropriate labor management organization or peer group or show that such an organization does not exist (advisory opinion requirement may be waived for certain O-1 aliens). • Employer files Form I-129, O-Supplement, and supporting documents with USCIS. • After employer receives approval, O-1 alien applies for visa at consulate abroad. (Canadian citizens do not need to apply at consulate abroad; instead, they may present approval notice at port of entry). • For extensions, employer must timely file Form I-129, O-Supplement, and essential supporting documents with USCIS.
Duration of Status	• Initial admission is for up to three years (the time necessary to complete the event or activity). There is no stated limit on the number of extensions.
Derivative Status for Eligible Family Members of Principal Applicant	• O-3

P Visa Category

The P visa category covers those entertainers and athletes who cannot qualify under the extraordinary ability standard for the O category. This category is set aside for athletes who compete individually or as part of a team at an internationally recognized level; and individuals who perform with, or as an integral and essential part of the performance of, an entertainment group that has received international recognition as "outstanding" for a "sustained and substantial period of time."

Unlike H-1B and L-1 petitions, P petitions (including accompanying P-1S, P-2S, or P-3S petitions for essential support personnel) do not require that the petitioner be the actual employer of the alien. Instead, a US agent is permitted to file a petition for workers who are traditionally self-employed, such as artists and entertainers. The regulation provides that the agent/petitioner may be: (1) the actual employer of the beneficiary; (2) the representative of both employer and beneficiary; or (3) a person or entity authorized by the employer to act for the

employer as its agent.

E. B-1/B-2/Visa Waiver Program/Western Hemisphere Travel Initiative

Although U.S. companies may not hire foreign nationals in B-1/B-2 status, they should be aware of the restrictions that apply to the visitor category because it is so widely used for business purposes. The B-1 category allows businesspersons to enter the United States on relatively short notice.

1. Business or Tourism

Visitors may enter the United States in B-1 status for business or B-2 status for pleasure. The definition of "business" includes "conventions, consultations and other legitimate activities of a commercial and professional nature. It does not include employment for hire."[39] The definition of "pleasure" includes "legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature."[40]

A visa is not required for a person who seeks admission into the United States as a business visitor or tourist for a period of 90 days or less and is a national of a country recognized under the Visa Waiver Program (VWP). Canadian tourists for business or pleasure are also not required to have visas for entry into the United States.

Regardless of nationality, B visitors must meet five basic requirements:

- Entry for a limited duration;
- Intent to depart United States at the end of their stay;
- Maintenance of a foreign residence they have no intent to abandon;
- Adequate financial arrangements; and
- Engagement solely in legitimate activities relating to business or pleasure.

Generally, the B-1 business activity should be associated with international trade or commerce and the principal benefit of the activity must accrue to the business abroad. Activities that relate to international commerce include commercial transactions such as taking orders for goods manufactured abroad; negotiating contracts; consulting with business associates; litigation; participating in scientific, educational, professional, or business conventions, conferences, or seminars; or undertaking independent research.[41]

Before attempting to use the B-1 category, the foreign visitor should be advised on the range of activities considered business for immigration purposes and the problems that may result from using the word "work" during an interview by an immigration inspector when applying for admission. The business visitor should carry a letter of invitation from the U.S. entity to confirm the facts of the business visit and relevant additional supporting evidence including evidence of employment by a foreign firm.

2. Visa Waiver Program

The Visa Waiver Program enables citizens of certain countries to travel to the United States for business or pleasure for 90 days or less without obtaining a visa. The State Department designates countries as members of VWP if they have low visa denial rates and a reciprocal agreement to admit U.S. citizen visitors without visas. Different procedures apply to those using the Visa Waiver program but the category is limited to those people who would otherwise qualify for activities authorized in B-1 or B-2 visa status.

a) To enter the U.S. under the VWP, travelers from participating countries must:

- be a citizen of a Visa Waiver Program country;
- have a passport issued by the participating country that will be valid for six months beyond the intended visit. All countries participating in the program must have machine-readable passports that include biometric identifiers by October 26, 2004;[42]
- seek entry for 90 days or less as a temporary visitor for business or pleasure. Travelers will not be permitted to extend their visit or change to another visa category under the VWP or adjust to permanent resident status unless they are the immediate relatives (spouse, child, or parent) of U.S. citizens. VWP participants are subject to summary removal and have no right to challenge a removal order;
- possess a round-trip ticket.

b) While in the US, travelers may

- participate in commercial business transactions (such as negotiating contracts or consulting with business associates) that do not involve gainful employment in the U.S The traveler cannot receive a salary or wages from a U.S. source;
- participate in scientific, educational, professional or business conventions, conferences or seminars;
- conduct independent research;
- appear as a witness in a trial.

There is a small filing fee (presently $6) for the Nonimmigrant Visa Waiver Arrival-Departure Record, Form I-94W from airlines. While this program is coordinated by DHS, it has its origins in the State Department.[43]

Visa Waiver Program - Participating Countries

Andorra (MRP)	Iceland	Norway
Australia	Ireland	Portugal
Austria	Italy	San Marino
Belgium (MRP)	Japan	Singapore
Brunei (MRP)	**Liechtenstein (MRP)**	Slovenia (MRP)
Denmark	Luxembourg	Spain
Finland	Monaco	Sweden

France	The Netherlands	Switzerland
Germany	New Zealand	United Kingdom

Note: Countries with the MRP designation are required to have machine-readable passports (MRP) as of October 1, 2003, for travelers who enter the U.S on the Visa Waiver Program. All other travelers from countries in the Visa Waiver Program must have an MRP as of October 26, 2005, except Belgium, which has had an MRP requirement for VWP travelers since May 15, 2003.

MRPs issued or renewed/extended on or after October 26, 2006 must have an integrated chip with information from the data page (e-Passport). MRPs issued or renewed/extended between October 26, 2005 and October 26, 2006 require a digital photograph printed on the data page or an integrated chip with information from the data page. MRPs issued or renewed/extended before October 26, 2005 have no further requirements.

3. Western Hemisphere Travel Initiative (WHTI)

Phase One of the Western Hemisphere Travel Initiative (WHTI) went into effect January 23, 2007. Phase One requires that ALL persons, including U.S. citizens, traveling by air between the United States and Canada, Mexico, Central and South America, the Caribbean, and Bermuda will be required to present a valid passport, Air NEXUS card, or U.S. Coast Guard Merchant Mariner Document, or an Alien Registration Card, Form I-551, if applicable.

As early as January 1, 2008, ALL persons, including U.S. citizens, traveling between the U.S. and Canada, Mexico, Central and South America, the Caribbean, and Bermuda by land or sea (including ferries), may be required to present a valid passport or other documents as determined by the Department of Homeland Security. While recent legislative changes permit a later deadline, the Departments of State and Homeland Security are working to meet all requirements as working to meet all requirements as soon as possible. Ample advance notice will be provided to enable the public to obtain passports or passport cards for land/sea entries.

For more information visit the Department of State website at www.travel.state.gov/travel.

F. Employer Sanctions

The Immigration Reform and Control Act of 1986 (IRCA) has made all U.S. employers responsible for verifying the identity and work authorization of all employees, whether U.S. citizens or not, who have been hired to work in the United States after November 6, 1986.[44] Employers must record the type of employment authorization document that the employee presents as evidence of work authorization. Individuals in the non-immigrant categories (i.e., H-1B, L-1, etc.), other than B-1/B-2 visitors, have employment authorization with a specific employer incident to status.[45]

Section 274A(a)(1) of the INA provides that it is "unlawful for a person or other

entity (A) to hire or to recruit or refer for a fee for employment in the United States an alien knowing the alien is an unauthorized alien … with respect to such employment, or (B)(i) to hire for employment in the United States an individual without complying with the requirement of subsection (b)." Subsection (b) requires the employer to attest under penalty of perjury on the I-9 Form that it has examined an employee's documentation and has verified his or her eligibility to work in the United States.

Every U.S. employer must have a Form I-9 in its files for each employee unless:

- The employee was hired before November 7, 1986, and has been continuously employed by the same employer;
- The employee provides domestic services in a private household that are sporadic, irregular, or intermittent;
- The individual provides services for the employer as an independent contractor; or
- The individual provides services for the employer under a contract, subcontract, or exchange entered into after November 6, 1986.

1. Employer's Responsibility for I-9

The employer is responsible for completing and retaining the I-9 forms for three years after the date of hire or one year after the date of termination, whichever is later. New employees complete and sign Section 1 of the I-9 form before the end of their first day of work and the employer completes and signs Section 2 before the end of the third day of work. The employer physically reviews the employee's documentation that establishes identity and work eligibility and records the document information. The employer may accept any List A document, establishing both identity and work eligibility or combination of List B document establishing identity and List C document establishing work eligibility that the employee chooses to present.[46] Employers may not specify a document from the list that a person must present. Requesting more or different documentation than the minimum necessary to meet this requirement may be an unfair immigration-related employment practice.

To summarize, for I-9 verification the employer should:

- Ensure that each new employee properly completes and signs Section 1 on the first day of work;
- Give each new employee a list of acceptable documents on the first day of work and ask the employee to present either one document from List A or one document from List B and one document from List C. The employer must leave the choice of documents up to the employee;
- Review documents by the third day of work;
- By the end of the third day of work, complete Section 2 of the I-9 form with information about documents, including numbers and any expiration dates;
- Keep copies of documents and attach them to completed I-9, but only if the employer's policy of attaching copies is consistent for all employees; and

- Establish a list with dates to re-verify employment eligibility for all employees with time-limited authorization.

