

U.S. IMMIGRATION LAW FOR THE INTERNATIONAL BUSINESS PERSON

INTRODUCTION

Border and immigration regulations are often confusing to those wishing to enter the United States on business. This pamphlet introduces U.S. Immigration Law as it relates to brief business trips, establishment of a U.S. branch of a foreign business, investment, or international trade in the U.S., and employment by a U.S. company. In this regard, there are five commonly used categories of temporary (nonimmigrant) business visas: B, E, H, L and O plus the TN visa (which is available to Canadian and Mexican citizens only). Additionally, there are categories of permanent resident (immigrant) visas based on offers of U.S. employment or investment in a new U.S. business. Permanent resident visas may also be available if the proper family relationship with a U.S. citizen or permanent resident exists.

The key to obtaining any of these visas is careful advance planning. An experienced immigration lawyer can effectively aid in determining the best visa based on your particular situation. Consultation with a knowledgeable immigration lawyer before setting up U.S. operations or applying for a visa is vital and may save considerable time, expense, and inconvenience.

TEMPORARY BUSINESS VISAS

B-1 Visa Visitors for Business

The B-1 status is a temporary nonimmigrant visa granted to the individual who wishes to conduct limited business transactions in the United States for a non-U.S. employer. Employment in the U.S. is not permitted with this visa. The applicant must show clear ties with his home country, a specific return date, and an acceptable reason for making his trip to the United States. Approved B-1 activities include: taking orders for goods purchased and manufactured abroad, negotiation of contracts, consultations with business associates, participation in professional or business conventions, independent research, attendance at board meetings, litigation, and organizing or staffing of a U.S. business by a principal. In certain circumstances, after-sales service of equipment purchased from abroad is also permissible B-1 business activity:

- **Application:** Canadian citizens may apply for B-1 entry at any U.S. Port of Entry where they must answer the Customs and Border Protection Officer's questions about their business activities. Application by nationals of other countries is made directly with the U.S. Consulate in their home country. B-1 status is usually granted for shorter entries to the U.S. with the possibility of extensions.
 - A candidate for B-1 status should not drive to the border and tell the inspector that he is a B-1; the inspector will think that he is trying to tell the inspector that he

knows more about immigration law than does the inspector. The proper way to seek B-1 status is to proceed to the border and wait for the inspector's questions. Answer them truthfully keeping your answers as short as is reasonably possible. The inspector will waive you through if he believes the B-1 criteria are satisfied.

E-1 and E-2 Visas Treaty Trader and Treaty Investor

The E visas are commonly called "Treaty Trader" (E-1) and "Treaty Investor" (E-2) visas. They are only available to nationals of those countries that have reached a qualifying agreement with the U.S. In addition, the visa applicant must meet specific criteria regarding investment or international trade in goods and/or services. There are about 50 countries, including Canada, whose nationals may obtain E visas. Qualifications for these visas are complex in nature; therefore, it is highly recommended that the advice of an immigration lawyer be obtained in determining whether the E visa may be an option.

- **Application:** Prospective E visa holders generally apply at the U.S. Consulate in their country of nationality or current residence. The initial visa may be issued for up to five years. Renewals can normally be obtained indefinitely if the requirements for the E visa remain satisfied.

H1-B AND H2-B Visas Temporary Workers

Employers wishing to employ foreign nationals in the U.S. on a temporary basis can utilize these visa options. The H1-B (specialty occupation) petition must show that the temporary worker is qualified and has been offered a position in a specialty occupation requiring theoretical and practical application of a body of highly specialized knowledge. Usually, a college degree is required. The H2-B visa is available for a worker in a seasonal or intermittent position where no U.S. workers are available to perform the services. Both H1-B and H2-B visas require clearance from the Department of Labor.

- **Application:** The U.S. employer must obtain appropriate documentation from the Department of Labor and then petition the Department of Homeland Security on behalf of the temporary foreign worker. Upon approval, the beneficiary may complete final processing with a U.S. Consulate abroad. For Canadian citizens, final processing takes place at a U.S. Port of Entry. H1-B visas may be issued up to three years initially with extensions available up to a maximum of six years. H2-B visas are issued up to one year.

