



Overview of U.S. Immigration Law & Procedures for Employers

Ieva Aubin

Associate Attorney

Dorsey & Whitney LLP

Government Agencies Involved

- **Department of Homeland Security (DHS)**

 - U.S. Citizenship and Immigration Service (USCIS)

 - U.S. Immigration & Customs Enforcement (USICE)

 - U.S. Customs & Border Protection (USCBP)



- **Department of Labor (DOL)**

 - Office of Foreign Labor Certification

 - PERM Processing Centers

 - State Workforce Agencies (SWAs)



- **Department of State (DOS)**

 - U.S. Embassies & Consulates Abroad



Terms & Definitions

U.S. Nationals:

- (A) a citizen of the United States, or
- (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Aliens:

- Immigrant (Lawful Permanent Resident or “Green Card” Holder)
- Non-immigrant
- Undocumented

U.S. Citizens

- Generally acquired because:
 - Born in the U.S./territory
 - Parent is a U.S. citizen
 - “Naturalization”
- Can vote
- Difficult to lose citizenship
- Dual Citizenship allowed by U.S. Government



Lawful Permanent Residents (Immigrants or “Green Card” Holders)

- Can live and work in the U.S. indefinitely
- Cannot vote in public elections
- Can become U.S. citizens after 3 - 5 years
- Can lose it due to:
 - Extended absence from the U.S.
 - Certain crimes



Paths to Permanent Residency

- Family
- **Employment**
- Diversity Lottery
- Refugee/Asylum
- Special Legislation

Employment-Based (EB) Categories

- EB-1:** Extraordinary ability aliens, outstanding researchers, multinational executives or managers
- EB-2:** Advance-degree professionals & aliens of exceptional ability*
- EB-3:** Professional, skilled & unskilled workers*
- EB-4:** Special Immigrants
- EB-5:** Investors

* requires labor certification

Process Overview

- 1. Labor certification (where required)**
 - Filed by employer
 - Processed under PERM system by the DOL

- 2. Immigrant Preference Petition (I-140)**
 - Generally filed by employer
 - Some foreign nationals can self-petition
 - Processed by USCIS

- 3. Application to Adjust Status (I-485) or Immigrant Visa Application (DS-230)**
 - Filed by the foreign national & family members
 - Processed by USCIS (I-485) or DOS (DS-230)

Step 1: Labor Certification

- **Purpose is to protect U.S. workers**
- **DOL will only certify if:**
 - there is a shortage of qualified, available & willing U.S. workers for the position
 - employment of the beneficiary will not adversely affect the wages & working conditions of similarly employed U.S. workers
- **Employer must:**
 - Complete recruitment to determine that there are no available, qualified U.S. workers for the position
 - Adhere to strict regulatory requirements
- **PERM process different from real world!**



Step 2: Immigrant Petition

- **Demonstrates employer's commitment to employ the foreign national.**
- **Employer must establish that it has had the ability to pay the wage listed in the LC application since filing that application.**
- **Employer must also demonstrate that the foreign national met all of the job qualifications at the time the LC application was filed.**

Step 3: AOS or Consular Processing

- **EB Visas are subject to numerical limitations.**
- **The availability of Visa numbers is determined by:**
 - **foreign national's priority date**
 - **preference category**
 - **country of birth**
- **Long waiting period in certain heavily oversubscribed categories.**

June 2014 Visa Bulletin

Employment- Based	All Chargeability Areas Except Those Listed	China - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	22MAY09	15NOV04	C	C
3rd	01APR11	01OCT06	15OCT03	01APR11	01JAN08
Other Workers	01APR11	01JAN03	15OCT03	01APR11	01JAN08
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Targeted Employment Areas/ Regional Centers and Pilot Programs	C	C	C	C	C

Non-Immigrants

- **Temporary entry to the U.S. for a specific purpose**
- **Non-immigrant intent required (dual intent - only for H's and L's)**
- **“Alphabet Soup”**