2. Penalties for I-9 Violations

The Immigration and Customs Enforcement (ICE) office with jurisdiction over a business may conduct an investigation of Immigration Reform and Control Act (IRCA) violations.[47] If ICE determines that there has been a violation, it may issue and serve a Notice of Intent to Fine. For knowingly hiring or continuing unauthorized employment, an employer may be fined:

- First offense: $275 to $2,200 for each unauthorized individual;
- Second offense: $2,200 to $5,500 for each unauthorized individual if the company was previously subject to one cease and desist order; or
- Third offense: $3,300 to $11,000 for each unauthorized individual if the company was previously subject to more than one cease and desist violation.[48]

For paperwork violations (i.e. the failure to fill out and maintain I-9 records correctly), employers are subject to fines ranging from $110 to $1,100 for each individual. In determining the amount of the fine, consideration is given to the employer's size, good faith, the type of violation, and history of previous violations.[49] Employers are also subject to criminal penalties for engaging in a pattern or practice of violations with penalties up to $3,000 for each unauthorized individual, imprisonment of up to six months for the entire pattern or practice, or both.[50] ICE defines "pattern and practice" as "regular, repeated, and intentional activities."

3. Discrimination

Employers must be cautioned against going beyond the requirements of the employment verification procedure. It is an unfair immigration-related employment practice for an employer to discriminate against a person in hiring, recruiting, referring, or discharging on the basis of the person's national origin or citizenship status.[51] While Title VII of the Civil Rights Act bars employers with 15 or more employees from engaging in discrimination based on national origin, IRCA's national origin protection covers employers of 4 to 14 employees. Because of the reach of Title VII's protections against national origin discrimination, IRCA's anti-discrimination provisions apply primarily to discrimination based on citizenship status and document abuse.

An employer commits citizenship-based discrimination when it refuses to hire a protected individual. For example, the employer may not tell an applicant that it only hires citizens.[52] An employer commits a document abuse violation when it refuses to accept documents presented by a new employee during the I-9 procedure that are sufficient and appear to be genuine on their face but only if the employer makes the request for more or different documents for the purpose or with the intent of discriminating against the new employee.[53]

III. Transitioning from Non-immigrant (Temporary) Residency Status to Immigrant (Permanent) Residency Status

Once the foreign national is in the United States working for the sponsoring company, the company should determine whether to sponsor the foreign national employee for permanent residency status or green card.[54] Foreign nationals working in non-immigrant status have temporary authorization that may not exceed a specified number of years. Permanent residence may become necessary to continue the foreign national's employment with the company.

There are three employment-based immigration categories:
1. Employment-based first preference or EB-1 (priority workers);
2. Employment-based second preference or EB-2 (advanced degree professionals or individuals of exceptional ability);
3. Employment-based third preference or EB-3 (professionals, skilled workers, or other workers).

Filing for EB-1 status is the fastest way for a foreign national to obtain permanent residence because it allows a person to file the I-140 Immigrant Visa Petition without any preliminary steps.[55] No labor certification is required for priority workers. However, it is generally more difficult to obtain approval from the USCIS for petitions of this type.

The EB-2 and EB-3 categories require the petitioning company to prove through a labor certification that there are no other qualified, willing, able and available U.S. workers for the offered position.[56] The petitioning company must file the labor certification application with the Department of Labor prior to filing the Form I-140 Immigrant Visa Petition. The EB-1, EB-2, and EB-3 categories are discussed below along with suggested steps for filing the relevant petitions. Please note this is not a comprehensive list of immigrant visa categories and should not be relied upon as such.

A. Employment-Based First Preference (EB-1)

Three different subcategories are covered under the EB-1 priority worker classification:

1. Individuals of Extraordinary Ability
2. Outstanding Professors and Researchers
3. Multinational Managers and Executives.

By statute 28.6 percent of the total number of employment-based immigrant visas per year are allocated to first-preference workers.

1. Extraordinary Ability

The first subcategory for priority workers covers individuals of extraordinary ability in business, science, athletics, and the arts. (Foreign nationals who have initially entered the U.S. under the O-1 temporary visa have already qualified as individuals of extraordinary ability.[57]) The regulations for EB-1 define extraordinary ability as "a level of expertise indicating the individual is one of that small percentage who have risen to the very top of the field of endeavor."[58] For this subcategory, there is neither a job offer nor a labor certification requirement. The applicant must demonstrate that he or she will continue to work in the United States in his or her area of expertise.

To establish extraordinary ability, the applicant must demonstrate sustained national or international acclaim through evidence of a major, international recognized award, or at least three of the following:

- Nationally or internationally recognized awards for excellence in the field;
- Membership in associations requiring outstanding achievement;
- Published material about the individual;
- Participation as a judge of the work of others in the field;
- Original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- Authorship of scholarly articles in the field;
- Display of an individual's work at artistic exhibitions;
- Performance in a leading role for organizations that have a distinguished reputation;
- High salary compared to others in the field; or
- Commercial success in the performing arts.[59]

2. Outstanding Professor or Researcher

The second subcategory for priority workers covers outstanding professors or researchers. Generally, the following evidence is required to qualify as an outstanding researcher:

a) nternational recognition as outstanding in a specific field;
b) At least three years of teaching or research experience in the field; and
c)The offer of a tenure or tenure-track position or comparable research position.

A petition for an outstanding professor or researcher must be accompanied by evidence that the individual is recognized internationally as outstanding in the specified academic field. Evidence of international recognition must include at least two of the following:

- Receipt of major prizes or awards for outstanding achievement in the academic field;
- Membership in associations in the academic field that require outstanding achievement;

- Published material written by others about the individual's work in the academic field;
- Participation as a judge of the work of others in the field;
- Original scientific or scholarly research contributions; or
- Authorship of scholarly books or articles.[60]

The individual must have at least three years of experience in teaching or research in the academic field. The required teaching or research experience may include experience gained while working on an advanced degree if the individual obtained the degree and the teaching was conducted with full responsibility for the class or the research was recognized as outstanding.

Research positions must be permanent. A permanent position is defined as tenured, tenure-track, or for a term of indefinite or unlimited duration with the expectation of continued employment unless there is good cause for termination.[61] The employer may be a private company if it has at least three full-time researchers. Neither the statute nor the regulations actually require the outstanding professor or researcher to have a Ph.D. degree.

3. Multinational Executive or Manager

The EB-1 category also covers executives or managers of foreign companies who have been transferred to the same or a related company in the United States. Certain multinational managers and executives may qualify for priority worker status if they have been employed outside the United States in a managerial or executive capacity by a related entity for at least one of the three years immediately preceding entry into the United States. The individual must be coming to work in an executive or managerial capacity. And the U.S. employer must have been doing business in the United States for at least one year. The requirements closely follow those for the non-immigrant L-1A intra-company transferees.[62]

Preparing the Form I-140 Immigrant Visa Petition

Form I-140, Immigrant Petition for Alien Worker, is required. The I-140 must be filed with the USCIS service center having jurisdiction over the place where the individual will work. First preference petitions for individuals of extraordinary ability and outstanding researchers require significant documentation to meet a very high standard set by USCIS. The regular filing fee for this type of petition is $195 made payable to USCIS. For an additional $1000, USCIS provides premium processing for a decision within 15 calendar days of filing.

B. Employment-Based Second Preference (EB-2)

The EB-2 visa category consists of foreign nationals who are "members of the professions holding advanced degrees or their equivalent" and foreign nationals "who because of their exceptional ability in the sciences, arts, or business will

substantially benefit the national economic, cultural, or educational interests or welfare of the United States." Individuals of exceptional ability must have a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.[63] By statute, 28.6 percent of the total number of employment-based immigrant visas available each year are allocated to second-preference workers. Specifically, a petition for a foreign professional holding an advanced degree may be filed when the job requires an advanced degree (beyond the baccalaureate) and the foreign national possesses such a degree or the equivalent. The petition must include documentation such as an official academic record showing that the foreign national has a U.S. advanced degree or a foreign equivalent degree or an official academic record showing that the foreign national has a U.S. baccalaureate degree or a foreign equivalent degree. Letters from current or former employers showing that the foreign national has at least five years of progressive post-baccalaureate experience in the specialty are also required. A baccalaureate degree plus five years of progressive experience in the field is considered the equivalent of a master's degree.

National Interest Waiver

The national interest waiver can be used with foreign nationals in the second preference category who have advanced degrees or exceptional ability in the arts, sciences, or business. Neither the statute nor the regulations define national interest for this waiver application, but a waiver request requires a showing "significantly above that for prospective national benefit."[64]

The Administrative Appeals Office issued a precedent decision in *Matter of New York State Department of Transportation (NYSDOT[65])* establishing the following three-prong test:

- Applicant seeks employment in an area of substantial intrinsic merit;
- The proposed benefit is national in scope;
- The national interest would be adversely affected if a labor certification were required.

Under this test, the applicant for the national interest exemption must be able to provide a benefit so great that it outweighs the national interest inherent in the labor certification process.

C. Employment-Based Third Preference (EB-3)

The EB-3 visa category consists of:

- Foreign nationals with at least two years of experience as skilled workers;
- Professionals with a baccalaureate degree; or
- Other workers with less than two years experience such as an unskilled worker who can perform labor for which qualified workers are not available in the United States.

