Business Immigration

ON THE FRONT LINES
OF WORKPLACE LAW™

BUSINESS IMMIGRATION

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This booklet should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult your lawyer concerning your particular situation and any specific legal questions you may have. Employers are specifically encouraged to consult an attorney to determine whether they are subject to other unique state requirements that extend beyond the scope of this booklet.

Overview

Every year, hundreds of thousands of foreign nationals enter the U.S. to work or join family members. Individuals who enter the U.S. for employment include managers, executives, professionals, skilled workers, professors, researchers, seasonal workers, agricultural workers, and a host of others. Family members may enter the U.S. as the spouse or child of a U.S. Citizen or Permanent Resident. Siblings of U.S. Citizens may also obtain permission to live in the U.S. as permanent residents. Each foreign national who enters the U.S., whether based on employment or a family relationship, first must obtain authorization, usually in the form of a visa stamp in his or her passport. This booklet provides an overview of the various types of temporary employment visa categories currently available and also describes the various types of employment and family-based permanent resident options and processes.

U.S. employers are required to ensure that all employees, including foreign nationals and U.S. workers, are eligible to work in the U.S. under the Immigration Reform and Control Act of 1986 (IRCA). All employees hired after November 6, 1986 must complete a Form I-9 and produce documents verifying their identity and work authorization. The federal agencies charged with enforcing IRCA are stepping up efforts to ensure employer compliance. This booklet provides a summary of IRCA and E-Verify requirements.

In March 2003, the Immigration and Naturalization Service (INS) was reorganized and reformed under the Department of Homeland Security (DHS). The topics covered in this booklet fall within the jurisdiction of two DHS divisions: 1) the U.S. Citizens and Immigration Services (USCIS); and 2) Immigration and Customs Enforcement (ICE). USCIS is responsible for visa benefits and related services and ICE is responsible for enforcing immigration laws in the U.S., including IRCA requirements.

Employment Verification And Sanctions

IRCA enlists U.S. employers in the federal government's efforts to enforce the nation's immigration laws. IRCA imposes several requirements upon employers, with violations punishable by civil fines and criminal sanctions. Specifically, IRCA makes it unlawful for you to:

- knowingly hire or continue the employment of any person hired after November 6, 1986 who lacks authorization to work in the United States;
- hire any person (after November 6, 1986) without verifying that individual's identity and employment eligibility;
- discriminate in hiring and firing decisions on the basis of citizenship status (except under very narrow restrictions);
- discriminate on the basis of national origin;
- knowingly counterfeit or alter a document for the purpose of satisfying any immigration-related requirement; or
- knowingly use or accept any false document for the purpose of satisfying any immigration-related requirement.

Reform legislation enacted in 1990 added new provisions to strengthen IRCA's prohibitions against discrimination. As a result, you cannot 1) require an employee to present more or different documents than are minimally required for the employment verification process; 2) refuse to honor documents presented by an employee that reasonably appear to be genuine and that relate to the person; or 3) specify which documents an employee must present to prove identity and/or employment eligibility. These prohibited practices are commonly known as "document abuse."

Employment eligibility verification is accomplished by completion of Form I-9, a form designated specifically for this purpose. The employee completes basic identifying information and attests to his or her immigration status in Section 1 before starting work. The employer must then examine the new hire's documents and certify in Section 2 within three business days after the employee's start date that the documents appear to: 1) be genuine; 2) relate to the individual in question; and 3) authorize the employee to work in the United States. Any document that contains an expiration date must be current and unexpired at the time that the I-9 form is completed.

The law requires that employees be allowed to select the documents they wish to present to verify identity and employment authorization. The documents presented must be on the List of Acceptable Documents, must be the originals, and must be unexpired. While you may photocopy documents presented by employees you are not required to do so. It is important to ensure that you are using the current version of the I-9 form and that you use the appropriate form for your location (e.g., the Spanish language version of the form is only for use in Puerto Rico.

The current version of the I-9 form (which includes the list of acceptable documents) is available on the U.S. Citizenship and Immigration Services (USCIS) website at www.uscis.gov. The employer is responsible for ensuring that the I-9 forms are completed in a timely manner, are completed properly, and that the forms are retained in accordance with IRCA requirements. Section 1 of the I-9 form must be completed by the employee no later than the date that employment starts. Section 2 must be completed by the employer representative no later than the third business day after the start date.

