



## **DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING**

IMMIGRATION LAW PRIMER

SESSION 609

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### AGENDA

I. Introduction

II. General Overview of Visa Categories

III. Nonimmigrant Business Visas

IV. Miscellaneous Considerations

V. Practical Tips

**DISCLAIMER: THE INFORMATION CONTAINED IN THIS MATERIAL IS FOR GENERAL INFORMATION PURPOSES ONLY. IT IS NOT OFFERED AS ADVICE BUT IS MEANT TO**

**PROVIDE THE READER WITH AN OVERVIEW OF COMMON NONIMMIGRANT BUSINESS VISAS AND SOME PRACTICAL TIPS WHEN SUBMITTING A VISA APPLICATION. ALL LIABILITY IS DISCLAIMED WITH REGARD TO THE INFORMATION PROVIDED AS IS THE CONSEQUENCES OF TAKING ANY ACTION OR OMITTING TAKING ANY ACTION IN RELIANCE THEREON. THE READER IS ENCOURAGED TO SEEK PROFESSIONAL ADVICE ON ANY GIVEN TOPIC.**

## I. Introduction

- a. Individuals permitted to work in the U.S.:
  - i. Born in the U.S.
  - ii. Obtained permanent residency
    - 1. Family based
    - 2. Employment based
    - 3. Asylum
    - 4. Lottery
    - 5. Other (e.g., Chinese Student Protection Act)
  - iii. Temporary authorization
    - 1. E visa
    - 2. F visa/practical training component
    - 3. H visa
    - 4. J visa
    - 5. L visa
    - 6. O visa
    - 7. TN visa
- b. I-9: Employment Eligibility Verification Process

## II. Visa Categories

### Visa Description

A Diplomats and members of their immediate families

B Temporary visitors

C Aliens in transit

D Crew members of ships or aircraft

E Treaty traders and investors

F Students in academic or language training programs

G Representatives of foreign member governments to international

organizations

H Temporary workers

I Representatives of foreign media, spouse, children

J Exchange visitors

K Fiancé(e)s of U.S. citizens and their children

L Intracompany transferees

M Students in vocational or recognized nonacademic programs

N Parents and children of "special immigrants"

NATO Representatives of NATO member states and NATO officials

O Aliens of extraordinary ability

P Athletes, entertainers, artists

Q Participants in international cultural exchange programs

R Aliens in religious occupations

S Aliens supplying critical information relating to crime or terrorism

TN/TD NAFTA professionals from Canada and Mexico, spouses, children

### III. Nonimmigrant Business Visas

#### a. B-1 Visa: Business Visitor

##### Description

- Most common visa used by foreign business travelers
- Cannot engage in gainful employment
- Cannot be paid as an independent consultant
- Business must be legitimate:
  - Engage in commercial transactions
  - Negotiate contracts
  - Participate in litigation
  - Attend conventions, conferences, seminars
  - Consult with business colleagues
- Must have adequate financial means
- Must depart at conclusion of visit
- Requires documentary evidence (i.e., letter re purpose of visit, duration of stay; itinerary)
- Do not use if intent is to later change to another visa category

Duration of stay: Time necessary to conduct business (not to exceed 1 year)

Extensions: Available in increments not to exceed 6 months each

Miscellaneous: Nationals of the following countries do not need a visa but may enter the U.S. under the Visa Waiver Pilot Program for up to 90 days and cannot change or extend their status: Andorra, Argentina, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, The Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, The United Kingdom, Uruguay

#### b. E Visa: Treaty Traders and Investors

##### Description

- Treaty of commerce and navigation between U.S. and alien's home country
- Treaty trader: engages in substantial trade (i.e., exchange, purchase or sale of goods/services) between U.S. and home country
- Treaty investor: has invested substantial amount of capital in a U.S. concern which he/she develops and directs
- If individual, is a national of the treaty country
- If company, is 50% or more owned by individuals in the U.S. who are of the nationality of the treaty country
- If individual, must be high-level executive, supervisor or someone with essential skills
- If company, must be parent-subsidiary relationship with the U.S. concern

Duration of stay: No more than 2 years initially

Extensions: Increments of no more than 2 years

#### c. F-1 Visa: Academic Students

##### Description

- Granted for time required to complete a full academic program
- INS must approve educational institution
- Certificate (Form I-20) issued to student
- Must have sufficient monetary support for duration of program
- Educational institution can authorize employment

(on-campus or off-campus)

- Curricular practical training may be available
- Optional practical training may also be available

Duration of stay: Time required to complete full academic program plus 1 year of practical training

Extensions: Not available unless student qualifies for another program

Miscellaneous: To remain employed after practical training, student must be granted another form of work authorization (e.g., H-1B visa).