By statute, 28.6 percent of the total number of employment-based immigrant

visas per year are allocated to third-preference workers in the three subcategories listed above. Eligibility requirements for the EB-3 classification are less stringent than the EB-1 and EB-2 classifications. The regulations for EB-3 workers are found at 8 CFR § 204.5(l).

a) Skilled Worker positions are not seasonal or temporary and require at least two years of experience or training. The training requirement may be met through relevant post-secondary education. Form ETA-9089 (Labor Certification) states the job requirements, which determine whether a job is skilled or unskilled.[66]
b) Professionals must hold a U.S. baccalaureate degree or equivalent foreign degree that is normally required for the profession. Education and experience may not be substituted for the degree. Unlike EB-2 advanced degree professionals category or the H-1B temporary workers category, the EB-3 category does not recognize a combination of education and experience as the equivalent of a baccalaureate degree.
c) Other Worker positions require less than two years of higher education, training, or experience.

D. The Labor Certification Application - Program Electronic Review Management System (PERM)

The labor certification is a prerequisite for obtaining employment-based permanent residence in the EB-2 and EB-3 categories. The labor certification is the determination by the DOL that there are no U.S. workers able, willing, qualified, and available for the position for which a labor certification is being sought and that employment of the foreign national will not adversely affect the wages and working conditions of U.S. workers. This document attests that the employer has in good faith engaged in recruitment efforts to fill the pertinent position but has found no able, willing and qualified U.S. worker and would like to hire the foreign national on a permanent (non-temporary) basis. In many cases, this position is the same one that the foreign national already holds on a temporary basis under H-1B, L-1B, or TN status.

After the employer has filed the labor certification and received an approval from the Labor Department, the employer can file the I-140 immigrant visa petition. The labor certification application is tied to one specific location, job, and employer.

The first step in obtaining residence based on an offer of employment in the U.S. is to obtain a labor certification from the DOL regarding the unavailability of qualified U.S. workers to fill the same position. More specifically, that qualified U.S. workers are unavailable to fill the position which is the subject of the job offer, and that the employment of the foreign national in the position will not adversely affect the wages and working conditions of U.S. workers in similar posi-

tions. A labor certification is obtained by filing an application under the PERM system.

PERM is designed to assist organizations in the timely hiring of foreign nationals to meet their workforce needs when no willing and qualified U.S. workers are available. Although PERM eliminated the traditional labor certification/reduction in recruitment processes, the premise of the application remains the same: The DOL must certify that the employer has demonstrated, through recruiting, that there are not sufficient U.S. workers who are able, willing, qualified and available; and that the employment of the foreign national will not adversely affect wages or working conditions of similarly situated U.S. workers.

PERM was designed to streamline the labor certification process by moving to a less paper intensive process utilizing electronic filing of certain documents. Under PERM an employer is required to complete the following recruitment before filing an application for labor certification:

- Two ads in two different Sunday editions of the local newspaper with the largest general circulation in the area where the job is located. In lieu of one Sunday newspaper ad, one ad may be placed in an appropriate professional journal, if the job requires experience and an advanced degree, and a professional journal would normally be used to advertise the job opportunity. The ads must be published no closer than 30 days and no later than 180 days before the date of filing the application with the DOL;
- A Notice of Job Opening based on the job description must be posted on the job-site for 10 consecutive working days in a location where Federal notices are usually posted; and
- Placement of a job order for 30 days with the State Workforce Agency.

If the position is a professional position, the employer must demonstrate recruitment in an additional 3 recruitment sources. A position is considered professional if a bachelor degree or higher is required in order to qualify for the position. If the position is professional then the employer must demonstrate recruitment in at least 3 of the following:

1. Job fairs;
2. Employer's web site;
3. Job search web sites
   (e.g., the DOL's America's Job Bank www.ajb.dni.us);
4. On-campus recruiting;
5. Professional or trade organization search;
6. Private employment firms or placement agencies;
7. Employee referral programs with incentives;
8. Campus placement offices;
9. Local and ethnic newspapers; or
10. Radio or television ads.

Once the required recruitment has been conducted, the employer must wait an additional 30 days to monitor the response to the recruitment effort before an application under the PERM system can be filed with the DOL.

Summary Of Frequently Used Procedures To Obtain Employment-Based Permanent Residency

Visa Type & Designation	First Preference (EB-1)
Eligible Persons	• Priority workers • Aliens of extraordinary ability / Outstanding professors and researchers / Multinational mangers/executives
Governing Provisions of Law	• INA § 203(b)(1) • 8 USC § 1153(b)(1) • 8 CFR § 204.5
Summary of Eligibility Requirements	Extraordinary ability aliens: • Must demonstrate extraordinary ability in science, art, education, business, or athletics via sustained national or international acclaim; must show by extensive documentation that they have risen to the very top of the field of endeavor; documentation must fall within criteria set forth in 8 CFR § 204.5(h). • No job offer is required and candidates can self-petition. Outstanding professors and researchers: • Must be able to show international recognition in a specific academic field; have at least threes years experience in teaching or research; must be coming to accept tenured or tenure track teaching or comparable research position at university, other institution of higher education, or private company. • Must have a job offer; only employers can petition. Multinational executives/managers: • Must be employed abroad in that capacity for at least one of the past three years and seek entry to provide executive/managerial service to the same employer or to a subsidiary, parent, branch, or affiliate. • Must have a job offer and only an employer can file petition.

Procedure for Obtaining Green Card (Lawful Permanent Resident Status "LPR")	1. File Form I-140 and supporting documents with USCIS Service Center. Alien may not file an immigrant visa application until "priority date" is current or a visa becomes immediately available. Availability of visas depends on the "priority date" (the date when the alien filed Form I-140). 2. When a visa becomes available, an alien has two options: a. Visa processing: i. Can obtain immigrant visa from consulate abroad. b. Adjustment of status: i. An alien in the U.S. may file Form I-485 with DHS to adjust status.
Visa Type & Designation	**Second Preference (EB-2)**
Eligible Candidates	• Members of the professions holding advanced degrees. • Aliens with exceptional ability in the sciences, arts or business. • Priority workers.
Governing Provisions of Law	• INA § 101(a)(32), 203(b)(2) • 8 USC § 1101(a)(32), 1153(b)(2) • 8 CFR § 204.5(k); 20 CFR §§ 656.1-656.62
Summary of Eligibility Requirements	Professionals holding advanced degrees: • Alien must hold a U.S. degree or foreign equivalent beyond a bachelor's degree (usually a master's) or a bachelor's plus five years of progressive work experience. Exceptional ability workers: • Must show exceptional ability in the sciences, arts, athletics, or business ("exceptional" means a degree of expertise significantly above the ordinary). National interest waiver: • If the foreign national will promote the "national interest" by his admission, USCIS may waive the labor certification requirement. Alien can self-petition.
Application Procedure Eligibility for nonimmigrant visas varies significantly from one category to another. Most visas require the filing of a predicate petition with U.S. CIS but a few visa categories require the alien applicant to apply directly to a U.S. Embassy abroad.	1. Labor certification: Employer must file Form ETA-9089 with DOL. 2. After DOL grants labor certification, employer files Form I-140 with supporting documents.
Visa Type & Designation	**Third Preference (EB-3)**
Eligible Candidates	Skilled workers, professionals, and other workers

Governing Provisions of Law	• INA § 203(b)(3) • 8 USC § 1153(b)(3) • 8 CFR § 204.5(l); 20 CFR §§ 656.1-656.62
Summary of Eligibility Requirements	All EB-3 aliens must have a permanent, full-time job offer. Skilled workers: • Are in positions requiring a minimum of two years' training or experience. Relevant post-secondary education counts as training. Professionals: • Must have a U.S. bachelor's degree or foreign equivalent. Other workers: • Are in positions requiring less than two years of higher education, training, or experience.
Application Procedure Eligibility for nonimmigrant visas varies significantly from one category to another. Most visas require the filing of a predicate petition with U.S. USCIS but a few visa categories require the alien applicant to apply directly to a U.S. Embassy abroad.	1. Obtain labor certification by filing Form ETA-9089 with DOL. 2. After DOL grants certification, employer files Form I-140 with supporting documents.

E. Adjustment of Status Application (also known as the "Green Card Application")

Once the I-140 immigrant visa petition is approved by USCIS, the foreign national then must file the Form I-485, Adjustment of Status (AOS) Application, using the approved immigrant visa petition.[67] Recent regulations allow for the concurrent filing of the Form I-140 petition and the Form I-485 AOS application when an immigrant visa number is available to the applicant. Upon receiving an approved adjustment of status application, the foreign national and his or her immediate family members will receive their I-551 stamps and subsequently their permanent resident cards ("green cards") to indicate their new status as U.S. permanent residents.[68]

Section 106(c) of the American Competitiveness in the 21st Century Act (AC21) allows individuals whose I-485 adjustment of status applications have been pending for more than 180 days to change jobs and/or employers if they remain in the same or a similar occupational classification.[69] According to current guidance, the I-140 petition must be approved but the I-485 must remain undecided for at least 180 days for the I-140 to continue to remain valid. The USCIS has not issued regulations relating to AC21.

