

Business Visas

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Current Immigration Status

Visa Waiver Program and B-1 Visas

- No gainful employment allowed
- Allowed to negotiate contracts, consult with clients or business associates, and be involved in litigation

L-1A Intracompany Transferee Visa Fact Pattern

I am an Indian citizen in the US on a B-1 visitor visa and I would like to work in the US. For the past 10 years, I have been the Sales Manager of a Indian company that employs 50 people in India. The US subsidiary of that company wants me to work for them as a Sales Manager where I would be supervising 20 employees.

E-2 Treaty Investor Visa Fact Pattern

I am an Italian citizen. I recently sold my home in Italy for \$200,000. I want to use that money to buy an Italian restaurant in the US. The restaurant I want to buy is worth around \$200,000 and it has been doing profitable business for 5 years and it has 6 full time employees. I will be the only owner of of the Italian restaurant.

H-1B Specialty Occupation Visa Fact Pattern

I am a software engineer from China. I am currently in the US in H-1B status working for a US company. I want to change employers. I have a four-year bachelor's degree in Computer Science and I have a full-time job offer from a large tech company in the US to work as a Systems Analyst. They are willing to pay me a salary of \$100,000 per year.

The Difficult Case

No history of sustained success in the foreign country

Not a large investment into the US

No job offer in the US in a math or science related job

New US offices that have been doing business in the US for less than 1 year

L-1A Visa: The Foreign National

Employed as an "executive" or "manager" abroad for at least one continuous year within the past three years

Employee organizational chart and payroll records from the foreign business showing subordinate employees

L-1A Visa: The Foreign Business

Business registration documents

Business tax returns

Business bank accounts

Business payroll records

Photographs of the foreign office

Invoices, contracts and business licenses

L-1A Visa: The U.S. Business

U.S. business is a parent, subsidiary, branch, or affiliate of the foreign business

"Affiliate" means that both the foreign and US companies are owned by a common group where each individual owns approximately the same proportion of both companies

Special Rules for "New Offices"

U.S. business articles of incorporation and by-laws

Detailed U.S. business plan and projected income statement

U.S. business licenses

Lease agreement for actual office space

Photographs of the office

Proposed employee organizational chart

L-1A Visa: U.S. Employment

As an "Executive" or "Manager"

One year visa for new offices

Must hire employees for the U.S. business during that first year

L-1A Procedure

L-1A petition filed with USCIS (no direct filing at the US consulate)

Processing time from 15 days to approximately 3 months

Consular processing or change of status

Limit of 7 years in the U.S.

E Visas

List of treaty countries at http://travel.state.gov/visa/fees/fees_3726.html

E-1 Treaty Traders vs E-2 Treaty Investors

E-1 Treaty Trader

At least 50% of stock of the US company must be owned by nationals of the treaty country

"Substantial" trade in goods or services between the US and the treaty country

Volume of exchanges more important than their value

E-2 Treaty Investor

At least 50% of the US company must be owned by nationals of the treaty country

Funds must be at risk

Investment must have a legitimate source

Investment must be "substantial"

Must direct and develop US business

E Visa Procedure

Usually, the entire application is filed with the US consulate in the applicant's home country

It may take 1 to 3 months for the US consulate to process

The E visa is valid for 2 years and can be extended every 2 years

H-1B: The Foreign National's Qualifications

At least a bachelor's degree in a specialty occupation

Three years of experience can replace every one year of missing education

Usually, for math and science related areas (accounting, engineering, computer science), not business related jobs (sales, marketing)

H-1B Visa: Job Offer in the U.S.

Job offer must require the foreign national's educational degree

Can be either full time or part time job offer

Employer must agree to pay the higher of the actual wage or the prevailing wage

H-1B Visa: Issues with Start Ups

If there is no track record of past business, do you have signed contracts from customers for future business?

H-1B Visas: Issues with CEO cases

Is there a valid employer/employee relationship between the US company and the CEO?

Does a CEO job require at least a bachelor's degree? If yes, in what field?

What is the prevailing wage for a CEO?

H-1B Procedure

New H-1Bs: Can apply beginning April 1st and employment cannot start until October 1st

Processing times: LCA takes about 7 days and H-1B petition takes between 15 days to about 3 months to process

Petition first filed with USCIS (no direct filing at the US consulate)

Six year maximum

US Permanent Residence (Green Card)

Step 1: The PERM Labor Certification

Step 2: I-140 Immigrant Visa Petition

Step 3: I-485 Adjustment Application

PERM Labor Certification

Future job offer

Recruitment required

Must offer to pay at least the prevailing wage

Will take at least 2 months to file and 3 to 12 months for DOL to process

I-140 Petition and I-485 Application

I-140 will take about 15 days to 6 months to process

I-485 cannot be filed until the priority date becomes current

Priority date: See Visa Bulletin on a at http://travel.state.gov/visa/bulletin/bulletin_1360.html

Short Cuts

Aliens of extraordinary ability, outstanding researchers, and multinational managers can skip the PERM labor certification process and proceed directly to the I-140 petition filing