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Need Talent? ... Using Global Talent Pool to Meet Your Staffing Shortages

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Today's Topics

- Need Talent?
- The competitive advantage using immigration as a tool for recruitment and retention
- We will cover:
 - The most useful immigration options
 - The procedure, timing, cost, advantages/disadvantages, and more
 - Post pandemic I-9 issues, including:
 - The new rules
 - The new form
 - E-Verify (is it time to sign up?)

Immigration in Recruiting

Immigration in Recruiting

- When we are trying to fill a role, where do we find foreign nationals?
 - U.S. Colleges and Universities
 - Already working in the U.S. for a different company
 - Working for a foreign affiliate
 - Abroad
- Where we find the individual often determines the appropriate visa options

U.S. Colleges and Universities

U.S. Colleges and Universities

- Let the schools do your recruiting for you
- Most foreign nationals in college are here on F-1 Student Visas
- Can be authorized to work while they are students
 - Curricular Practical Training
- What are the options after they graduate?



Colleges and Universities

- Optional Practical Training
 - Twelve months following graduation
 - No cost to the employer
 - Can work in any role related to their studies
 - No wage limitations
- STEM Extensions
 - Can extend OPT for up to three years
 - Must work in a STEM occupation
 - Provide an itinerary

H-1B Visas

- Are for specialty occupations
- Can be used only if the position is “professional,” with the candidate holding a bachelor’s degree or the equivalent and the position requiring at minimum a bachelor’s degree
- USCIS often evaluates job requirements based on U.S. Department of Labor sources, including Occupational Outlook Handbook <https://www.bls.gov/ooh/> and O*Net Online <http://www.online.onetcenter.org>

H-1B Visas (Cont.)

- Requires a labor condition attestation (different from and easier to obtain than a labor certification)
- Requires employer to pay the “prevailing wage,” the higher of wage rate paid to others with similar qualifications performing similar duties; or the rate for the job in the geographic area
- Are granted for three years, with extensions for a total stay of six years, (a longer period of stay beyond 6 years is possible if permanent resident status process started)

H-1B Visa Quota Issues

The H-1B Cap

- 65,000 H-1B visas may be issued each fiscal year
- An additional 20,000 visas are available for workers having a Master's or higher degree from a U.S. institution
- The cap applies only to new issuance of H-1B visas or grants of H-1B status
- Last five (5) fiscal years H-1B Caps were met – hit 1st week of April filing
- The federal fiscal year runs from October 1 through September 30

H-1B Fees

- \$460 USCIS Petition Filing Fee
- \$750 or \$1,500 American Competitiveness and Workforce Improvement Act
- \$500 Fraud Prevention and Detection Fee
- \$3,500 to \$4,500 average legal services fees
- Total fees \$5,000 to \$6,500 for 3 year visa



Already Working In The U.S.

Working In The US For A Different Company

- H-1B visa Transfers
 - Convenient
 - Available (almost) any time
 - Fast
 - Very cost effective
- Other visa options

TN Visas



- Are available to Citizens of Canada and Mexico under NAFTA
- Require that the candidate be a “professional” listed in the treaty
- May be issued to Canadians without preapproval by the United States Citizenship and Immigration Services (USCIS); Canadians apply directly at the border; Mexican Nationals apply at US Consulate
- May be granted for a period of stay of 3 years with no limit on extensions, but no “intent to immigrate”

O-1 Visas

- Requires extraordinary ability in the sciences, arts, education, business, or athletics
- Requires peer group, labor union, or management organization to confirm “extraordinary ability”
- Proof of ability under certain criteria, i.e. national awards, published materials in peer reviewed or professional journals, patents, high compensation compared to others in the field

Foreign Affiliates

Working For A Foreign Affiliate

L-1 Intra-Company Transfers

- Are for “intra-company” transfers
- Are used for managers, executives, and workers with specialized knowledge
- Can be used only if the foreign and U.S. companies have a “qualifying relationship” (that is, one is a branch, affiliate or subsidiary of the other)
- Can be granted for three years with extensions for a total stay of 5-7 years



B Visas

- Are for “visitors for business” or “visitors for pleasure”
- Will not grant U.S. employment authorization (the employer must be a foreign entity and pay must come from outside the U.S.)
- Can be used for international exchanges of information, training, and the like, particularly among related multinational operations
- Are for short visits - no longer than six months to one year per visit
- A potential “Bridge the Gap” strategy to avoid an unauthorized stay
- Can be granted for up to 10 years, with multiple entries

E-1/2 Visas

- Are for “treaty traders” and “treaty investors,”
Qualifying treaties listed at U.S. Department of State website
<https://travel.state.gov/content/travel/en/us-visas/employment/treaty-trader-investor-visa-e.html>
- Are used for those investing in a U.S. company
- Are for executives, managers, and those with specialized knowledge
- Are granted for initial periods of 1 to 5 years at a time, with no limit on extensions
- The law permits employment authorization for a spouse

Other Non-Immigrant Visas

- *Visas may also be obtained for:*
 - H-2 for temporary or seasonal workers
 - H-3 trainees intended to prepare trainee for employment outside the U.S.
 - For other athletes and entertainers (P Visas)
 - R-1 Religious Workers

Living Abroad

Abroad

- Any number of options, including:
 - B-1 Business Visitor and B-2 Tourist Visa
 - E-1 Treaty Traders
 - E-2 Treaty Investors
 - E-3 Treaty Alien in Specialty Occupation from Australia
 - H-1B Specialized Occupation Workers and H-4 Dependents
 - H-2B Temporary/Seasonal Workers
 - H-3 Trainees
 - J-1 Exchange Visitors and J-2 Dependents
 - L-1 Intra-Company Transfers and L-2 Dependents
 - O-1 Extraordinary Ability Aliens, O-2 individuals providing “essential assistance,” and O-3 spouse/children
 - R-1 Religious Workers and R-2 Dependents
 - TN NAFTA Workers and TD for Dependents