The following consists of a checklist of materials the immigration attorney will need to file the Form I-485 applications:

- Employment verification letter (furnished by the employer);
- Complete copy of the foreign national's and his or her family's passports (front and back);
- Copy of Form I-94, Arrival/Departure Record (front and back);
- Copy of birth records issued by the appropriate civil or municipal authority listing the name of child, date of birth, place of birth, name of father, and name of mother;
- Copy of marriage document issued by the appropriate civil or municipal authority listing the date of marriage, place of marriage, name of husband, and name of wife;
- Copy of termination of prior marriage document: a certified copy bearing the appropriate seal or stamp of the issuing authority of final divorce judgment, death certificate, or annulment of each prior marriage;
- Copy of ALL USCIS authorized approval notices and documents;
- Two color passport photographs of each applicant;
- Applicable filing fees; and
- Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, performed by an USCIS-authorized physician (U.S. Civil Surgeon).

IV. Additional Resources

ACC Sources

Flow Chart: H-1B Process Employment Based Permanent Residence Process available at http://www.acc.com/resource/v7513

Flow Chart: Non-Immigrant Visa Procedures http://www.acc.com/resource/v7514

J. Christopher Erb, and Jean Dorton, *"Cap's Up! Hiring the H-1B Visa Nonimmigrant Specialist,"* ACCA Docket, July/August 2001, available at www.acca.com/protected/pubs/docket/ja99/visas.html

Frida P. Glucoft , Lorna A. De Bono, *"Globalization Of The Workforce U.S. Immigration Law"* 2001, available at www.acca.com/protected/legres/immigration/globalization.html#top

Mark A. de Bernardo, *"Congress Revises Immigration Laws to Combat Terrorism in the Aftermath of September 11"*, November 2001, available at www.acca.com/protected/legres/immigration/patriotact_lm.html

Global Counsel

Directors' duties: QuickGuide, Global Counsel, August/ July 2002, *available at* www.acca.com/resources/vl/php

Program Materials

"*Shortcuts Through the Immigration & Expatriate Maze for Employees*," ACC 2003 Annual Meeting, *available at* http://www.acca.com/education03/am/cm/203.pdf

"Foreign Employees: Issues in Hiring This New Workforce," Program Materials, ACCA 2001, *available at* www.acca.com/education2k1/am/cm/012CD.pdf

Cynthia A. Binns, "*Delivering Strategic Solutions,"* ACCA 2000 Annual Meeting, Program Materials, October 2000, *available at* www.acca.com/education2000/am/cm00/html/immprimer.html

Other Sources

Jessica Vaughan "*Shortcuts to Immigration: The 'Temporary' Visa Program is Broken*" (January 2003). http://www.cis.org/articles/2003/back103.html

Jessica Vaughan "*Be Our Guest: Trade Agreements and Visas*" (December 2003). http://www.cis.org/articles/2003/back1803.html

Organizations

American Immigration Lawyers Association (AILA) http://www.aila.org/

Websites

National Call Center (Department of Labor)

http://www.dol.gov/dol/contact/contact-phonecallcenter.htm

The Department of Labor National Call Center provides workers and employers with consistent, accurate information and assistance. The Call Center provides nationwide toll-free assistance to customers with questions about job loss, business closures, pay and leave, workplace safety and health, pension and health benefits, and workplace injuries. In addition to answering general information, the Call Center will relay any specific inquiry to the proper office without delay.

Main Call Center Number:	1-866-4-USA-DOL
Employment and Training Questions:	1-877-US-2JOBS
Wage and Hour Questions:	1-866-4-US-WAGE
Workplace Safety and Health Questions:	1-800-321-OSHA
Energy Employees' Compensation Questions:	1-866-888-3322
Federal Employees' Compensation Questions:	1-866-999-3322
TTY number for all Department of Labor Questions:	1-877-889-5627

Compliance Advisors

http://www.dol.gov/elaws/

The "elaws Advisors" are interactive tools that provide information about federal employment laws. Each Advisor simulates an interaction between a caller and an employ-

ment law expert. The Advisor asks questions and provides answers based on your responses. The Advisor websites are the following:

Small Business Compliance

http://www.dol.gov/osbp/sbrefa/main.htm

This website contains the central contact point for Department of Labor compliance materials, contacts for compliance advice, information on penalty reductions and waivers for small businesses, and how small businesses can comment on Department of Labor regulatory activities and new regulations. You may also call the Office of Small Business Programs toll free at: 1-888-9-SBREFA. (See also information below about the Small Business Regulatory Enforcement Fairness Act.)

Contacting the Department of Labor (via email)

http://www.dol.gov/dol/contact/contact-email.htm

Employment/Labor Laws and Regulations

http://www.dol.gov/dol/compliance/compliance-majorlaw.htm

This website is sponsored by the Department of Labor and provides clear and accessible information on how to comply with employment laws and regulations. The website also contains links which provide access to compliance assistance on particular Department of Labor laws and regulations. Simply select the law or regulation about which you need information by either topic or alphabetical list. You can also view a summary of major laws, which contains brief descriptions of many of the Department's laws.

Guide to Laws, Regulations and Technical Assistant Services

http://www.dol.gov/asp/programs/handbook/contents.htm

This Guide describes the statutes and regulations administered by the Department of Labor (DOL) that affect businesses and workers. The Guide is designed mainly for those needing "hands-on" information to develop wage, benefit, safety and health, and nondiscrimination policies for general businesses.

Office of Business Liaison (USCIS)

http://uscis.gov/graphics/services/employerinfo/oblhome.htm

This site is the homepage for the Office of Business Liaison (OBL). The office provides information on the employment eligibility verification process as well as the opportunities available to employers to hire and/or "sponsor" foreign workers in accordance with U.S. Government regulations administered by a variety of federal agencies.

Listing of USCIS Field Offices and Support Centers

http://uscis.gov/graphics/fieldoffices/alphaa.htm

USCIS Forms and Fees

http://www.uscis.gov/graphics/formsfee/forms/index.htm

This website provides you with access to immigration forms and fees.

Extensions of Non-immigrant Status (How to extend your foreign national employees' stay in the U.S.)

http://www.uscis.gov/graphics/howdoi/extendstay.htm

This website provides the answers to questions such as:

- Why do you need to extend your nonimmigrant status?
- What does the law say?
- Who is eligible?
- How do I apply?
- How do my spouse and child apply to extend their stay in the United States?
- When should I apply?
- What if my authorized stay has already expired?

V. Sample Forms

A. Sample Letter: In Support Of Petition For L-1B Visa Where Foreign National Is An Employee Of A Foreign Subsidiary Of The U.S. Parent Company[70]

[Date]

Department of Homeland Security

United States Citizenship and Immigration Services

Vermont Service Center

75 Lower Welden St.

Saint Albans, Vermont 05479

SUBJECT: I-129L for [name of foreign national]

Dear Administrator:

We are submitting this letter and the enclosed material in support of the petition of [U.S. company] to classify [Mr. or Ms.] [name of foreign national] as an L-1B nonimmigrant transferee to fill a position in the United States, which requires specialized knowledge. This assignment in the United States is for a temporary period of three years, effective [date] through [date three years later].
In support of [U.S. company's] petition on behalf of [foreign national], we submit the explanations and supporting documents, which follow.

I. Description of Company and Purpose of Transfer

[Example: [U.S. company] is a worldwide organization involved in [describe the nature of the company and the business with which it is associated. Also estimate the number of employees the U.S. company has in the U.S. or on a worldwide basis. Also indicate the U.S. company's annual gross sales according to the most recent information available (*i.e.*, for the previous fiscal year) and list that dollar figure. Make certain this information matches what is contained on the petition. You may want to include a copy of the company's annual report here as the first attachment.]

[Brief description of the company's worldwide intra-company training program and why the company wants to transfer the foreign national to the U.S. such as [U.S. company] maintains a globalization program for its employees who possess knowledge of a particular component of a foreign subsidiary's operations. In

the situation at hand, [foreign national] has specialized knowledge regarding . . . [summarize the specialized knowledge; example: . . . direct marketing and sales of the Company's widget product line.] The ability to train and share marketing and sales methods and techniques [. . . or whatever you described previously] has contributed to the company's overall worldwide success [or whatever is appropriate here].]

[Example continued to describe program: This globalization program permits [U.S. company's] operations in the U.S. the opportunity to develop specific goals and objectives to meet the overall demand for our products. A significant factor, which contributes to the program's success, is the ability to temporarily relocate subsidiary personnel to the U.S. where their specialized knowledge can be shared with their U.S. counterparts. The utilization of individuals in this way provides [U.S. company] with a perspective on our worldwide operations through our marketing and sales network [or whatever is appropriate].]

[Describe purpose of this particular transfer; for example: Specifically, [U.S. company's] [name of business or division] would like to expand and strengthen its worldwide marketing and sales effort [or whatever effort it is expanding, *e.g.*, engineering]. [Name of business or division] provides . . . [describe in a summary manner how the business or division assists the overall objectives of the company].]

II. Corporate Relationships

[U.S. company] wishes to have the intra-company transferee, [foreign national], undertake a temporary assignment at [U.S. company's] [city and state] facility, the location of our [name of the business group or division, if applicable]. [Foreign national] is employed at the present time by [name of foreign subsidiary] located in [city and country]. [Name of foreign subsidiary] is a wholly owned subsidiary of [U.S. parent company] [or describe the appropriate relationship between the parties].