#### d. H Visa: Temporary Worker

##### Description

- Temporary authorization granted
- Several subcategories a few of which are discussed here

#### H-1B Visa: Specialty Occupation

##### Description

- Permitted in occupations which require theoretical and practical application of a body of specialized knowledge and a bachelor's degree or higher
- If no degree, 3 years experience for every 1 year of college that is lacking
- Not necessary to prove foreign national is not displacing a U.S. worker
- Employer must pay prevailing wage for the position
- Employer-specific
- Subject to numeric limitation

Duration of stay: Total of 6 years (granted initially for 3 years)

Extensions: Available as long as duration of stay does not exceed 6 years

#### H-3 Visa: Trainee

##### Description

- Purpose is to train, not to improve employer's production
- Knowledge or experience must not be available in country where trainee resides
- Must submit detailed training schedule and reasons why it cannot be obtained abroad
- Must maintain foreign residence

Duration of stay: Time necessary to complete the training

Extensions: Available as long as total duration of stay does not exceed 2 years

#### e. J-Visa: Exchange Visitor

##### Description

- Used by foreign nationals who enter the U.S. to participate in an exchange program
- Purpose can be to teach, lecture, instruct, study, research, consult, or to receive certain training or education
- Controlled by United States Information Agency (U.S.I.A.) (an independent federal organization)
- May engage in employment and receive compensation if part of program

Duration of stay: Dependent upon category for which an individual is admitted

Extensions: Permitted if program extended

Miscellaneous: Must return to home country if this requirement not waived.

#### f. L-1 Visa: Intracompany Transferee

##### Description

- Available for executive, managers and those with specialized knowledge
- Must have been employed in the capacity for which foreign national is being transferred
- Must be coming to U.S. to fill position in that capacity
- Employed abroad by subsidiary or affiliate of U.S. company for at least one year of the preceding three years
- Foreign company transferring foreign national must be in business for the duration of stay
- Source of compensation not important
- Must depart U.S. at conclusion of stay

##### L-1A Description

- Executive
  - Directs the management of the organization or of a major component of the organization or a function in the organization
  - Establishes goals and policies of the organization
  - Possesses broad discretionary decision-making authority
  - Receives general supervision or direction from superiors
  - Supervises the work of others or of a function
- Manager
  - Directs the organization, a department or a division of the organization or a function
  - Controls the work of other professionals, supervisors or managers (unless he/she manages a function)
  - Possesses the authority to hire and fire or to make recommendations regarding hiring or other employee-related actions (unless he/she manages a function)
  - Exercises discretionary authority over day-to-day operations

Duration of stay: 7 years total

##### L-1B Description

- Specialized knowledge
  - Company product and its application in international markets
  - Advanced level of expertise of company processes and procedures

Duration of stay: 5 years total

#### g. O-1 Visa: Individuals of Extraordinary Ability

##### Description

- Extraordinary ability
- Nationally or internationally known for their expertise
- Made achievements in their field
  - Awards

- Published in professional or trade publications
- Recognized contributions in field of specialization
  
- Must have a sponsor and job offer

Duration of stay: Time necessary to complete the event or activity, not to exceed 3 years

Extensions: Increments of up to 1 year to continue same event or activity

#### h. TN Visa: Canadian and Mexican Professionals

##### Description

- To engage in professional business activities in accordance with NAFTA
- Must have Baccalaureate degree or appropriate credentials
- Equivalency in experience not accepted
- Visit to U.S. is temporary

##### Canadian Professionals

- Proof of Canadian citizenship
- Proof of credentials
- Profession listed on Schedule 2 of NAFTA
- Minimum of bachelor's degree
- Must establish nonimmigrant intent
- Documentation of remuneration re U.S. activity

Duration of stay: Maximum 1 year initially

Extensions: Unlimited extensions of 1 year

Miscellaneous: Visa processing usually occurs at the border or port of entry.

