

# Immigration 101



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# The U.S. Immigration System

Two general categories of visas:

- Nonimmigrant Visas, which allow people to remain in the U.S. on a temporary basis
- Immigrant Visas, which allow people to live and work in the U.S. on a permanent basis

# Nonimmigrant Visa Categories

The nonimmigrant visas most frequently used by U.S. companies are:

- B-1 business visitors
- F-1 students (CPT/OPT)
- H-1B specialty occupation
- L-1 intracompany transferees
- TN professionals (citizen of Mexico or Canada)
- J-1 exchange visitor/trainee
- O-1 extraordinary ability in science or business
- E-3 specialty occupation (Australian)

# B-1 Business Visitor

- Temporary visit to conduct business to benefit foreign employer (attend meetings, seminars, conferences)
- Employment in U.S. not permitted
- May not be paid by U.S. company
- Duration: less than 6 months; 90 days for visa waiver countries
- Visa Waiver: some countries have agreements with the U.S. so their citizens do not require a visa to travel to the U.S. as a visitor (EU, Japan, Australia)

# Acceptable Activities for B-1 Business Visitors

- Meeting with U.S. business associates (may not lead meetings)
- Attending conferences, conventions, trainings, seminars, trade shows, or job fairs
- Conducting independent research
- Negotiating contracts
- Sales meetings with customers not permitted unless product made overseas

# F-1 Student

- Curricular Practical Training (CPT) for F-1 students for summer internship
- Optional Practical Training (OPT) after completion of U.S. Bachelor's or Master's degree
  - Must have valid OPT Employment Authorization Document (EAD) for employment
- OPT Extension if employee has STEM (Science, Technology, Engineering, Math degree) – additional 24 months

# H-1B Specialty Occupation

- Employee must have Bachelor's degree in specialty field
- Job offered requires Bachelor's degree
- Prevailing wage requirement
- Employer must pay all legal and filing fees
- Subject to annual cap (65,000; 25,000 if U.S. Master's degree)
- Maximum 6-year limit (may be extended if employer starts green card process)
- H-1B transfer if already working on H-1B
- Labor Condition Application (LCA) posting requirement

# TN Professional (NAFTA)

- Employee must be citizen of Canada or Mexico
- Occupations: Engineer, Computer Systems Analyst, Accountant, Management Consultant
- Apply at U.S. port of entry or file with U.S. Citizenship and Immigration Services (USCIS)
- Must have temporary intent



# Obtaining Green Card through Employment

## PERM Labor Certification process

- Employer must post ads, conduct good faith recruitment and show shortage of U.S. workers for position
- Prevailing wage requirement
- Employer must pay legal fees and costs

## I-140 Petition

- Employer files on behalf of employee
- “Ability to pay” requirement

## Adjustment of Status Application

- Employee and dependents eligible to file once priority date is current

# Questions to ask Prospective Hires

- Are you currently authorized to work in the U.S.? Do you require visa sponsorship in order to work in the U.S.?
- If so, what is your current immigration (work visa) status?
  - H-1B: need to transfer; check max. limit
  - F-1: CPT or OPT EAD?
  - EAD: Must accept on face but may not be eligible to work for any employer.
- Caveat: see OSC rules re: discrimination in hiring process