An I-9 form is required for each employee hired after November 6, 1986. Employees hired before that date are "grandfathered" and an I-9 form is not needed for these persons so long as the individual's employment is "continuing" in nature. For example, this means that authorized leaves of absence, brief

interruptions in employment, transfers to other facilities, resumption of seasonal employment and similar situations do not generally trigger the verification requirement. True independent contractors are not subject to the I-9 form verification requirement. To reduce the risk of possible liability, however, you will often want to ensure that even your contract employees are lawfully working in this country.

When an employee's work authorization has an expiration date, you are required to "reverify" his or her employment authorization no later than the date that the prior work authorization expires. If the employee cannot provide you with proof of his or her authorization to work beyond that date, generally you may not continue to employ that person. In some cases, such as work authorization issued under Temporary Protected Status (TPS) or under F-1 STEM OPT, you may be able to continue to employ the individual even though they are not able to produce a new original employment authorization card. In order to re-verify an employee's work authorization, you may complete a new I-9 form. In the alternative, you may use Section 3 of the original I-9 form but only if it is the current valid version of the I-9 form and the original start date of employment was no more than three years prior to the date of the re-verification. List B identity documents never need to be re-verified, even if they have an expiration date that expired after the original acceptance of the document to complete the Form I-9. Likewise, Permanent Resident Cards and U.S. Passports and U.S. Passport Cards should not be re-verified when they expire, so long as they were valid at the time they were accepted to complete the Form I-9.

While an individual remains employed by your company, you must maintain an I-9 form for that employee in your files (unless he or she was hired before November 7, 1986). Once an employee is terminated, you must retain that employee's I-9 form in your files for: 1) three years from the date the employee originally started to work; and 2) one year after employment terminates. Once the later date of those two dates is reached, you can purge the I-9 form for the terminated employee.

Officials of the USCIS, ICE, and others have authority to conduct inspections of an employer's I-9 forms. Generally, an I-9 form inspection is initiated when ICE issues a Notice of Inspection (with or without a subpoena). In almost all cases, you are entitled to three days notice prior to the inspection – this is time you should use to review your forms and prepare for the inspection. If it is determined that you have substantive or technical errors on your I-9 forms that cannot be corrected (such as late completion errors), you may be assessed a fine based on the fine schedule in effect at the time of the assessment.

If it is determined that you knowingly hired or continued to employ individuals who were not authorized to work in the U.S. or discriminated on the basis of citizenship status or national origin, you may be ordered to pay fines based on the fine schedule in effect at the time of the investigation. Criminal penalties may be imposed against an employer convicted of engaging in a "pattern or practice" of knowingly hiring unauthorized workers in violation of the law.

The prohibitions against discrimination, including the document abuse provisions, are enforced by the Department of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). OSC also has the power to inspect I-9 forms to ensure that an employer has not over-documented employees or specified which document an employee must present. OSC functions much like the Equal Employment Opportunity Commission (EEOC) in investigating and prosecuting alleged violations of IRCA's discrimination prohibitions. The penalties for IRCA discrimination violations may include backpay and other remedial measures in addition to the fines listed above.

E-Verify is a web-based system that allows employers to check the work authorization for newly hired, rehired, and, in limited circumstances, existing employees. While use of E-Verify is voluntary for many employers, several states have passed laws requiring certain employers to use E-Verify. Additionally, some employers may be required by federal law to use E-Verify under a federal contract.

Once an employer has enrolled in the E-Verify program, which includes signing a Memorandum of Understanding to share data with the DHS and the Social Security Administration (SSA), the employer must start verifying all newly-hired or rehired employees through the system. E-Verify does not relieve an employer of the obligation to complete a Form I-9 for each newly hired employee; rather the system provides additional verification of the employee's authorization to work in the United States. To learn more about E-Verify or to enroll in the system, please visit the USCIS website at www.uscis.gov/e-verify.

Immigration Opportunities And Categories

U.S. immigration law presumes that every foreign national entering the country intends to stay here permanently. Thus, most foreign nationals coming to the U.S. must demonstrate that they intend only a temporary visit. The law distinguishes between permanent residence (immigrant) visas and temporary (non-immigrant) visas. Visas permit an individual to come to the U.S. border and seek entry in a particular status or classification. Each visa category has different eligibility requirements and benefits.