##### Mexican Professionals

- Must be sponsored by U.S. company which petitions INS for nonimmigrant worker status
- Labor Condition Application must be filed with and approved by DOL
- Must apply for visa at U.S. consulate
- Must prove nonimmigrant intent

Duration of stay : Maximum 1 year initially

Extensions: Unlimited extensions of 1 year

#### IV. Miscellaneous Considerations

- a. Change in employer: work visas are employer-specific
- b. Document fraud: verify documents/don't cross the line
- c. Employment discrimination re individual's national origin or citizenship status
- d. Family members must separately qualify to be allowed to work in U.S.

- e. Form I-9 Employment eligibility verification: applicable to foreign nationals hired as temporary employees; must re-verify prior to expiration of work authorization
- f. Overstays: subjects alien employees to removal if they remain in U.S. under expired visas
- g. Permanent residency: involves recruitment phase which requires proof that no U.S. citizen or permanent resident can perform minimum responsibilities of position
- h. Termination of employment: may require U.S. employer to pay cost of return airfare home for alien employee; employer to notify INS re termination
- i. Trade embargoes: foreign nationals from country where U.S. has imposed a trade embargo may not be able to work in the U.S.

## I. Practical Tips

### a. In general

- i. Complete the immigration forms in full
- ii. Include support letter
- iii. Include documentary evidence
- iv. Remember to check current fees and enclose check
- v. Check INS address before mailing documents
- vi. Use U.S. postal service to mail (not an overnight courier service)

### b. H-1B Visas

- i. Change in filing requirements: Form I-129W must be included with H-1B visa petition, filing fee and supporting documentation. Includes information regarding the H-1B position, the industry of the employer, the H-1B worker's highest level of education, compensation and country of origin.
- ii. Be aware of annual cap
  - 1. 115,000 for FY 2000
  - 2. 107,500 for FY 2001
- iii. Applications which have historically been accepted even though the annual cap has been met
  - 1. Extensions of stay for current H-1B workers
  - 2. Amending terms of employment for current H-1B workers
  - 3. Permitting current H-1B workers to change employers
  - 4. Permitting current H-1B workers to work concurrently in a second H-1B position

### c. L-1 Visas

- i. Basic Requirements (refer to 3(f) above)
- ii. Complete application (Form I-129 and L Supplement) in duplicate and sign in duplicate
- iii. Recommended information to be contained in support letter for L-1B visa (see Attachment A for a sample)
  - 1. Introduction
  - 2. Description of company
  - 3. Purpose of transfer
  - 4. Description of relationship between the U.S. company and the foreign affiliate organization
  - 5. Foreign position held by transferee; description of transferee's specialized knowledge
  - 6. Description of transferee's education and experience
  - 7. Description of U.S. position
  - 8. Confirmation that alien will leave the U.S. at conclusion of his/her temporary stay in



the U.S.

9. Employment terms (salary; period of employment; temporary nature of employment)

iv. Sample Certificate of Incumbency (see Attachment B)

SAMPLE LETTER IN SUPPORT OF PETITION FOR L-1B VISA WHERE FOREIGN NATIONAL IS AN EMPLOYEE OF A FOREIGN SUBSIDIARY OF THE U.S. PARENT COMPANY

[Date]

United States Department of Justice

Immigration and Naturalization Service

[Appropriate INS address]

SUBJECT: I-129L for [name of foreign national]

Dear Administrator:

We are submitting this letter and the enclosed material in support of the petition of [U.S. company] to classify [Mr. or Ms.] [name of foreign national] as an L-1B nonimmigrant transferee to fill a position in the United States which requires specialized knowledge. This assignment in the United States is for a temporary period of three years, effective [date] through [date three years later].

In support of [U.S. company's] petition on behalf of [foreign national], we submit the explanations and supporting documents which follow.