Common Business-Related Nonimmigrant Visas

Visa Category	Description	Duration	Work Authorization
B-1	Temporary visitor for business	Up to 6 Months	NONE
B-2	Temporary visitor for pleasure	Up to 6 Months	NONE
E-3	Australians to work temporarily in a specialty occupation ¹	Up to 2 years; renewable	Yes; employer-specific; Spouse eligible for employment card
F-1	Academic Student; enrolled in full time program at an approved institution	Duration of academic program plus practical training	Various limited programs; 1 year practical training post-graduation
F-2	Spouse or Child of F-1	Same	NONE
H-1B	Specialty Occupations ¹ ; Annual cap limits new H-1Bs to 65,000; annual shortages occur	Up to 3 years; renewable for 6 year maximum with exceptions for more time	Yes
H-3	Trainee; receiving instruction in any field of endeavor that is unavailable in the home country ² .	Up to 2 years	Yes – incidental to training program
H-4	Spouse or child of H-1, H-3	Same as Primary	NONE
J-1	Visas for Exchange Visitors (several categories, including trainee ²); May be subject to 2-year home residency requirement	Trainee – 18 mo; Otherwise, duration of program	Yes
J-2	Spouse or child of J-1	Duration of program	Yes
L-1A	Executive, Managerial: Manages a function or oversees a component of a company	3 years initially; renewable; 7 years maximum	Yes
L-1B	Specialized Knowledge: Has insider knowledge of the company product and its application in international markets, or with an advanced level of knowledge of processes/procedures of company	3 years initially; renewable; 5 years maximum	Yes
L-2	Spouse or Child of L-1	Same as primary	Yes
O-1	Extraordinary ability in Sciences, Arts, Education, Business, or Athletics	Initial petition valid 3 years; no maximum for renewal	Yes
O-3	Spouse or child of O-1	Same as primary	NONE
TN	Trade visas for Canadians and Mexicans: Temporary entry as a business person to engage in business activities at a professional level ³	No defined time; however, must show will remain temporarily	Yes – Annually renewed

1. The definition of “specialty occupation” is one that requires:

- A theoretical and practical application of a body of specialized knowledge; and
- The attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

2. Not designed for regular employment

3. Limited to occupations listed in NAFTA treaty; common commercial occupations include Accountant, Computer Systems Analyst, Economist, Lawyer, Management consultant

Visitor Visas

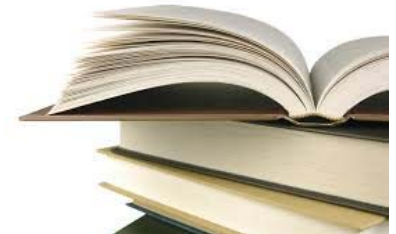
- **B-1 Visitor for Business**
- **B-2 Visitor for Pleasure/Tourism**
- **Visa Waiver Program (VWP)**
- **No employment/productive work allowed (some exceptions: meetings, conferences, negotiations, after service)**



F-1 Students

Cannot work off campus, except:

- **Curricular Practical Training (CPT)**
 - usually 20 hrs/wk; must relate to field of study
- **Optional Practical Training (OPT)**
 - usually post-graduation, full-time work related to field of study;
 - employment authorization card required;
 - generally lasts 12 months; 17-month extension available to graduates of science, technology, engineering, mathematics (STEM) fields if employer enrolls in E-verify
- **Severe economic hardship**



J-1 Exchange Visitor

- **Requires sponsorship by an Exchange Visitor Organization**
- **Categories include interns, trainees, scholars, students, physicians, Au Pair, etc.**
- **J-1 Students can get practical training (similar to OPT)**
- **Some people may be subject to “2 year foreign home residency requirement”**

H-1B Worker

- **“Specialty Occupation” - position must require at least a bachelor’s degree in a relevant field, or equivalent, and the employee has such a degree or equivalent.**
- **Employer must first file “Labor Condition Application” with the DOL (no external advertising necessary) which certifies that:**
 - The employer will pay at least the actual or prevailing wage;
 - Working conditions will have no adverse effect on U.S. workers;
 - No strike or lockout is in progress;
 - The employer has notified the bargaining representative if the job is unionized, or has posted a notice that an LCA was filed.
- **Tied to the Employer.**

H-1B Worker Cont'd

- **The prevailing wage is determined based on the position and the geographic location.**
- **The DOL maintains a database with applicable current prevailing wage levels based on occupation and work location.**

H-1B Worker Cont'd

Foreign Labor Certification Data Center
Online Wage Library

www.flcdatacenter.com



Wage Library

[Quick Search](#)
[Search Wizard](#)

Case Disclosure Data Archive

[H1B Data](#)
[H2A Data](#)
[H2B Data](#)
[Perm Data](#)

Also available:
[File Archive](#)

[Skill Level Explanation](#)

[SVP Explanation](#)

[FLC Wage Data updated July 1, 2013](#)
[see change history](#)

[Technical Support](#)

FLC Wage Results [New Quick Search](#) [New Search Wizard](#)

You selected the All Industries database for 7/2013 - 6/2014.