[Provide some details of the foreign subsidiary, such as when it was established and where; whether it is part of a division or group of the parent company; whether this division or group includes locations in other countries (and list those countries); anything outstanding or relevant regarding the foreign subsidiary, such as: it's the fastest growing geographic sales region, etc.]

[If brochures exist on this foreign subsidiary or the division or business group to which it belongs, include the brochure as an attachment. For example: See the enclosed pamphlet describing the _____ Division and, in particular, note the tabbed page which discusses the widget product line (**Attachment** _).]

The relationship between [U.S. company] and [foreign subsidiary] is documented

in the following attachments:

Attachment _: Certificate of Incumbency of [name of company officer], [title] of [U.S. company], certifying to the relationship between [U.S. company] and [foreign subsidiary].

Attachment _ : Copy of the [20__] [or appropriate year] Annual Return [if appropriate] of [foreign subsidiary] which includes a list of the members of the Board of Directors and the sole Shareholder. [Number] of the Directors of [foreign subsidiary] are also officers of [U.S. company]. [If this is true for the applicable U.S. company and foreign subsidiary, list the details as it helps to establish the interrelationship of the entities.]

Attachment _: [U.S. company's] [20__] Annual Report to Shareholders which discusses [foreign subsidiary] [If this is available, summarize what the report mentions. In the alternative, if you already included this as an attachment in Section I, refer to it again and reference the applicable page that discusses the foreign subsidiary.]

III. Foreign Position Filled by Transferee/Transferee's Specialized Knowledge

[Foreign national's] education and experience render [him/her] an excellent candidate for a temporary intracompany transfer to the [name of business group or division] at [U.S. company's] [state where group or division located] facility. [Foreign national] received a [describe foreign national's educational background, including degree, name of university, date of graduation and attach copy of diploma] (see **Attachment** _). Copies of [foreign national's] grade transcripts are enclosed as **Attachment** _ to show evidence of [his/her] studies. [If grade transcripts are not available, at least attach a copy of the diploma.]

[Foreign national] has had more than [number] years of experience as [describe foreign national's position at foreign subsidiary and enclose documentation of it such as a payroll notice. It is also helpful if you are able to obtain a letter from an officer of the foreign subsidiary or from the foreign national's supervisor briefly describing the foreign national's employment history with the foreign subsidiary] (see **Attachment** _). [Foreign national] speaks English in addition to [his/her] native [language, e.g., French or German, etc.].

During [his/her] tenure with [foreign subsidiary], [foreign national] has had increasing responsibilities which include [provide details of the position(s) held; in the alternative, attach a position description].

[Foreign national] has been a major contributor to a variety of projects during [his/her] employment with [foreign subsidiary]. A representative sample is ex-

plained below:

[List 3-5 projects in which the foreign national participated and/or attach a document summarizing these details. Only a few sentences are required to describe each project.]

The knowledge and experience [foreign national] has gained during [his/her] employment with [foreign subsidiary] combined with [his/her] skills and education have given [him/her] the background needed to work on a temporary basis in the U.S. [Foreign national] will be able to share with the U.S. [business group or division] [his/her] knowledge of the successful marketing and sales experiences [or whatever experiences are applicable] of [U.S. company's] subsidiary in [country].

IV. U.S. Position

[Describe the position the foreign national will hold in the U.S., such as: [Foreign national's] primary function will be to train and share marketing and sales methodologies and techniques developed through [his/her] association with [foreign subsidiary] with the U.S. counterpart. [His/her] specific responsibilities as [title of position in the U.S.], [name of U.S. business group or division, if applicable,] will include the following:]

[Provide list of responsibilities or reference the responsibilities in an attachment]

V. Conclusion/Summary

[U.S. company] proposes to transfer [foreign national] to the United States for a temporary period of approximately three years from [date] to [date]. [He/she] will serve as [title in U.S.] to the [U.S.-based business group or division, if applicable] located in [city, state].

During [his/her] tenure in the United States, [foreign national] will be compensated at an annual salary of $_____ along with [list any other relevant benefits and the approximate value of the benefit, such as company-provided automobile (valued at approximate $115/week)].

[U.S. company] understands the temporary nature of this assignment and we have communicated the conditions of the transfer to [foreign national]. [This statement regarding the temporary nature of the assignment is necessary. Be sure you have in fact communicated this to the foreign national.]

We respectfully request you grant our petition for an L-1B nonimmigrant visa for [foreign national]. We have enclosed a check to cover the filing fee for the petition. Please contact me directly should you require anything further. [Or other appropriate closing.]

Very truly yours,

[Name]

[Title]

Enclosures

SAMPLE [Where the U.S. company is parent to the foreign subsidiary]

ATTACHMENT ___

CERTIFICATE OF INCUMBENCY

I, [full name], [title] of [U.S. company], a corporation duly organized and existing under and by virtue of the laws of the State of [state], with a principal office at [complete address], am familiar with the books and records of [U.S. company] and its wholly-owned subsidiaries and, based on this familiarity, do certify that:

- [U.S. company] is the sole shareholder [or majority shareholder or whatever is appropriate] of [name of foreign subsidiary], holding [number] shares.
- The following officers of [U.S. company] are members of the Board of Directors of [name of foreign subsidiary] during Fiscal Year [appropriate year] [This statement shows the connection between the two entities by also showing the relationship of the officers to the entities. Delete if this is not applicable to the entities you are describing.]:
- [Name], [title] of [U.S. company]
- [Repeat information for others where applicable]
- [As an alternative to the above or in addition to the above, attach Shareholder and Board of Directors meeting minutes of the foreign subsidiary to show the relationship of the entities (redact confidential information, if appropriate) and make a statement similar to what follows: A copy of [foreign subsidiary's] Annual Shareholders Meeting Minutes and the Board of Directors Meeting Minutes from 1999 [or appropriate year] are attached. [You may want to use a highlighter on the copy to draw attention to relevant information such as the name of the foreign subsidiary, the parent company name (i.e., shareholder), etc.]

Dated this ___ day of _____, [20__].

[U.S. company] (Company seal)

By: _____

(Signature)

Name: _____
Title: _____

VI. Glossary Of Key Immigration Terms

Adjustment of Status: the process of changing from a lawful, non-immigrant status to that of lawful permanent resident status within the U.S.

Advance Parole: permission for certain foreign nationals who do not have a valid immigrant visa to re-enter the U.S. after traveling abroad. Those individuals must be approved for Advance Parole before leaving the U.S. If they have not obtained Advance Parole before traveling abroad, they will not be permitted to re-enter the U.S. upon their return. With the exception of applicants with valid H or L visas, Advance Parole is required for all individuals with an adjustment application pending during the period of travel. Advance Parole does not guarantee re-entry. Consult an attorney before traveling with Advance Parole.

Alien: "alien" is the legal term of art used to describe anyone who is not a natural born or naturalized U.S. citizen or national of the U.S. The term "citizen" is not defined in the INA; a "national" of the U.S. is defined to include a citizen of the U.S. and any other person who, although not a U.S. citizen, owes allegiance to the U.S.

Admission: the concept of "admission" was added to U.S. Immigration Law Lexicon by the 1996 Act. It replaces the old concept of "entry." Admission is defined as the lawful entry into the U.S. after due inspection and permission to enter issued by a DHS inspector at the port of entry or on deferred inspection. An alien seeking admission is subject to grounds of inadmissibility, while an alien who has been admitted is subject to removal or deportation grounds.

Affidavit of Support: a document filed in support of family-based and certain employment-based adjustment of status or immigrant visa applications. An affidavit of support is required in conjunction with an immediate relative petition and employment petition when the beneficiary is a relative.

Alien Labor Certification: Department of Labor certification that there is an insufficient number of U.S. workers are able, willing, qualified, and available in the area of the proposed employment and that hiring a qualified alien will not adversely affect similarly situated U.S. workers.

Asylee: the immigration status of an applicant who applies from within the U.S. and establishes that he or she is a refugee for purposes of receiving asylum. After one year as an "asylee", the alien may apply to become a lawful permanent resident.

Child: an unmarried person under 21 who is either 1) legitimate child; 2) step-

child; 3) child legitimated before reaching 18 years of age; 4) illegitimate child; 5) child adopted when he or she is younger than 16 years of age; or 6) orphan.

Conditional Permanent Resident Status: status given to spouse and children obtaining permanent residency through marriage to a US citizen if the status is conferred before the couple's second anniversary or as an immigrant investor. At the end of the conditional period, the alien must file a Form I-751 petition to remove the condition.

Consular Processing: the process of applying for an immigrant visa outside the U.S.

Employment Authorization Document (EAD): numerous non-immigrant visa holders require, as an incident of their visa status, authorization to work in the U.S. Employment authorization has no limits in some instances while in other situations the authorization is tied to a particular employer or DHS approval. Increasingly, the DHS is issuing a card with photo and fingerprint known as an Employment Authorization Document (EAD) to confirm an alien's authorization to work in the U.S.

Employer Sanctions: pursuant to the Immigration Reform and Control Act of 1986, employers face civil and criminal penalties if they hire or continue to employ aliens who are not authorized to work in the U.S.

Employment Verification: paperwork procedures established by the Immigration Reform and Control Act of 1986 require employers to verify the identity and employment eligibility on Form 1-9 for all individuals hired on or after November 7, 1986.