Visas are valid for varying lengths of time depending on the visa category and "reciprocity" rules with the foreign national's native country. Visa validity marks the period during which the foreign national may apply for admission to the United States. If admitted, the foreign national will be granted a period of authorized stay by means of an Arrival/Departure (Form I-94) record either in electronic format (accessible at https://i94.cbp.dhs.gov/I94/#/home) or a white card stapled in the passport. The "Admit Until Date" is the date that establishes when the individual's authorized stay will expire. The period of authorized stay does not always coincide with the visa validity period.

There are five broad categories of employment-based permanent residence and more than 20 different non-immigrant work visa designations. A complete list of the current non-immigrant work visa categories can be found in Appendix 1 at the end of this booklet. Some of the more

common employment-related visa categories are explained below, followed by a discussion of the basics of permanent residence.

Non-immigrant Work Visas

Different types of nonimmigrant (temporary) visas are issued for different purposes – travel, business, study, employment, etc. Specific documentation and evidence is necessary to meet the requirements of each different visa category.

Not all temporary visas authorize employment. It is therefore possible for a foreign national to be in the U.S. lawfully, but not be allowed to work. In addition, nearly all employment-related non-immigrant visas authorize employment only in a specific position and for a specific employer. Any other employment is prohibited. It is usually possible for the foreign national to change visa categories and/or employment upon USCIS approval of a visa petition filed by the foreign national or the employer. Generally, dependents (spouses and children under the age of 21) are authorized to accompany the principal foreign national to the U.S. Certain non-immigrant visa categories allow dependent spouses to apply for employment authorization.

A. B-1 Business Visitor

This visa category is commonly used by a foreign employer to send a foreign national to the U.S. to perform a brief assignment. The B-1 visa does not authorize employment by a U.S. employer. For example, this category is frequently used by salespeople to call upon U.S. customers, by managers or executives attending conventions or business meetings in the U.S., by technical personnel servicing equipment or goods sold to U.S. entities, etc. The key requirement is that the foreign national cannot receive payment from a U.S. employer for services rendered during a B-1 visit. The B-1 visa authorizes the foreign national to stay for the duration of the temporary assignment but no more than six months; an extension of stay beyond six months is possible but difficult to obtain.

Business visitors who are citizens or nationals from certain countries may be able to travel to the United States using the Visa Waiver Program (VWP). VWP allows eligible citizens or nationals from certain countries to travel to the United States for tourism or business and stay for 90 days or less without a visa. Individuals eligible to travel on the VWP may apply for a visa, if they prefer to travel using a visa. Not all countries participate in the VWP, and not all travelers from VWP countries are eligible to use the program.

The countries currently eligible for participation in the VWP program and information about qualifying for the VWP can be found on the U.S. State Department website at http://travel.state.gov.

Individuals wishing to travel using the VWP are required to obtain authorization prior to traveling from the DHS's Electronic System for Travel Authorization (ESTA) system. ESTA is a free, automated system used to determine whether an individual is eligible to travel to the U.S. under the VWP. ESTA was implemented to provide added security to the VWP. ESTA allows the DHS to determine whether an individual may travel using the VWP and whether the individual poses a security risk. ESTA applications may be completed online at https://esta.cbp.dhs.gov any time before traveling. The ESTA system requires the traveler's biographical data including name, birth date, and passport.

Individuals wishing to travel to the United States on the VWP must also meet specific requirements regarding their passports. Individuals not meeting the requirements must either obtain a visa to enter the United States or obtain a new passport meeting the requirements.

B. E-1 Treaty Trader And E-2 Treaty Investor

The E visa category allows foreign nationals to enter the U.S. to manage a foreign entity's "substantial" trade or investment in the United States. This visa category is frequently used by multi-national companies to transfer managers, executives,

and key personnel to U.S. operations. E visas require the existence of a friendship, navigation, and commerce or bilateral investment treaty between the U.S. and the foreign entity's country. The foreign national must be a citizen of the treaty country, and the foreign entity must be owned (or majority owned) by citizens of the treaty country. The E visa permits an initial period of authorized stay of two years, but E status can be renewed indefinitely so long as the requisite treaty relationship and qualifying trade/investment continue.

