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PRACTICE AREAS

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AMNESTY

Selecting the Best Work Visa for You and Your Family

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Not all Visas Have the Same Benefits

Employees may qualify for multiple types of nonimmigrant worker visas, but each visa comes with a different set of advantages and disadvantages, particularly if the employee intends to bring a spouse and/or children with him or her. Therefore, it is important for employees to strategically plan which type of visa will be the best for their families and for achieving their goals while they are in the United States.

For example, only some types of visas permit spouses of employees to work while they are in the country. For some families, it is not feasible for the spouse to accompany the employee if he or she cannot work. For others, it is a good opportunity for spouses to gain experience working in the US. But in order for spouses to receive work authorization, they must have a valid visa that permits them to work. If spouses work without proper authorization, they may be removed from the US and not permitted to re-enter the country for up to 10 years.

Work visas must be approved by US Citizenship and Immigration Services (USCIS). Certain types of work visas, including H1-B visas, also require labor certification from the US Department of Labor (DOL). Work visas are in high demand and the US government imposes caps on the number of some classes of work visas that may be issued each year. Thus, it is important for employees to begin the visa application process as soon as possible - which means they must begin researching the different types of visas and determine which one best fits their skill set, needs and family situation as early as possible.

H1-B Visas: Professional Workers

H1-B visas are available for specialty workers, which are defined as workers in occupations that require some degree of theoretical or



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practical application of specialized knowledge. Applicants must have a bachelor's degree, other advanced education degree or a combination of education and experience to qualify for this type of visa.

H1-B visas are one of the most popular types of visas requested by US employers for foreign workers. However, the government limits the number of H1-B visas issued each year and spouses of H1-B employees are not authorized to work while in the country. As of April 27, 2009, 45,000 H-1B visas have been applied for with an additional 20,000 petitions for advanced degree visas.

- Initial length of visa: up to 3 years
- Renewable: Yes, in 1 year increments up to 6 years total
- Annual cap: 65,000 with an additional 20,000 visas for those holding a US-issued Master's Degree or higher level degree
- Spouse authorized to work: No

L Visas: Intracompany Transferees

L visas permit US employers to transfer employees from overseas offices, divisions and branches of their companies to work in the United States. There are two classes of L visas: L-1A visas for managers and executives and L-1B visas for employees with specialized knowledge. In order for employees to be eligible for an intracompany transferee visa, they must have been employed for at least 1 year by the company's foreign branch continuously within the previous 3 years and meet the definitional requirements for manager, executive or specialized knowledge.

L visas are a popular alternative for US employers who are unable to retain H1-B visas for employees. Currently there is no cap on the number of L visas issued each year and they have the additional benefit of allowing spouses of employees to work while living in the United States.

- Initial length of visa: up to 3 years for L-1A and L-1B
- Renewable: Yes, for a maximum of 7 years for L-1A; maximum of 5 years for L-1B
- Annual cap: No annual cap
- Spouse authorized to work: Yes

TN Visas: NAFTA

Professional workers from Canada and Mexico may qualify for TN visas, a special class of visas made available to citizens of these two countries as



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part of the North American Free Trade Agreement (NAFTA). These visas only are available to those hired for professional employment in one of the listed categories of professions. However, it is not always to the advantage of a Canadian or Mexican citizen to apply for a TN visa if they are eligible for other types of visas, like the L visa, since spouses of TN visa holders are not permitted to work.

- Initial length of visa: up to 1 year
- Renewable: Yes, in 1 year increments
- Annual cap: No annual cap
- Spouse authorized to work: No

E Visas: Australian Citizens

In 2005, the US signed a treaty with Australia that created a special class of work visas for Australian citizens seeking professional employment in the US. Qualifications for the E-3 visa are similar to those for the H-1B visa. The applicant must be hired for a specialty occupation, which requires at least a bachelor's degree and employment in a position requiring the theoretical or practical application of a body of specialized knowledge. E Visas are a great alternative for Australians who are unable to receive H-1B visas and have the added bonus of offering work authorization for spouses.

- Initial length of time of visa: 2 years
- Renewable: Yes, in 2 year increments indefinitely
- Annual cap: 10,500
- Spouse authorized to work: Yes

Contact an Experienced Immigration Attorney

US immigration laws are complex and change frequently. The application process for work visas is time-consuming and can be a huge source of frustration. If you make an error in the paperwork or omit important information, your visa may be delayed or even denied. An experienced immigration attorney can help simplify the process and explain the different types of visas to you. He or she can help you determine the best type of work visa based on your work experience, goals and family situation. The type of nonimmigrant work visa you choose can also have an impact on your ability to secure other types of immigrant and nonimmigrant visas at a later date. An immigration attorney can help you avoid any pitfalls and assist you throughout the visa application process.