Following to Join: qualifying immediate relatives attempting to obtain derivative status after principal beneficiary is in permanent status for four months. The criteria for following to join are: (1) that person seeking entry is the spouse or child of principal beneficiary before the beneficiary's entry into the U.S.; (2) that the spouse or child not precede the principal beneficiary to U.S.; and, (3) that the time period of child or spouse's entry is more than four months and without time limit so long as child or spouse maintain his or her respective status.

H-1B Dependent Employers: under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), certain employers who employ a high percentage of H-1B dependent employees were required to meet additional requirements in order for the DHS to approve other H-1B employees. These additional requirements were part of a law with a sunset date of September 30, 2003.

I-94 card: card given upon entry to the U.S. to an alien with a non-immigrant visa that indicates the length and terms of the alien's stay.

"Illegal" Alien: foreign nationals who enter the U.S. without proper documentation *(i.e.*, without DHS permission) are referred to as illegal aliens.

Immigrant: foreign nationals who are granted the right to permanently reside in the U.S are referred to as immigrants. Aliens can acquire permanent resident status in the U.S. in many ways, such as through an employment-based petition filed by an employer, a family-based petition filed by a U.S. citizen or permanent resident family member, or humanitarian-based petition filed by an individual for refugee or asylum status. Lawful permanent residents are entitled to privileges and protections under the U.S. Constitution but not the full complement of rights afforded citizens.

Immigrant Visa: a visa document that allows an alien to enter the U.S. with the intention of remaining permanently. A consular officer outside the U.S. issues the document if the person meets the criteria and is not barred from entering the country. An immigrant visa is valid for six months only.

Labor Certification: certification by the U.S. Department of Labor ("DOL") that there are not sufficient U.S. workers who are able, willing, qualified and available at the place of proposed employment and that such employment will not adversely affect the wages and working conditions of U.S. workers similarly employed. In most instances, Labor Certification is a prerequisite to filing an Immigrant Petition for alien workers. (Form I-140).

Naturalization: the process of attaining citizenship status in a country. Excludes citizenship that a person obtains at birth.

Non-immigrant: a non-immigrant is a foreign national who must demonstrate that he or she is coming to the U.S. temporarily and has no intention of abandoning his or her permanent residence abroad. The requirement of proving non-immigrant intent does not apply to foreign nationals in H or L status. A non-immigrant must receive DHS approval to engage in certain activities. Some non-immigrant visa categories provide employment authorization and if such authorization is granted, it is limited in duration and is usually employer-specific.

"Out of Status" Alien: a non-immigrant whose authorized period of stay has expired. The authorized stay of a non-immigrant expires on a predetermined date or upon the occurrence of an event (*e.g.*, for F-1 students, the completion of their studies). When the status of a non-immigrant expires, the individual becomes "out of status."

Parole: when the DHS allows a person to come into the U.S. without formally admitting him or her. A person who paroles into the U.S. does not have the same status or legal rights as someone whom the DHS admits into the country.

Particularly Serious Crime: for asylum purposes, it is defined by immigration law as a conviction for an "aggravated felony".

Passport: a travel document issued by proper authorities showing the traveler's origin, identity, and nationality which is valid for the admission of the traveler into a foreign country.

Permanent Resident Status: the status of having been lawfully awarded the privilege of residing permanently in the U.S. as an immigrant consistent with the U.S. immigration laws, such status not having changed.

Preference: refers to the level of priority that the U.S. government has given to various visa categories. Each category is allocated a set number of visas per year. The categories apply to family immigrant visas for those not considered immediate relatives and to employment immigrant visas. Specifically, the categories are:

- EB-1: Priority Workers. 28.6% of worldwide visas plus unused investor and special immigrant visas. People who qualify are (1) Persons of extraordinary ability; (2) Outstanding professors and researchers; and (3) Multinational executives and managers.
- EB-2: Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. 28.6% of worldwide visas plus unused priority workers.
- EB-3: Skilled Workers, Professionals and Other Workers. 28.6% of worldwide visas plus unused visas in the priority worker and professional categories.
- EB-4: Special Immigrants. 7.1% of worldwide visas per year with a 5,000 limitation on religious workers. Does not include returning LPRs or former citizens seeking reacquisition of citizenship.
- EB-5: Employment Creation (investors). 7.1% of visas per year of which 3,000 are set-aside for investors in a targeted rural or high-unemployment area, and 3,000 are set-aside for investors in designated regional centers.
- Family First Preference: Unmarried sons and daughters of U.S. citizens (USCs). A total of 23,400 plus unused Fourth Preference.
- Family Second Preference: Spouses and unmarried children and sons and daughters of lawful permanent resident (LPR). Divided between 2A and 2B - 114,200 plus excess over 226,000 plus unused First Preference. 2A - spouses and unmarried children of LPR. 77% of visas to the 2A category and 75% of the 77% are not subject to per country limitations (2A exempt). 2B - unmarried sons and daughters of LPRs are given 23% of the visas.
- Family Third Preference: married sons and daughters of USCs. 23,400 plus unused First and Second Preference.
- Family Fourth Preference: brothers and sisters of USCs. 65,000 plus any unused First, Second, and Third Preference.

Priority Date: date that determines the order in which the Department of State issues visas based on the preference system. For employment-based cases, the priority date is either the date the labor certification is filed or the date that the

preference petition is filed with DHS under any category not needing a labor certification. For families, the priority date is the date the preference petition (I-130) is filed, which under DHS regulations requires receipt of the filing fee and a signed petition. It is not the date the petition was approved.

Re-entry Permit: travel document issued to allow a permanent resident to travel abroad. This document allows the permanent resident to re-enter the U.S. if he or she travels for an extended period outside of the U.S.

Refugee: a person who is "outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

Status Violator: a person who violates the terms of his or her nonimmigrant status such as working without permission. This is not the same as someone who is unlawfully present because he or she overstayed.

Temporary Protected Status (TPS): a status granted to certain individuals when their native country is undergoing extraordinary and temporary conditions. A person with this status may remain in the U.S. for six to eighteen months and receive employment authorization.

"Unauthorized" Alien: an alien is unauthorized if he/she is not lawfully admitted as a permanent resident (green Card holder) and his/her period of authorized stay in nonimmigrant status or temporary work authorization status has expired.

Unlawful Presence: U.S. immigration laws provide grounds for inadmissibility for three years for a foreign national who has been unlawfully present in the U.S. for more than 180 days or for ten years if unlawfully present for one year or more.

VII. Major Government Agencies Involved In The Immigration Process

U.S. Department of Homeland Security

The Department of Homeland Security (DHS) exercises extensive control over immigration issues in the U.S. through three divisions: U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (BCP). The Department of Homeland Security adjudicates almost all immigration-related petitions at one of five USCIS Regional Service Centers. The service centers are located in California, Missouri, Nebraska, Texas, and Vermont. The Department of Homeland Security oversees applications involving interviews.

U.S. Department of State

The Department of State (DOS), through U.S. embassies and consular posts, issues nonimmigrant and immigrant visas to foreign nationals. The DOS' issuance of a nonimmigrant or immigrant visa does not guarantee entry to the U.S. It is simply permission to travel to the U.S. and seek approval from the DHS inspector at the port of entry to be admitted in lawful immigrant or non-immigrant status. DHS directs visa policy under the terms of a Memorandum of Understanding with DOS.

U.S. Department of Justice

The Department of Justice (DOJ) retained certain immigration-related responsibilities after the legacy INS moved to the Department of Homeland Security. The Executive Office for Immigration Review (EOIR) remains within the DOJ under the authority of the Attorney General. EOIR includes the Immigration Courts and the Board of Immigration Appeals (BIA). Immigration Judges are appointed and supervised by the Attorney General. They decide cases in removal proceedings including matters where individuals are subject to removal and whether they are eligible to any form of relief. These forms of relief may include asylum, withholding of removal, cancellation of removal, or adjustment of status. The BIA decides cases on appeal from the Immigration Court.

U.S. Department of Labor

The basic function of the Department of Labor (DOL) in the immigration process is protecting the wages and working conditions of U.S. workers. DOL must certify that wage and working conditions provided by employers to foreign national employees meet average prevailing wage and working conditions of U.S. workers similarly situated. For many immigrant classifications, the DOL working in conjunction with State Employment Security Agencies (SESA) supervises the labor certification process.

VIII. Glossary Of Key Immigration Forms

FORM	TITLE AND USAGE
I-9	Employment Eligibility Verification - Completed by employer and all new hires (both U.S. citizens and foreign nationals) to verify the individual's identity and eligibility to reside and work in the U.S.
I-129	Petition for a Nonimmigrant Worker - Primary form used to obtain and extend many of the professional and non-professional nonimmigrant worker status, such as E-1, E-2 H-1B, H-2B, H-3, L-1 and TN statuses.
I-131	Application for Travel Documents - Used to obtain travel documents such as advance parole document, re-entry permit, and refugee travel document.
I-140	Immigrant Petition for Alien Worker - Filed with DHS to classify a nonimmigrant alien in one of the employment-based preference categories for immigrant visa purpose.
I-485	Application For Adjustment of Status - Used by foreign nationals who are eligible and choose to adjust status to that of lawful permanent resident while in the U.S.
I-539	Application to Extend/Change Nonimmigrant Status - Filed by non-immigrants to extend or change nonimmigrant status or by dependents (spouse and children) to extend or change status (such as H-4, L-2 or TD).
I-765	Application for Employment Authorization - Filed by foreign nationals to obtain work authorization in the U.S. in various circumstances.
ETA-9035	Labor Condition Application - Used by employers to make attestations regarding wages and working conditions prior to filing each H-1B visa petition.
ETA-9089	Application for Alien Employment Certification - Filed by the employer and the employee as part of the labor certification .
DS-156	Nonimmigrant Visa Application - Filed with a U.S. embassy or consulate to obtain nonimmigrant visas for entry to the U.S.
DS-230	Immigrant Visa Application - Used by individuals to apply for immigrant visas through U.S. embassy or consulate.