**I. Description of Company and Purpose of Transfer**

[Example: [U.S. company] is a worldwide organization involved in [describe the nature of the company and the business with which it is associated. Also estimate the number of employees the U.S. company has in the U.S. or on a worldwide basis. Also indicate the U.S. company's annual gross sales according to the most recent information available (i.e., for the previous fiscal year) and list that dollar figure. Make certain this information matches what is contained on the petition. You may want to include a copy of the company's annual report here as the first attachment.]

[Brief description of the company's worldwide intracompany training program and why the company wants to transfer the foreign national to the U.S., such as: [U.S. company] maintains a globalization program for its employees who possess knowledge of a particular component of a foreign subsidiary's operations. In the situation at hand, [foreign national] has specialized knowledge regarding . . . [summarize the specialized knowledge; example: . . . direct marketing and sales of the Company's widget product line.] The ability to

train and share marketing and sales methods and techniques [. . . or whatever you described previously] has contributed to the company's overall worldwide success [or whatever is appropriate here].]

[Example continued to describe program: This globalization program permits [U.S. company's] operations in the U.S. the opportunity to develop specific goals and objectives to meet the overall demand for our products. A significant factor which contributes to the program's success is the ability to temporarily relocate subsidiary personnel to the U.S. where their specialized knowledge can be shared with their U.S. counterparts. The utilization of individuals in this way provides [U.S. company] with a perspective into our worldwide operations through our marketing and sales network [or whatever is appropriate].]

[Describe purpose of this particular transfer; for example: Specifically, [U.S. company's] [name of business or division] would like to expand and strengthen its worldwide marketing and sales effort [or whatever effort it is expanding, e.g., engineering]. [Name of business or division] provides . . . [describe in a summary manner how the business or division assists the overall objectives of the company].]

## II. Corporate Relationships

[U.S. company] is desirous of having the intracompany transferee, [foreign national], undertake a temporary assignment at [U.S. company's] [city and state] facility, the location of our [name of the business group or division, if applicable].

[Foreign national] is employed at the present time by [name of foreign subsidiary] located in [city and country]. [Name of foreign subsidiary] is a wholly-owned subsidiary of [U.S. parent company] [or describe the appropriate relationship between the parties].

[Provide some details of the foreign subsidiary, such as when it was established and where; whether it is part of a division or group of the parent company; whether this division or group includes locations in other countries (and list those countries); anything outstanding or relevant regarding the foreign subsidiary, such as: it's the fastest growing geographic sales region, etc.]

[If brochures exist on this foreign subsidiary or the division or business group to which it belongs, include the brochure as an attachment. For example: See the enclosed pamphlet describing the \_\_\_\_\_ Division and, in particular, note the tabbed page which discusses the widget product line (**Attachment** \_).]

The relationship between [U.S. company] and [foreign subsidiary] is documented in the following attachments:

**Attachment** \_ : Certificate of Incumbency of [name of company officer], [title] of [U.S. company], certifying to the relationship between [U.S. company] and [foreign subsidiary].

**Attachment** \_ : **Copy** of the 19\_\_ [or appropriate year] Annual Return [if appropriate] of [foreign subsidiary] which includes a listing of the members of the Board of Directors and the sole Shareholder. [Number] of the Directors of [foreign subsidiary] are also officers of [U.S. company]. [If this is true for the applicable U.S. company and foreign subsidiary, list the details as it helps to establish the interrelationship of the entities.]

**Attachment** \_ : [U.S. company's] 19\_\_ Annual Report to Shareholders which discusses [foreign subsidiary] [If this is available, summarize what the report mentions. In the alternative, if you already included this as an attachment in Section I, refer to it again and reference the applicable page that discusses the foreign subsidiary.]

## III. Foreign Position Filled by Transferee/Transferee's Specialized Knowledge

[Foreign national's] education and experience render [him/her] an excellent candidate for a temporary intracompany transfer to the [name of business group or division] at [U.S. company's] [state where group or division located] facility. [Foreign national] received a [describe foreign national's educational background, including degree, name of university, date of graduation and attach copy of diploma ] (see **Attachment** \_). Copies of [foreign national's] grade transcripts are enclosed as **Attachment** \_ to show evidence of [his/her] studies. [If grade transcripts are not available, at least attach a copy of the diploma.]