C. E-3 Australian Citizen Professional

The E-3 category allows Australian nationals to work in the U.S. in specialty occupations. Specialty occupations are those which are professional in nature and require at least a baccalaureate degree in a specific, relevant field. The foreign national must possess the relevant baccalaureate degree or the equivalent in education and working experience. E-3 visas are approved for a period of two years and are renewable indefinitely. A statutory quota system limits the number of new E-3 visas granted during each fiscal year.

D. H-1B Specialty Worker

The H-1B visa category allows a foreign national to fill a specialty "professional" position, i.e., one that requires at least a baccalaureate degree in a specific, relevant field. The foreign national must possess the relevant baccalaureate degree or the equivalent in education and working experience. The H-1B visa allows for an initial period of three years of authorized employment and a maximum period of six consecutive years of authorized employment (although the six year period may be extended under certain circumstances). The employer may be required to return the foreign national to his or her native country in the event that employment terminates during the validity period of the visa approval.

The employer must compile documentation and obtain approval of a Labor Condition Application (LCA) from the U.S. Department of Labor before submitting an H-1B petition to the USCIS. The LCA attestation requirements include, among other things, agreeing to pay the prevailing wage or the actual wage, whichever is higher, and agreeing to provide the foreign national the same benefits as those offered to U.S. workers.

H-1B visa holders may take advantage of a "portability" provision that allows them to begin working for a new employer once the new employer's H-1 petition is filed (rather than waiting several months for the petition to be approved). Of course, the new employer must comply with the attestation requirements and file a bona fide petition.

A statutory quota system limits the number of new (meaning for those individuals who have never held H-1B status or not held it within the six year period prior to the new petition being submitted for processing) H-1B visas granted during each fiscal year. Institutions of higher education, non-profit research organizations, and organizations affiliated with institutions of higher education generally are exempt from the annual quota. Extensions of H-1B status are also generally exempt.

E. H-1B1 Chile And Singapore Professionals

The H-1B1 category allows citizens of Chile and Singapore to work in the U.S. in specialty occupations requiring theoretical and practical application of a body of specialized knowledge and the attainment of a bachelor's degree or the equivalent in the specific specialty. Application of the H-1B1 visa can be made directly at the U.S. Consulate without prior approval from the USCIS. Admission is in one-year increments; indefinite extensions in one-year increments may be granted. An annual quota system limits the number of Chile H-1B1 visas to 1,400. Singapore H-1B1 visas are annually limited to 5,400.

F. H-2 Temporary Worker

There are two kinds of H-2 visas: H-2A visas for temporary agricultural workers and H-2B visas for other temporary workers. In both cases, the employer must demonstrate that the foreign national will only be needed for a temporary or seasonal period, i.e., the job itself must be temporary in nature. In addition, the employer must undertake an extensive documentation process to obtain a labor certification from the DOL. This process includes positive recruitment efforts

intended to prove that U.S. workers are not available for the job in question. Generally, H-2 status is only valid for the period of the employer's temporary need. H-2B visas are subject to a fiscal year quota limiting the number of visas issued each year.

G. H-3 Trainee

The H-3 category is for foreign nationals coming to the U.S. to receive training unavailable in their native country. The employer providing the training must document the existence and content of a formal training program, which may include some on-the-job training, provide evidence that the foreign national is unable to obtain the training in his or her home country, and that the training will benefit the foreign national when he or she returns home. The foreign national cannot displace a U.S. worker and should not work for the U.S. employer once the training program concludes.

H. J-1 Exchange Visitor

This visa category is a broad category used by students, visiting researchers, lecturers, business trainees, summer camp counselors, au pairs, and others. Business trainees may qualify for up to 18 months of on-the-job training or employment, except for trainees in the agricultural, hotel, and tourism fields which are generally limited to 12 months. The foreign national must be sponsored by an officially designated exchange visitor program sponsor, but employers can often coordinate sponsorship with an academic institution or "umbrella" program. Umbrella program sponsors work with employers to place exchange visitors for a fee.

The J-1 visa can subject the foreign national to a two year home country residence requirement if the foreign national's visit is funded by the native country or a U.S. government agency, if the foreign national's skills are in short supply in the native country, or if the J-1 foreign national is coming to the U.S. to receive graduate medical training. A foreign national subject to the two year residence rule must spend two full years in the native country or obtain a waiver of that

requirement before being eligible for H-1, L-1, or permanent residence status.

