



2024 HR Virginia Conference

Setting the Pace in Global HR: Business Immigration Strategies

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Governing Agencies

U.S. Department of Homeland Security (DHS)



- Citizenship & Immigration Services (CIS)
- Immigration & Customs Enforcement (ICE)
- Customs & Border Protection (CBP)

U.S. Department of State (DOS)



- Visa Services at Consulate Offices Abroad

U.S. Department of Labor (DOL)



- Info re Wages & Availability of U.S. Workers

U.S. Department of Justice (DOJ)



- Attorney General and U.S. Attorneys
- Immigration and Employee Rights Section (previously Office of Special Counsel for Immigration-Related Unfair Employment Practices)



Most Popular Non-Immigrant Visas and Work Documents

B-1 Visas for Business Visitors; VWP Visa Waiver Program for Business Visitors	E-1/E-2 Visas for Treaty Traders or Treaty Investors
H-1B Visas for Professionals in Specialty Occupations	Temporary Entry under USMCA (formerly NAFTA) – TN Professions
L-1 Visas for Multinational Transferees	Curricular Practical Training
O-1 Visas for Individuals with Extraordinary Ability or Achievement	Optional Practical Training (including STEM extensions)

H-1B Visas

Only 85,000 H-1B visas allowed per year:

- **65,000 – Regular Cap**
- **20,000 – Master’s Cap**

- Professionals in specialty occupations
- Initial admission 3 years (6-year maximum)
- Requires U.S. bachelor’s degree or equivalent
- Must pay actual or prevailing wage
- Random lottery
- Dual Intent visa
- Spouse cannot work in U.S.*

*There is a limited exception allowing spouses to obtain work authorization based on a pending Green Card case/sponsorship.

H-1B Visas



Key Points

▶ Specialty Occupation:

What qualifies as a “specialty occupation” can shift based on the President and the interpretation of the regulations.

▶ A U.S. college graduate on OPT most likely would need to go to H-1B; however, they would then likely not have a great Green Card case as their only experience would have been with that employer – thus it is experience we most likely would not be able to use.

Gold Medal Tips for H-1B Cases



Before making an offer, consider whether there is a viable case



Make sure all stakeholders with the business understand the time limitations

- If it is a “portability” case make sure they understand how much H-1B time is remaining
- Make sure the stakeholders understand the potential constraints of applying for a Green Card



If it is a new H-1B case make sure they understand that the lottery is indeed a lottery



Make sure the salary for the role is one that meets the prevailing wage requirements



If a case is not selected in the lottery:

- Try again – if the employee has time
- Explore cap-exempt possibilities, O-1 visa, partnering with cap-exempt organizations, employing the individual abroad, etc.

L-1 Visas

International Transfer of Qualified Workers

- Must have at least one year of qualifying experience in the three years preceding the transfer to the United States
 - Must have worked for a related company
 - Must have worked in either a “specialized knowledge” or managerial position
- Two Types of L-1:
 - L-1A: Manager or Executive in the U.S.
 - L-1B: Specialized Knowledge Employee in the U.S.
- Two ways to acquire L-1:
 - Blanket
 - Individual
- Dual Intent visa

L-1A:

Manager or Executive

The individual does not need to have been a manager or executive abroad; they could still get an L-1A if their qualifying experience was as a specialized knowledge employee



L-1B:

Specialized Knowledge Employee

- Available to individuals who are coming to the U.S. to serve in a “specialized knowledge” position
- What is “specialized knowledge?”

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.

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Technically, USCIS states that only one year of experience is required to qualify for L-1; however, USCIS often challenges and may deny L-1B cases where the employee's only experience with the employer is for one year. The theory behind this is that if Employee A works as an Engineer from March 11, 2022 through March 10, 2023 and the company then claims this is a specialized knowledge position that requires substantial specialized knowledge, USCIS may say that either: (1) Employee A spent a portion of time from March 2022 through March 2023 training, thus they have not served in a specialized knowledge position for a year or (2) it is not a specialized knowledge position because clearly anyone can pick it up fast and be able to contribute quickly.