[Foreign national] has had more than [number] years of experience as [describe foreign national's position at foreign subsidiary and enclose documentation of it such as a payroll notice. It is also helpful if you are able to obtain a letter from an officer of the foreign subsidiary or from the foreign national's supervisor briefly describing the foreign national's employment history with the foreign subsidiary] (see **Attachment** \_). [Foreign national] speaks English in addition to [his/her] native [language, e.g., French or German, etc.].

During [his/her] tenure with [foreign subsidiary], [foreign national] has had increasing responsibilities which include [provide details of the position(s) held; in the alternative, attach a position description].

[Foreign national] has been a major contributor to a variety of projects during [his/her] employment with [foreign subsidiary]. A representative sample is explained below:

[List 3-5 projects in which the foreign national participated and/or attach a document summarizing these details. Only a few sentences are required to describe each project.]

The knowledge and experience [foreign national] has gained during [his/her] employment with [foreign subsidiary] combined with [his/her] skills and education have given [him/her] the background needed to work on a temporary basis in the U.S. [Foreign national] will be able to share with the U.S. [business group or division] [his/her] knowledge of the successful marketing and sales experiences [or whatever experiences are applicable] of [U.S. company's] subsidiary in [country].

#### **IV. U.S. Position**

[Describe the position the foreign national will hold in the U.S., such as: [Foreign national's] primary function will be to train and share marketing and sales methodologies and techniques developed through [his/her] association with [foreign subsidiary] with the U.S. counterpart. [His/her] specific responsibilities as [title of position in the U.S.], [name of U.S. business group or division, if applicable,] will include the following:]

[Provide list of responsibilities or reference the responsibilities in an attachment]

#### **V. Conclusion/Summary**

[U.S. company] proposes to transfer [foreign national] to the United States for a temporary period of approximately three years from [date] to [date]. [He/she] will serve as [title in U.S.] to the [U.S.-based business group or division, if applicable] located in [city, state].

During [his/her] tenure in the United States, [foreign national] will be compensated at an annual salary of \$ \_\_\_\_\_ along with [list any other relevant benefits and the approximate value of the benefit, such as company-provided automobile (valued at approximate \$115/week)].

[U.S. company] understands the temporary nature of this assignment and we have communicated the conditions of the transfer to [foreign national]. [This statement regarding the temporary nature of the assignment is necessary. Be sure you have in fact communicated this to the foreign national.]

We respectfully request you grant our petition for an L-1B nonimmigrant visa for [foreign national]. We have enclosed a check to cover the filing fee for the petition. Please contact me directly should you require anything further. [Or other appropriate closing.]

Very truly yours,

[Name]

[Title]

Enclosures

SAMPLE [Where the U.S. company is parent to the foreign subsidiary]

**ATTACHMENT** \_\_\_\_

**CERTIFICATE OF INCUMBENCY**

I, [full name], [title] of [U.S. company], a corporation duly organized and existing under and by virtue of the laws of the State of [state], with a principal office at [complete address], am familiar with the books and records of [U.S. company] and its wholly-owned subsidiaries and, based on this familiarity, do certify that:

- [U.S. company] is the sole shareholder [or majority shareholder or whatever is appropriate] of [name of foreign subsidiary], holding [number] shares.
- The following officers of [U.S. company] are members of the Board of Directors of [name of foreign subsidiary] during Fiscal Year [appropriate year] [This statement shows the connection between the two entities by also showing the relationship of the officers to the entities. Delete if this is not applicable to the entities you are describing.]:
  - [Name], [title] of [U.S. company]
  - [Repeat information for others where applicable]
- [As an alternative to the above or in addition to the above, attach Shareholder and Board of Directors meeting minutes of the foreign subsidiary to show the relationship of the entities (redact confidential information, if appropriate) and make a statement similar to what follows: A copy of [foreign subsidiary's] Annual Shareholders Meeting Minutes and the Board of Directors Meeting Minutes from 1999 [or appropriate year] are attached. [You may want to use a highlighter on the copy to draw attention to relevant information such as the name of the foreign subsidiary, the parent company name (i.e., shareholder), etc.]

Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

[U.S. company] (Company seal)

By: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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