I. L-1 Intra-Company Transferee

The L-1 visa category permits transfer of managers, executives, and persons with specialized skill/knowledge from a foreign entity to a related affiliated U.S. employer. The foreign national must have been employed by the foreign entity in the requisite capacity for at least one full year during the three years preceding the transfer and must be coming to work in a qualifying position with the U.S. employer. The L-1 visa authorizes up to seven years of employment for executives and managers, and up to five years of employment for specialized knowledge personnel. L-1 managers and executives are eligible for a streamlined permanent residence process.

Employers who make frequent use of the L-1 category may qualify for "blanket" L-1 authorization. In effect, this amounts to pre-qualification for L-1 status and reduces the procedural burden associated with key transfers.

J. O-1 Extraordinary Alien

The O-1 visa category is intended for foreign nationals of extraordinary ability in the arts, sciences, education, business, or athletics. The prospective employer must demonstrate a specific, limited need for a foreign national of extraordinary ability, and the foreign national must be able to document national or international renown in the relevant field of endeavor. The employer must also obtain a consultation, if applicable, from a peer group or labor organization in the field which confirms the foreign national's reputation and the employer's need for the foreign national's services. The return transportation requirement applicable to H-1 professionals also applies to O-1 foreign nationals. O-1 status is generally valid for three years and may be extended.

K. P Performing Artist

The P visa category is designed to permit entry of foreign-national performers in the arts or athletics, or foreign nationals who are internationally known artists, entertainers, or athletes coming to the U.S. for a specific event or tour. P-2 visas are available for foreign national performers participating in a reciprocal cultural exchange program. P-3 visas are used by coaches and trainers accompanying P artists or athletes. The foreign national must demonstrate an international reputation. Like the O-1 visa, the P visa categories generally require a consultation from a peer group or labor organization to confirm the foreign national's reputation, and the return transportation requirement applies if the employment ends prematurely.

L. Q Cultural Exchange Visitor

The Q visa permits entry of foreign nationals coming to an approved international cultural exchange program. This category is used to permit employment of foreign nationals in culturally unique exhibits or attractions. Q foreign nationals are permitted up to 15 months of employment in the cultural exchange program.

M. TN NAFTA Treaty Professional

NAFTA incorporated the provisions of the U.S.-Canada Free Trade Agreement, and made similar provisions applicable to Mexicans seeking employment in the United States. Canadian and Mexican citizens who are employed in defined occupations can obtain TN visas that will authorize U.S. employment in three year increments. Canadian TN applicants may apply at the border simply by presenting proof of citizenship, proof of an academic degree in the qualifying profession, and an offer of employment from the U.S. employer. Mexicans seeking TN status must present the same documents at a U.S. Consulate to obtain a TN visa stamp and then may apply for entry at the border.

N. F-1 & M-1 Students

Foreign students pursuing an education in the U.S. generally utilize the F-1 (academic) or M-1 (vocational) student visa category. Upon completion of a recognized degree program,

a foreign student may qualify for a period of on-the-job practical training (OPT). For example, academic students completing a baccalaureate degree program are often eligible for up to 12 months of practical training. The student must apply to USCIS for permission to engage in practical training, which must be in a field related to the student's degree program.

Because practical training is fairly easy to obtain, in many cases it will be the ideal means of employing a foreign national professional. Once the foreign national begins practical training, the employer can consider sponsoring the foreign national for H-1B status. OPT may be extended for an additional 24 months for F-1 visa students with a degree in science, technology, engineering, or mathematics who are employed by businesses enrolled in the E-Verify program.

Students in degree programs may sometimes work pursuant to "curricular practical training" or a work-study program. Curricular practical training is approved by the school's foreign student advisor and does not require prior government approval. Students who use up 12 or more months of curricular practical training become ineligible for post-graduate practical training.

Employment Authorization Not Requiring Employer Sponsorship

Spouses of E, L, and certain H-1B visa holders are eligible to apply for employment authorization. E and L dependent spouses are eligible to apply based on their status. Spouses of H-1B visa holders who are in H-4 status may apply for employment authorization if the H-1B spouse has an approved I-140 Immigrant Petition and the spouse is maintaining a valid H-1B status. Dependent spouses in E, L, or H-4 status may work for any employer for the duration of the validity period on the USCIS-issued employment authorization card.