Bottom Line: You need to have a convincing story, evidence, and background on how an L-1B employee developed their specialized knowledge, why it is unique, and why it is required for their current position and will be required for their future position.

Gold Medal Tips for L-1 Cases



Document all levels of training for L-1B cases



Give certificates for in-house training



Emphasize uniqueness of your products and processes



Give details re: managerial decisions for L-1A cases



Start immigration process early



Do not move household goods on a pre-visit



Avoid unchangeable travel plans before approval

O-1 Visas

Literally the Olympian Visa

- The O-1 visa is the “gold medal” for individuals with exceptional skills in sciences, arts, education, business, or athletics
- O-1A for sciences, education, business, and athletics
- O-1B for arts, motion pictures, and television
- O1 applicants must show a track record of excellence and international acclaim
- Most O-1 petitions must be submitted with a written advisory opinion from a U.S. peer group in the beneficiary’s area of ability. It is crucial to determine whether such a consultation letter is necessary and to understand the specific requirements of the relevant peer group.
- O-1 generally can be held for up to three years, but the period of admission is determined based on the time necessary to complete the event or activity for which the O-1 beneficiary was admitted (which could be less than three years).
- No limit on the number of extensions an O-1 beneficiary can receive.

O-1 Visas



Literally the Olympian Visa (cont.)

- Evidence of a pinnacle award (e.g., Olympic medal, Nobel Prize, etc.) or at least three of the following:
 - National or international prizes/awards.
 - Membership in associations requiring outstanding achievement.
 - Publications in major media or trade publications.
 - Participation as a judge of peers in the field.
 - Original contributions of significance.
 - Scholarly articles in professional journals or media.
 - Critical roles in distinguished organizations.
- High salary or significant remuneration.
- Comparable evidence accepted for non-conventional fields

E1/E2 Visas

- E-1 visa for substantial trade principally between the U.S. and treaty countries
 - Trade must be substantial – in goods or services
 - At least 50% of trade must be with the U.S.
 - More weight on trade volume than dollar value
- E-2 visa for investors developing operations in an enterprise with a substantial capital investment
 - Investment can be in cash, equipment, inventory, or intellectual property
 - No fixed minimum investment, but proportional to business size is key
 - Smaller businesses require higher percentage investment
 - Must show lawful source of funds
 - Funds must be at risk and irrevocably committed
 - Escrow arrangements are allowed pending visa approval
- Ownership requirement: at least 50% owned (and controlled) by nationals of a treaty country
- Can be individual or public ownership

TN Status or Visa

- TN nonimmigrant status allows professionals from Canada and Mexico to work in the United States
- Must be a citizen of Canada or Mexico
- Profession must qualify under the TN regulations
- Canadians are visa exempt, so they can apply at the border
- Mexicans must apply at an Embassy/Consulate for a visa and then enter the U.S.
- Can be indefinitely extended
- Not Dual Intent

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TN Professions:

- Accountant
- Architect
- Computer Systems Analyst
- Dentist
- Dietitian
- Economist
- Engineer
- Industrial Designer
- Mathematician
- Meteorologist
- Nurse
- Occupational Therapist
- Pharmacist
- Physician
- Psychologist
- Technical Publications Writer
- Zoologist
- Management Consultant – Generally NOT available to companies other than consulting companies

How a Foreign Employee Gets a U.S. Work Visa via Individual Petition



U.S. Employer Submits Petition to CIS Service Center in U.S.