About Igbanugo Partners Int'l Law Firm PLLC

Description Of Our Firm

Igbanugo Partners *Int'l Law Firm*, PLLC, specializes in United States Immigration and Naturalization laws, and International Trade with a narrow focus on Sub-Saharan Africa. We provide an innovative approach to partnering and client service that is unique among top tier firms. Our focus is institutional and our goal is to be a one-stop law firm that meets the needs of institutional clients in these two specialized areas of law practice. We have a solid history of delivering value-added service without compromise and bring a focused expertise to complex issues that lead to the best solutions to your legal needs. We provide you with insights into the legal and/or business challenges you face and what needs to be done to positively resolve them. We then identify the strategic opportunities that come from the posture of your case and the applicable law to help you construe and develop a course of action. **Igbanugo Partners** understands that addressing our clients' issues from a business perspective gives both the client and the firm an unparalleled opportunity to create a competitive edge toward the legal resolution of a business problem.

Firm Capabilities And Staffing

Igbanugo Partners features an experienced Immigration Law Practice Group, whose members represent and assist law firms, in-house counsel, corporate human resource/personnel departments, health care organizations, universities, entertainment/sports agents, and executive search firms with immigration matters associated with the hiring and intra-company transfers of foreign nationals/personnel for temporary or permanent assignments in the United States and abroad. U.S. immigration and nationality law is highly regulatory and undergoes constant change. Navigating the complex maze of U.S. immigration legislation and regulations requires skillful and experienced legal counsel who is capable of mastering its intricate substantive and procedural rules and regulations, and the bureaucracy called the United States Department of Homeland Security (DHS).

We are a lean and growing law firm with experienced attorneys handling an established national client base. Our clients hire us because of our expertise and track record of results. Our clients stay with us because of our attention to detail, responsiveness, flexibility, professionalism, and cost-effective lawyering. Our commitment to partnering with you means that we share in the risk of representation. We believe in client-focused service. We realize that good legal representation means more than simply delivering high-caliber work product. The essence of our service to clients is creating value and solving problems. We view our services

as business expenses that must be managed efficiently to solve business problems. Responsiveness and accessibility are also hallmarks. We regularly advise clients on the progress of matters and respond quickly to client inquiries. Our role is to assist our clients in making informed decisions and then to execute those decisions as cost-effectively and expeditiously as possible.

Diversity, Minority Hiring And Support

Embracing diversity is central to the philosophy of **Igbanugo Partners.** Our diversity encompasses complex differences within our community and the individuals who compose that community. It includes dimensions of race, ethnicity, national origin, religion, gender, age, and culture. We pride ourselves on being one of the most diverse firms in the country representing institutional clients. At **Igbanugo Partners,** our diversity is a way of life. More than one-half of our lawyers are women and lawyers of color.

Drawing upon our varied talents and experiences has far-ranging and significant benefits for our firm and its clients. **Igbanugo Partners** has truly shifted the diversity discourse from conversation to practice. Our institutional clients do business in a multinational and multicultural world. We offer them a multinational and multicultural firm.

Using Technology to Maximize Efficiency & Cost-Effectiveness

Technology-wise, we are a state-of-the-art immigration law department. With infrastructure similar to that of a 50 plus law firm, **Igbanugo Partners** is able to handle a very high volume of employment based immigration petitions and applications in a more efficient manner. Our software and hardware continues to improve our excellent case management system, and our innovative implementation of LawLogix case management, forms, and web interface software has squarely placed our technological capabilities in the new millennium to provide our clients with the highest-degree of immigration services. **Igbanugo Partners** is dedicated to using technology to reduce our client's costs, while improving our ability to meet our client's needs.

We Have Successfully Serviced Major U.S. Corporations

Past and present clients include leading U.S. corporations such as Merck and Co., Xcel Energy, Graco, Inc., Best Buy, General Mills, Northwest Airlines, Medtronic, Inc., Analysts Int'l Corporation, Open Access Technology, Inc., Minnesota Sur Seine, Circuit City Stores, Inc., Lisec America Software, Inc.

About the Attorneys

The following attorneys form the Immigration Practice Group at **Igbanugo Part-**

ners:

Herbert A. Igbanugo, founding partner, received his J.D. from Hamline University School of Law in 1987; admitted to practice in the State of Minnesota and before numerous Federal District Courts, Second, Third, Fourth, Fifth, Seventh, Eighth, and Ninth Circuit Court of Appeals, U.S. Court of International Trade, and the U.S. Supreme Court; substantial experience in federal court litigation against the DHS and in navigating the complex maze of U.S. immigration statutes and regulations, including all areas of business immigration; member of the American Immigration Lawyers Association since 1989; has nineteen (19) years of experience in immigration law.

Katie A. DeGrio, associate attorney, received her J.D. from Hamline University School of Law in 2004; admitted to practice in the State of Minnesota and before the Federal District Court of Minnesota, Seventh and Eighth Circuit Court of Appeals; assists companies nationwide in obtaining permanent and temporary visa in all aspects of employment based immigration; specializes in EB-1 outstanding researcher petitions, H-1B specialty occupations, TN and NAFTA professionals, O visas (extraordinary ability) and P visas (cultural exchange) for athletes and entertainers; member of the American Immigration Lawyers Association since 2006.

Christina Nsajja, associate attorney, received her J.D. and L.L.M. from Hamline University School of Law in 2003; admitted to practice in the State of Minnesota and in East Africa (Uganda, Kenya and Tanzania); her immigration practice includes assisting companies nationwide in all aspects of employment-based immigration and related matters, including labor certifications, nonimmigrant visas, and permanent residency options for foreign national workers.

Dyan Williams, associate attorney, received her J.D. from William Mitchell College of Law in 2005; admitted to practice in the State of Minnesota and before the Eighth Circuit Court of Appeals; specializes in the areas of employment- and family-based immigration, naturalization, and nonimmigrant visas, including H-1B specialty occupations and L-1 intra-company transferees; member of the American Immigration Lawyers Associate since 2006.

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Endnotes

[1] Please see the last two pages of this InfoPAK for more information about the firm and attorneys in the Immigration Practice Group.

[2] INA §101(a)(31); 8 U.S.C. §1101(a)(31).

[3] If you are thinking of relocating or assigning a lawful permanent resident overseas, you should first contact an attorney. Knowledgeable immigration attorneys can help your foreign employees maintain their residence status and address the residency requirements for naturalization with the proper advanced planning.

[4] The renewal option of a non-immigrant visa status depends on that specific visa category. Some non-immigrant categories allow the company to renew the status indefinitely (e.g., the O-1 is valid for an additional period of to three years. However, the validity is within the discretion of the USCIS officer adjudicating the case. TN visas are renewable in one-year increments). Other non-immigrant visa categories only allow up to a six-year maximum period of stay. For instance, the H-1B non-immigrant visa status is valid for an initial period of three years with an option to renew (extend) for an additional three years. Please note that regulations now allow H-1B workers to extend their H-1B status beyond the six years if they have a labor certification application pending for more than 365 days and if the application was filed before the end of their fifth year. The foreign national may also be able to recapture time not spent in H-1B status. *See* 8 C.F.R. § 214.2(h)(13).

[5] We have applied a step-by-step analysis for common employment-based non-immigrant and immigrant visa categories. We have not covered all employment-based visas available to foreign nationals.

[6] Appropriate fields are defined to include but are not limited to architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts. 8 C.F.R. §214.2(h)(4)(ii).

[7] Depending on the number of foreign national employees, a company should develop a system to handle the unique employment issues that may arise with foreign nationals and which differ from the issues arising with their home-based employees. For instance, a global company with a large number of foreign national employees constantly being transferred around the world may want to create an immigration division to handle the relocation and visa issues of its foreign national employees. The same company can also have the in-house immigration division deal with the human resources and compliance issues of foreign national employees and work with outside immigration counsel. Alternatively, companies that rarely hire foreign nationals may find it most efficient to have their human resources department work closely with outside counsel that specializes in immigration law.

[8] Personal information may include the foreign national's foreign address and phone number (if entering the U.S. from abroad) and information about his or her immediate family members (including name, sex, age, and country of birth).

[9] When immigration counsel has received the necessary information, he or she files a petition with the USCIS Vermont Service Center. In the case of the H-1B filing, the petition includes a filing fee of $190 for standard processing, training fee of $750 (for employers with 25 or less employees) or $1,500 for employers with 25 or more employees and $500 anti-fraud prevention and detection fee; (Optional Form I-907 with a filing fee of $1,000 for premium processing), Form I-129 with H Supplement, Form I-129W, Form G-28 which authorizes the attorney to file on behalf of the company, a copy of the foreign national's university degree(s) with English translation and educational credentials evaluation if necessary for a foreign university, and a detailed company letter of support.