Keeping Them Long Term

Permanent Resident Status-3 Steps for Most Employees

1. Labor Certification-Most employment based Immigrant Petitions require the U.S. Department of Labor to confirm no minimally qualified U.S. workers are available
2. Immigrant Petition filed with USCIS seeking classification under an Immigrant Visa preference category
3. Final visa eligibility review after approval of the Immigrant Petition and Priority Date current – visa must be available under the quota system

Visa availability or quota system Priority Dates are published monthly in the “Visa Bulletin” by the U.S. Department of State:

<http://travel.state.gov/visa/frvi/bulletin>

Immigrant Visas: 1st Preference – Aliens with Extraordinary Ability

- Candidates must have received sustained national or international acclaim; major prizes or awards for excellence; or comparable evidence and a high salary or high remuneration in relation to others in the field
- No job offer or labor certification is required

Immigrant Visas: 2nd Preference

- Advanced degree professionals or “aliens with exceptional ability”
 - Advanced degree = master’s or higher, or bachelor’s + 5 years progressive experience
 - Exceptional ability generally requires:
 - An academic record showing a college degree
 - Letters documenting at least ten years of full-time related experience
 - Evidence of a salary or other remuneration which demonstrates exceptional ability
 - Recognition for achievements and significant contributions to the field
- Labor certification required unless a National Interest Waiver is obtained

Immigrant Visas: 3rd Preference – Professionals

- Bachelor’s degree professionals: this category is for entry-level managers, researchers, scientists, information technology workers and like positions which require a bachelor’s degree (or the equivalent)
- USCIS must agree the job requires a bachelor’s degree
- Labor certification is required

Immigrant Visas: 3rd Preference – Skilled Workers

- **Skilled Workers:** the category is for technicians or skilled workers with at least two years' training or experience beyond high school
- Labor certification is required

Labor Certification for Permanent Resident Status Petitions

- Process starts with prevailing wage request to U.S. Department of Labor
- Job duties, experience, and educational requirements analyzed to determine prevailing wage
- Employer must conduct specific recruiting steps and determine no minimally qualified U.S. workers are available

Labor Certification (Cont.)

- Employer must conduct “good faith” recruiting efforts in local labor market using appropriate sources, screen and interview applicants and demonstrate lack of qualified-available U.S. Workers. Recruiting efforts must include:
 - A 30 day job order with the state work force agency/unemployment office, i.e. the Pure Michigan Talent Connect
 - Print advertisements on 2 different occasions. Generally, Sunday newspaper advertisements in a local paper with major circulation
 - “Professional jobs,” those requiring a bachelor’s, must also include 3 additional recruiting efforts

Form I-9 Remote Verification

I-9 COVID-19 Remote Flexibility

- As April 1, 2021, the requirement that employers inspect employees' Form I-9 identity and employment eligibility documentation in-person applies only to those employees who physically report to work at a company location on any regular, consistent, or predictable basis.
- For employees who work exclusively in a remote setting due to COVID-19-related precautions, they are temporarily exempt from the physical inspection requirements until they undertake non-remote employment on a regular, consistent, or predictable basis, or the extension of the flexibilities related to such requirements is terminated,

I-9 COVID-19 Remote Flexibility (Cont.)

- Covid-19 related flexibilities ended July 31, 2023.
- For employees whose documents were inspected remotely during the temporary flexibilities, employers must complete in-person physical document inspections by August 30, 2023.
- Employers may choose to designate an authorized representative to complete Forms I-9 and conduct an in-person physical document inspection on their behalf.

New Form I-9

- As of August 1, 2023, DHS has released a new version of the Form I-9.
- Notable changes to the Form I-9 include:
 - § 1 and § 2 are on the same page with more narrow fields in which to write answers to the government's questions.
 - The Preparer/Translator paragraph is no longer part of § 1, but instead is a separate supplement (Supplement A).
 - New hires and employers are no longer required to enter "N/A" in fields that do not apply.
 - § 2 contains a new checkbox in the Additional Information field for employers to mark if they have examined documents using an authorized alternative procedure.
 - § 3 (for reverification or, in limited circumstances, rehire) no longer follows § 2. Instead, § 3 is a separate supplement (Supplement B).

New I-9 Remote Verification Procedure

- As of August 1, 2023, DHS will allow qualified E-Verify employers to complete document verification remotely instead of physically examining the original documents.
- To utilize the alternative remote verification procedure, employers must:
 - Have an employee submit "clear and legible" copies of the document(s) prior to conducting remote verification. (front and back if applicable).
 - Review the clear and legible copies of the document(s) to confirm that they reasonably appear genuine.

New I-9 Remote Verification Procedure (Cont.)

- Conduct a video meeting with the employee. During this video meeting, ask the employee to show the original document(s) and compare the document(s) presented earlier.
- Mark the checkbox in the Additional Information field of § 2 to show that the employer used the remote document verification procedure. If the employer is still using the existing Form I-9 (issuance date of October 21, 2019), write “Alternative Procedure” in the Additional Information field.
- Timely open the E-Verify case inquiry following completion of Form I-9.
- Retain the clear and legible copies of the document(s) with the completed Form I-9.

New I-9 Remote Verification Procedure (Cont.)

- E-Verify employers are not required to use the I-9 remote document verification procedure. If E-Verify employers choose to use this new procedure, they may do so for all employees or for only those Forms I-9 associated with employees who are working remotely. Employers must apply I-9 procedures fairly and consistently.



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