Deferred action for childhood arrivals (DACA) is also available for certain individuals who came to the U.S. before their 16th

birthday. If they have continuously resided in the U.S. since June 15, 2007, and meet other guidelines, they may be eligible to apply for consideration of deferred action of removal proceedings and a two-year employment authorization card. DACA individuals may work for any employer for the duration of the validity period on the USCIS-issued employment authorization card.

Immigrant Visas

Foreign nationals who intend to reside in the U.S. indefinitely may wish to obtain permanent residence. Foreign nationals may apply for permanent residence on the basis of a family relationship to a U.S. citizen or permanent resident, or, they may seek permanent resident status on the basis of current or prospective employment. Other foreign nationals may qualify for permanent residence by virtue of a grant of asylum or admission as a refugee. To promote greater cultural diversity, the law occasionally provides for random lotteries which can result in permanent residence status as well.

In family and employment-based cases, the sponsor files a visa petition with USCIS seeking to classify the foreign national in the desired category. Unlike non-immigrant visas, which generally have no quotas limiting visa availability, immigrant visas are subject to two kinds of quota systems. First, there is a quota created by the annual allocation of visas to different permanent residence categories. Second, there is a per-country quota system designed to ensure that foreign nationals from no single country consume too many of the visas allocated in any category.

The two quotas combine to make it extremely difficult to immigrate in some categories, and foreign nationals from certain countries (such as India) can face a delay of several years before visas are available in certain categories. Once the visa becomes available, the foreign national can apply for permanent resident status through consular visa processing at a U.S. embassy or consulate abroad, or, if the foreign national is already in the U.S., through adjustment of status.

Because the permanent residence procedures can take a considerable amount of time to complete, most employers seeking a foreign national's services will first seek a temporary work status for the foreign national. Once the foreign national is in the U.S. working pursuant to the non-immigrant visa status, the employer will then sponsor the foreign national for permanent residence.

If a foreign national is sponsored for employment-based permanent residence, the following conditions must be met: 1) the sponsoring employer must intend to employ the foreign national; 2) the position to be filled by the foreign national must be permanent, full-time employment; 3) the employer must have the financial resources to pay the foreign national's salary; and 4) the foreign national must meet the minimum requirements for the position. In addition, several categories of employment-based permanent residence require certification by DOL that no qualified U.S. workers are available to fill the position.

There are five major employment-based visa categories for immigrants, as well as a broad category of family-based visas. All are described below.

A. Priority Workers

There are three groups of foreign nationals who can qualify for Priority Worker status. Labor certification is not required for this category of permanent residence.

1. Aliens of Extraordinary Ability in Arts, Sciences, Education, Business, or Athletics

Generally, this sub-category is reserved for individuals of extraordinary talent and achievements such as Nobel laureates or recipients of internationally recognized prizes and awards but also may be available to foreign nationals who can show international or national acclaim in the field. In short, the foreign national must have risen to the top of his or her profession. Although this is an employment-based permanent residence

category, foreign nationals meeting this high standard need not have a firm offer of employment in the U.S. but can qualify solely on the basis of a promise to seek employment commensurate with their standing in the profession or field.

2. Outstanding Professors and Researchers

This sub-category is intended to permit academic and research institutions to hire the most qualified people regardless of citizenship status. The foreign national must have at least three years of experience in teaching and/or research and must be able to demonstrate an outstanding reputation in the field. In addition, the employer must demonstrate that the position requires the services of an outstanding teacher or researcher and that the foreign national will be filling a tenure or tenure-track position (or an indefinite position in a non-academic research center).

3. Intra-Company Transferee Managers and Executives

This sub-category recognizes that foreign companies with U.S. operations often prefer "home-grown" managers and executives in key positions in the U.S. operation. Thus, the standard for this category is the same as for the L-1 non-immigrant visa, i.e., the foreign national must have been a manager or executive for the foreign employer for at least one year during the three years prior to admission to the U.S. and must be filling a managerial or executive position with the related U.S. entity.