Usually 2 to 4 Months Later: Receive Decision from CIS on I-797 Form (Faster with Premium Processing Fee)



Foreign Employee Presents CIS Approval Notice to Apply For Visa At U.S. Embassy Abroad



Visa Issuance: If application is approved, Consulate places U.S. visa in passport



Employee Requests Admission at U.S. Port of Entry

Electronic I-94 Record

Sample Electronic Form I-94

The screenshot displays the U.S. Customs and Border Protection website interface. At the top, the logo and text "U.S. Customs and Border Protection Securing America's Borders" are visible. Below this, there are two tabs: "Get I-94 Number" and "I-94 FAQ". The "I-94 FAQ" tab is selected. The main content area is titled "Admission (I-94) Number Retrieval". It shows the following information:

- Admission (I-94) Record Number: 19191919191
- Admit Until Date (MM/DD/YYYY): D/S
- Details provided on Admission(I-94) form:
 - Family Name: SMITH
 - First (Given) Name: JOHN
 - Birth Date (MM/DD/YYYY): 01/01/1990
 - Passport Number: P123456789
 - Passport Country of Issuance: India
 - Date of Entry (MM/DD/YYYY): 4/11/2013
 - Class of Admission: F1

For students in F and J status, Admit Until Date should be "D/S" for "Duration of Status"

Note: If Class of Admission does not match your visa status, notify the port of entry officer and/or the ISSO as soon as possible to get it corrected.

Immigration Considerations Related to Changes in Employment

- ▶ Changes may require amended immigration status prior to the change!
 - Job Title
 - Key Duties
 - Salary
 - Corporate Structure
 - Ownership
 - Worksite Location
- ▶ Termination of employment may require:
 - Notification to Government
 - (H-1B Only) Costs of Return Transportation abroad for the terminated employee

Gold Medal Tips for Visa Cases



Assess whether your company is willing to complete the sponsorship process



Ensure the stakeholders within the company understand the timelines and risks



Analyze the situation to determine if you have a case



Give details re: managerial decisions for L-1A cases



Maintain clear and concise communication with the potential employee and the operations team



Understand the requirements for the visa category and understand the evidence and information the company and the beneficiary will need to provide



Remember that spouses and children also need visas, so determine how your company will handle those situations

Strategic Immigration Management: HR Best Practices

- Embrace Technological Solutions: Deploy case management software, AI, and online tools to streamline processes
- Develop a Robust Immigration Policy: Develop and implement a policy on how your company will handle non-immigrant visa requests, Green Card sponsorships, visa renewals, etc.
- Clarity in Communication: Set expectations and develop a policy regarding communication with outside legal (if applicable)
- Centralization of Immigration Tasks: As much as possible, centralize the immigration-related tasks to ensure consistency, compliance, and efficiency in handling immigration matters
- Clear Definition of Roles: Make sure all stakeholders understand the immigration process who will be responsible for which aspect of the process
- Robust I-9 Compliance: Establish and maintain a thorough I-9 verification, retention, and training plan
- Preparedness for ICE/USCIS Visits: Stay ready for site visits with well-documented employee records and routine training of what to do
- Informed Employee-Specific Decisions: Understand individual immigration circumstances before making impactful decisions
- Legal Expertise Collaboration: Regularly consult with immigration lawyers for policy development and case complexities
- Ongoing Staff Education: Train HR and relevant staff on the latest in immigration regulations and best practices
- Continuous Policy Evolution: Keep immigration policies up-to-date with the legal landscape and organizational learnings

Immigration of the Future?

- Immigration is inherently political and the agenda is set by the Executive Branch
- More online filings will be available
- Higher filing fees
- I-9 audits will continue to increase
- Changes to Green Card allocation?? Possibly...



Q&A





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As the leader of the Business Immigration Law Team, Jimmy provides a wide array of legal services to employers and foreign employees seeking U.S. immigration benefits. His work includes numerous types of nonimmigrant visa cases, employment-based green card cases, and work before the U.S. Department of Labor in handling applications for permanent labor certification for hard-to-fill job positions. Jimmy communicates directly with clients and helps develop strategies that will meet an employer's business needs, consistent with the applicable requirements and regulations under U.S. immigration law.

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