L-1 Visa Intracompany Transferee

This option is available to an employee who has worked for at least one out of the last three years for a company abroad as an executive, manager, or in a capacity involving "specialized

knowledge”. The employee can then be transferred to a U.S. subsidiary or affiliate if the U.S. position is also executive, managerial, or involves “specialized knowledge”. The L-1 application process involves thorough documentation of the businesses in question and the individual’s position and skills.

- **Application:** The U.S. company must petition the Department of Homeland Security on behalf of the intracompany transferee. Final visa processing occurs at the U.S. Consulate in the home country, or, for Canadians, at a U.S. Port of Entry. The L-1 visa may be granted for an initial period of up to three years. For a new “start-up” U.S. business operation, the L-1 transferee will be granted a visa for an initial one-year period. Extensions are available up to a maximum stay of seven years. In certain circumstances, this visa may be converted to permanent resident status if the holder’s intent changes and other requirements can be met.

O Visa Extraordinary Ability

Persons who have demonstrated extraordinary ability in the sciences, the arts, education, business, or athletics may be eligible for the O visa. The O visa is intended for those persons who have risen to the top of their field and have received national or international acclaim.

- **Application:** A petition must be filed with the Department of Homeland Security. Upon visa approval, the beneficiary may complete final processing with a U.S. Consulate abroad. In the case of the Canadian citizens, final processing may take place at a U.S. Port of Entry.

TN Visa Treaty NAFTA Professional

The TN option is available only to Canadian and Mexican citizens entering the United States to work for a U.S. employer in a profession or occupation designated by the North American Free Trade Agreement (NAFTA). More than 60 approved professions are listed and most of them require, at minimum, a bachelor’s degree. The TN visa applicant must document Canadian or Mexican citizenship, appropriate credentials, and an offer of professional employment in the U.S.

- **Application:** Canadians apply at major U.S. Ports of Entry. Mexicans apply at a U.S. Consulate. The TN holder will be admitted to the United States for an initial three-year period. Extensions of TN status may be granted in three-year increments, with no ceiling to the total number of years one may qualify for TN status.

PERMANENT RESIDENT VISA

-“Green Cards”-

Immediate relatives, including spouses, children (under 21 and unmarried), and parents of U.S. citizens over 21 are eligible for permanent resident status, which allows them to be gainfully employed in the U.S. Availability in this category is unlimited and without a waiting period.

An allocation of permanent resident visas is available to sons, daughters, and siblings of U.S. citizens, and to spouses and unmarried sons and daughters of permanent residents. The time needed to obtain one of these visas varies greatly depending on the specific family relationship and alien’s country of origin. Backlogs exist in many quota visa categories.

A substantial number of permanent resident visas have been set aside for aliens based on employment in the United States. One important category provides visas for priority workers including multinational executives and managers. An executive or manager who qualifies for an L-1 visa may also be eligible for permanent resident status under this category once his U.S. employer has been doing business for more than one year.

Other categories provide visas for professionals skilled and other employees. In these categories, the employer generally must obtain labor certification from the Department of Labor to show that no U.S. worker can be found to fill the applicant’s position. The employer then petitions the Department of Homeland Security on the alien’s behalf, and often final processing takes place at a U.S. Consulate in the alien’s country.

Immigrant visas are also available for investors who invest at least \$1,000,000 in a new U.S. business that creates employment for 10 or more U.S. workers. If the business is located in designated rural areas or areas of high unemployment, an investment of \$500,000 or more may suffice.

DERIVATIVE CITIZENSHIP

Those with a U.S. citizen parent or grandparent often qualify as a U.S. citizen by derivation, although they were born abroad.

CONCLUSION

Immigration matters are complex, often requiring legal advice. This brief overview is intended to provide you with general information on the various U.S. immigration options available to the international businessperson. If during the planning process you discuss your particular situation with a knowledgeable immigration lawyer, you will be better prepared to achieve your goals. Effort in this direction may save you considerable time, money, and inconvenience in your future U.S. business dealings.

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