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VISAS TO WORK IN THE UNITED STATES

The interdependence of the world economy has increasingly transferred company personnel of exterior branches or subsidiaries of foreign companies to the United States. This article will explain the types of visas an American company may use to bring different types of foreign employees into the United States.

A company may use one of three types of visas to bring foreign personnel into the United States: the H-1 visa, the L-1 visa and the E-1 visa.

The H-1 visa is used to bring a foreign employee on a temporary or seasonal basis. This visa category is reserved for foreign employees of “distinguished ability or merit” and “professionals”. In addition, a B.A. or B.S. degree from an accredited U.S. or foreign university is required to qualify for this visa. Also, the job or position an employee will assume should be the type which necessitates such a degree.

The L-1 visa is available for business executives who are transferred to the United States, have continuously worked in an executive position for over a year, and will come to the United States to assume a similar position in the same company, subsidiary or affiliated branch. Also the L-1 visa is issued to personnel with specialized knowledge of firm operations.

Finally, the E-1 /E-2 visa (investor trade) corresponds to a foreign individual or company which has maintained substantial amounts of business with the United States. The term “substantial” is not explicitly quantified but may be interpreted as maintaining large business transactions for a prolonged period of time. The E-1 visa is limited to nationals of countries which maintain bilateral commerce, navigation and friendship treaties with the United States. The following Latin American countries have bilateral treaties with the United States: Argentina, Bolivia, Colombia, Costa Rica, Honduras and Paraguay.

All three visas allow the recipient to work in the United States, provided that this person work exclusively for the corporation requesting the visa. In other words, these visas are limited in that they allow an employee to stay in the United States so long as the employee remains with the company requesting the visa. These are not unrestricted visas to work in any job, such as a green card, which is granted to permanent resident aliens.

Employees who wish to become permanent resident aliens may do so if they have family members qualified to claim them or if their company claims them through a procedure called a “labor certification”.

Generally, a labor certification is based on the notion that the specialization of the employee is so important that the company cannot find a local replacement to fill the foreign employee's position. Nevertheless, demonstrating such uniqueness to receive a certificate of labor is a rather difficult process and, in some cases, outright impossible.

However, the above mentioned visas, in some situations, may be extended. An extension of these visas may increase the chances of receiving permanent residence status. In order to receive an extension, an employee must have worked for at least a year in an executive or managerial position at a foreign branch or affiliated company outside the United States. The company must further demonstrate that it has maintained normal business operations in the United States for at least one year and show an adequate financial status.

A client must keep these factors in mind when choosing the most adequate visa to transfer a foreign employee into the United States. Most important, planning an effective immigration strategy which covers the needs and long term growth projections of a company should be a prime consideration before initiating such a quest.