B. Professionals With Advanced Degrees And Aliens Of "Exceptional Ability" In The Arts, Sciences, Or Business

Foreign nationals applying in this category must have post-baccalaureate degrees or exceptional ability in a field relevant to the proposed employment. The foreign national must possess skills or knowledge which are necessary to the U.S. employer or will substantially benefit the U.S. prospectively. Labor certification is required but may be waived if the employment of the foreign national is in the "national interest."

C. Other Professionals And Skilled/Unskilled Workers

This is a "catch-all" category for other foreign workers desiring permanent residence. Professionals who lack an advanced degree but have a bachelor's degree in the relevant field of endeavor, skilled workers in jobs requiring at least two years of training or experience, and unskilled laborers qualify in this category. Labor certification always is required in this category.

D. Investors And Entrepreneurs

This category, which has an annual limit of 10,000 visas, was created to encourage business investment in the U.S. and provide employment opportunities for U.S. workers. In general, a foreign national seeking to qualify in this category must invest at least $1 million in a commercial enterprise which will create at least ten new jobs for U.S. workers. The investment amount may be as little as $500,000 in areas of high unemployment or in targeted job creation areas. Permanent residence is granted conditionally for the first two years; the conditional status is removed if the foreign national demonstrates that at least 10 U.S. workers are employed as a result of the qualifying investment. By placing the investment with an approved Regional Center, however, the investor is not required to show direct job creation.

E. Special Immigrants

This category is another "catch all" category which is principally used by foreign nationals who can demonstrate at least two years experience as a worker for a religious denomination that has a bona fide, non-profit organization in the United States. This category is also available for certain employees of international organizations and certain U.S. government employees employed abroad.

F. Family-Based Immigration

Permanent residence is also possible based upon a familial relationship to a U.S. citizen or permanent resident. Foreign nationals who are immediate relatives of U.S. citizens, i.e., a spouse or child (defined as under age 21), are granted a

preference and are not subject to any quota system. For all other types of family-based permanent residence, there is no labor certification requirement, but the categorical and per-country quotas apply. This can result in considerable delays before an immigrant visa is available in certain categories.

There are four major family-based permanent residence categories with quotas by category and country:

1. Unmarried Sons And Daughters Of Citizens

This category permits adult (21 years of age or older), single children of U.S. citizens to become permanent residents. Children under 21 years of age usually qualify as immediate relatives of U.S. citizens.

2. Spouses, Children And Unmarried Sons And Daughters Of Permanent Residents

There is often a waiting period of several years before a visa becomes available because of extremely high demand. Spouses and children receive 77% of the visas allocated, and unmarried sons and daughters (21 years of age or older) receive the remaining 23% of the allocation.

3. Married Sons And Daughters Of Citizens

This category is for married children of a parent who first became a U.S. permanent resident and later naturalized and became a U.S. citizen.

4. Brothers And Sisters Of Adult Citizens

This visa category is reserved for foreign nationals who are brothers or sisters of adult U.S. citizens.

For further information about these contents, please visit our website at www.fisherphillips.com, contact a lawyer in our Global Immigration Practice Group, or contact any office of Fisher Phillips.

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Immigrant Visa Categories

Employment-Based Immigration

1. Priority Workers
    A. Aliens of Extraordinary Ability in the Arts, Sciences, Education, Business, or Athletics
    B. Outstanding Professors and Researchers
    C. Intra-company Transferee Managers and Executives
2. Professionals with Advanced Degrees and Aliens of "Exceptional Ability" in the Arts, Sciences, or Business
3. Other Professionals and Skilled/Unskilled Workers
4. Investors and Entrepreneurs
5. Special Immigrants

Family-Based Immigration

1. Unmarried Sons and Daughters of U.S. Citizens
2. Spouses, Children and Unmarried Sons and Daughters of Permanent Residents
3. Married Sons and Daughters of U.S. Citizens
4. Brothers and Sisters of Adult U.S. Citizens

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Age Discrimination In Employment Act

Americans With Disabilities Act
(Employment Aspects)

Americans With Disabilities Act
(Public Accommodations)

COBRA

Employment Discrimination

Family Medical Leave Act

Fair Labor Standards Act
(Exemptions & Recordkeeping)

Fair Labor Standards Act
(Wage & Hour Provisions)

HIPAA

National Labor Relations Act
(Unfair Labor Practices)

National Labor Relations Act
(Union Organizing)

OSHA

Sexual Harassment

USERRA

WARN Act

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