[10] The Labor Condition Application can be completed on-line at *www. lca.doleta.gov*. The application form is a prerequisite to H-1B approval.

[11] In the past, if the company was "H-1B dependent" it had to comply with additional attestation requirements but those requirements are no longer enforced. The attestations for H-1B dependent employers were part of a temporary law that ended on September 30, 2003, and they have not been renewed but the concept may return as part of a future H-1B legislative package. The H-1B dependent attestations were intended to ensure that U.S. workers were not replaced with H-1B workers and that employers attempted to locate qualified U.S. workers before hiring H-1B workers. Please see the article, "Globalization of the Workforce U.S. Immigration Law" for further information. www.acca.com/protected/legres/immigration/globalization.html

[12] The regulations make a SWA prevailing wage determination the only safe harbor in the event of a challenge or complaint. 20 C.F.R. §655.731.

[13] There are different USCIS service centers assigned to certain geographical areas within the U.S. Please go to www.uscis.gov for a list of service centers. Also, please go to http://uscis.gov/graphics/index.htm for the appropriate

USCIS forms and http://www.dol.gov/dol/regs/main.htm for compliance assistance.

[14] Under the American Competitiveness in the Twenty-first Century Act of 2000 ("AC21"), Congress addressed some concerns of H-1B foreign nationals and employers by raising the number of H-1B visa allotments from 115,000 per year to 195,000 per year, but the increase was only effective for fiscal years 2001 through 2003. In fiscal year 2008 (which runs from October 1, 2007, through September 30, 2008), the USCIS the cap is 65,000 H-1B visas for the year. The cap applies to foreign nationals who have never held H-1B status and now seek such classification. Free trade agreements with Chile and Singapore set aside 1,400 visas for Chilean professionals and 5,400 for individuals from Singapore. These numerical limits are registered against the annual H-1B cap of 65,000.

[15] Male applicants between the ages of 16 and 45 must also complete Form DS-157. A copy of this form and fee information can be found at http://travel.state.gov/visa_services.html.

[16] This is also an ideal time to consider sponsorship for the foreign national's green card (permanent residency). The permanent residency process can take several years to complete. The lengthy wait is due to the fact that currently there is a retrogression in certain visa categories.

[17] INA §214(g)(7); 8 U.S.C. §1184(g)(7).

[18] INA §214(m); 8 U.S.C. §1184(m).

[19] INA §214(g)(1)(A); 8 U.S.C. §1184(g)(1)(A).

[20] "The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services or training." 8 C.F.R. §214.2(h)(9)(i)(B).

[21] INA §214(g)(5), (6), and (7); 8 U.S.C. §1184(g)(5), (6), and (7).

[22] Excerpted from: "Cap's Up! Hiring the H-1B Visa Non-immigrant Specialist," by J. Christopher Erb, ACCA Docket (July/August 2001), *available at* http://www.acca.com/protected/pubs/docket/ja01/caps2.php

[23] *See* 8 C.F.R. § 214.2(I)(1)

[24] If the employer has a Blanket L Petition, the period of time that the foreign employee must have worked for the transferring company overseas increased from 6 months to one year, as of June 6, 2005. For existing Blanket L-1 Petitions approved prior to June 6, 2005, however, the 6-month rule still applies. Therefore, an employer who had a Blanket Petition approved prior to June 6, 2005 may continue to bring in blanket qualified workers who have only 6 months of qualifying employment.

[25] For purposes of our discussion, intra-company transferees are foreign nationals that have been employed with the petitioning company (or the parent, one of its affiliates, subsidiaries, or branches) and are now being transferred to the U.S. parent, affiliate, subsidiary or branch.

[26] The period of time is six months, not one year, for individuals utilizing a Blanket L-1 Petition that was approved prior to June 6, 2005.

[27] Similar to the H-1B visa extension, an L-1A non-immigrant may remain on a company's payroll after the L-1A extension has been filed even if his or her current L-1A has expired.

[28] Unlike for the H-1B, a Labor Condition Application is not necessary for L-1A/L-1B petitions. Further, the company does not have to maintain public access files in accordance with Department of Labor regulations.

[29] USCIS is required to adjudicate all L-1 petitions within 30 days of filing but it often fails to meet this requirement. INA §214.2(l)(16).

[30] 8 C.F.R. §214.2(l)(1)(ii)(D).

[31] The L-1A provides a potential avenue to obtain permanent residence through an immigrant petition in the priority worker category for multinational managers (as discussed in Part III), meaning that the applicant would be able to avoid the involved labor certification process.

[32] 8 C.F.R. §214.2(l)(4)(i).

[33] To find out who qualifies for a TN visa, how the TN visa is obtained, how an application for extension of temporary stay can be made, and the NAFTA Professional Job Series List, please see http://travel.state.gov/visa/tempvisitors_types_temp_nafta.html

[34] Under the provisions of NAFTA, the petition requirements for Mexican non-immigrant professionals ended at midnight on December 31, 2003.

[35] 9 FAM §41.59 N6.

[36] 9 FAM §41.59, N11.

[37] If the employer chooses to extend the foreign national's

TN status for an additional year, the foreign national will need to apply for a new TN admission at the Canadian or Mexican border. If the foreign national or company would rather process the TN extension in the U.S., he or she can only do so through the appropriate USCIS Service Center.

[38] 8 C.F.R. §214.2(o)(1)(ii)(A)(1).

[39] 22 C.F.R. §41.31(b)(1).

[40] 22 C.F.R. §41.31(b)(2).

[41] 9 FAM §14.31, N.5.

[42] Pub. L. No. 107-56, 115 Stat. 272 (USA Patriot Act).

[43] For more details, see http://travel.state.gov/visa/temp/without/without_1990.html (current as of February 19, 2007). .

[44] Public L. No. 99-603, 100 Stat. 3359

[45] 8 C.F.R. §274a.12(b)(1) to (2).

[46] For the list of identity and employment authorization documents, see 8 C.F.R. §274a.2(b)(1)(v).

[47] INA §274A; 8 U.S.C. §1324a

[48] INA §274A(e)(4)(A), 8 U.S.C. §1324a(e)(4)(A)

[49] INA §274A(e)(5), 8 U.S.C. §1324a(e)(5)

[50] INA §274A(f), 8 U.S.C. §1324a(f)

[51] INA §274B(a)(1), 8 U.S.C. §1324b(a)(1)

[52] An employer may not limit its hiring policy to citizens or permanent residents but it may limit its hiring policy to persons with current employment authorization or even to IRCA protected individuals provided such a policy does not lead to national origin discrimination. Protected individuals under IRCA for citizenship status discrimination are U.S. citizens, permanent residents, temporary residents, refugees, and asylees. INA §274B(a)(3), 8 U.S.C. §1324b(a)(3).

[53] INA §274B(a)(6), 8 U.S.C. §1324b(a)(6).

[54] Depending on the temporary visa's maximum period of stay and the type of employment visa the foreign national currently holds, the company may need to devote approximately three years to obtaining the green card.

[55] The rationale here is that foreign nationals who meet the stringent EB-1 requirements would not be displacing qualified U.S. workers because they are at the very top of their fields and thus are members of an elite group of experts.

[56] A labor certification is not required for national interest waiver applications in the EB-2 category.

[57] The EB-1 Individuals of Extraordinary Ability visa is not limited to previous O-1 visa holders. Any non-immigrant visa holder can receive a green card based on this first preference if he or she has the required credentials.

[58] 8 C.F.R. §204.5(h).

[59] 8 C.F.R. §204.5(h)(3)(i) to (x).

[60] 8 C.F.R. §204.5(i)(3).

[61] 8 C.F.R. §204.5(i)(2).

[62] 8 C.F.R. §204.5(j).

[63] 8 C.F.R. §204.5(k)(2).

[64] INA 203(b)(2)(B)(i) and 56 Fed.Reg. 60900 (Nov. 29, 1991).

[65] Int. Dec. 3363 (Comm'r 1998).

[66] For more information, please see http://workforcesecurity.doleta.gov/foreign/perm.asp

[67] The processing time for the Adjustment of Status application vary dramatically by Service Center but can take anywhere from one to three years. While the Adjustment of Status application is pending, the foreign national and his or her immediate family members may file other forms to work in the United States and travel abroad. Specifically, the foreign national and all family members over the age of 14 may file a Form I-765, Application for Employment Authorization, to work in the United States for any employer. The USCIS now allows the I-765 form to be filed online. The Form I-131, Application for Travel Document, allows the foreign national and all family members to travel abroad. Before the foreign national and family members leave the U.S., the USCIS must approve their Form I-131 applications and issue travel documents for them to present at the port of entry upon their return to the U.S. An exception to this advance parole requirement applies to adjustment applicants traveling with valid H-1B or L-1 visas. See Glossary of Terms for definition of "advance parole requirement".

[68] It will take time for the foreign national to actually receive the green card in the mail. During that time, the

foreign national will be able to take his or her I-485 approval notice to the local USCIS office to be fingerprinted and receive a temporary green card known as the I-551 stamp. The I-551 stamp is usually valid for one year and can be renewed if necessary.

[69] 8 U.S.C. §1154(j); INA §204(j).

[70] Excerpted from: Delivering Strategic Solutions by Cynthia A. Binns, The Glidden Company – Originally presented at ACC's 2000 Annual meeting