Your search returned the following: [Print Format](#)

Area Code: 41620
Area Title: Salt Lake City, UT MSA
OES/SOC Code: 15-1133
OES/SOC Title: Software Developers, Systems Software
GeoLevel: 1
Level 1 Wage: \$30.98 hour - \$64,438 year
Level 2 Wage: \$38.01 hour - \$79,061 year
Level 3 Wage: \$45.03 hour - \$93,662 year
Level 4 Wage: \$52.06 hour - \$108,285 year
Mean Wage (H-2B): \$45.03 hour - \$93,662 year

This wage applies to the following O*Net occupations:

[15-1133.00 Software Developers, Systems Software](#)

Research, design, develop, and test operating systems-level software, compilers, and network distribution software for medical, industrial, military, communications, aerospace, business, scientific, and general computing applications. Set operational specifications and formulate and analyze software requirements. May design embedded systems software. Apply principles and techniques of computer science, engineering, and mathematical analysis.

[O*Net™ JobZone: 4](#)

[Education & Training Code: No Level Set](#)

H-1B Worker Cont'd

- **Six-year maximum stay (can extend under certain circumstances - AC-21).**
- **Once H-1B employment ends, the foreign national must leave the U.S.**
- **Employer is responsible for reasonable costs of return transportation for dismissed employee.**
- **Spouse and children (H-4) not eligible to work.**

H-1B Cap

- **65,000 new H-1Bs per fiscal year.**
- **Additional 20,000 for those with U.S. Master's degrees or higher.**
- **Cap does not apply to extensions, change of employer.**
- **Submission window period starts April 1 of each year for the fiscal year starting October 1 of the same year.**

H-1B Cap FY 2015

- **USCIS received about 172,500 H-1B petitions during the filing period (April 1-7, 2014), the highest number of H-1B filings ever.**
- **51% of FY 2015 H-1B Petitions Rejected in Lottery.**
- **By comparison, in the previous years, the H-1B cap was reached:**
 - H-1B 2008 (FY 2009 cap) April 7, 2008**
 - H-1B 2009 (FY 2010 cap) December 21, 2009**
 - H-1B 2010 (FY 2011 cap) January 26, 2011**
 - H-1B 2011 (FY 2012 cap) November 22, 2011**
 - H-1B 2012 (FY 2013 cap) June 11, 2012**
 - H-1B 2013 (FY 2014 cap) April 5, 2013**

L-1 Intracompany Transferee

- **Qualifying corporate relationship between the U.S. & foreign entities required (parent, subsidiary, affiliate, branch office).**
- **Prior employment abroad: one out of the last three years:**
 - **Executive**
 - **Managerial**
 - **Specialized Knowledge**
- **Nature of U.S. Position:**
 - **Executive**
 - **Managerial**
 - **Specialized Knowledge**

L-1 Intracompany Transferee Cont'd

- **Employers must generally first file a petition with the USCIS.**
- **Canadians can apply at the port of entry.**
- **L-1 Blanket petitions are available for certain multinational companies.**
- **5 (L-1B-specialized knowledge) or 7(L-1A-executive/manager) years maximum.**

TN NAFTA

- **Available only for certain Canadian and Mexican professionals (e.g. systems analysts, engineers, management consultants, etc.).**
- **Canadians can apply at the port of entry.**
- **3 years maximum at a time.**
- **For very “temporary” work.**

E-1 (Treaty Trader), E-2 (Investor), E-3(Australian Professional Worker)

- **Treaty-based/available to citizens of only certain countries**
- **E-3 is much like H-1B**
- **Good 2 years at a time /extendable for an indefinite period**

Compliance & Enforcement

- **Increased Worksite Enforcement by USICE**
 - **Form I-9 compliance**
 - **Potential consequences include criminal prosecution, administrative sanctions and debarment**
- **Increase in fraud investigations and unannounced site visits by USCIS**
- **In case of audit/site visit, call counsel immediately for advice**

Questions?



Ieva Aubin

(206) 903-2458

aubin.ieva@dorsey.com

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