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PART 1
Immigration Basics

• Visa Options and Long-Term Processing Concerns
• Common Visa Scenarios
Immigration Vocabulary

- Citizen
- Alien or Foreign National
- Immigrant Visa = “Green Card”
- Nonimmigrant = Temporary/Finite Period of Stay
- U.S. Department of Homeland Security f/k/a Bureau of Citizenship and Immigration Services f/k/a Immigration and Naturalization Service
Points to Remember

- Visa = admission ticket (no guarantee of admission)
- I-94 card = defines period of stay and status in the United States during that stay
H-1B: Temporary Employment in a Specialty Occupation

- Theoretical and practical application of specialized knowledge
- Bachelor’s degree or equivalent in the specific specialty
- Degree is normal to the field/employer normally requires degree
H-1B Validity Period

• Up to three years initially
• Extension up to another three years
• Deduct time previously spent in H or L visa status within previous six years
• H-4 spouse is not entitled to work (except under certain circumstances)
The H-1B Visa Cap

- 65,000 per Fiscal Year
- 20,000 for holders of U.S. Masters degrees
- FY: October 1st - September 30th
H-1B Visa Availability Snapshot

- H-1B Cap for FY2016 reached on April 07, 2015
- 20,000 additional H-1B visa numbers for persons with U.S. Masters or higher degrees
- 233,000 H-1B petitions received in first week of April of 2015
H-1B Approved: Post-Hire Issues

• Extension beyond the six-year maximum:
  − Must initiate “green card” process more than 365 days prior to the six-year period of stay (commonly known as 5th year anniversary)
• Change in job duties
  − Substantial changes require amendment
• Change in job location
  − If new LCA required, amended petition required
    • Temporary or long-term?
• Change in employer
  − Merger/acquisition = New EIN?
• Return transportation
  − Only applies to dismissal BY employer prior to end of H-1B status
H-1B Concerns: Transfers & Travel

• H-1B Portability
  – Employment can begin upon filing
  – What if gap between Employer A and Employer B?

• Travel Issues While Petition Pending
  – While change of status pending
  – While extension of status pending
  – While portability transfer pending
H-1B Concerns: 7 Yr. Extensions

- Extensions Beyond the Six-Year “Maximum”
  - Labor Certification OR I-140 pending for 365 days
  - One year extensions

- Other Extension Issues
  - What If LC or I-140 Filed by Prior Employer?
  - What if LC filed for Prior Employee?
L-1 Intracompany Transferee Visa

L-1A Multinational Manager or Executive/L-1B Specialized Knowledge

- The employee must have worked abroad for the overseas company for at least one (1) continuous year at any time within the three (3) years preceding the filing of the petition;
- The company for whom the employee has worked abroad must be related to the U.S. company in a specific manner (e.g., one company is more than 50% owned by the other);
- Canadians can apply directly at the border instead of through USCIS;
- Dual intent is permitted.
L-1A Multinational Manager or Executive

- The position abroad and in the U.S. must be “executive” or “managerial”
- The period of stay is initially for three years, although the visa may be valid for five
- L-1A has a maximum of seven total years
L-1B Specialized Knowledge

- Initially issued for three years
- Visa may be valid for five years
- L-1B has a maximum of five total years
- If switching from an L-1B to an L-1A, the process must commence at least six months in advance of the max out date of the L-1B
- Highly scrutinized visa category
TN Classification

- Available only to Mexican and Canadian Nationals
- Specific list of occupations in NAFTA
- Up to three-year initial admission – extensions can be granted indefinitely in three-year increments
TN Classification Cont.

• Biggest obstacles: Demonstrating nonimmigrant intent and “fitting” within defined occupations

• Processing:
  – *For Canadians*: Can apply directly at Class A POE/PFI
  – *For Mexicans*: Can apply directly at the US Embassy
Other Nonimmigrant Visa Alternatives

Hiring a Foreign Student in F-1/J-1 Status

- F-1 (OPT) requires EAD — allow at least 90 days to receive EAD
- J-1 requires school authorization to work
- Apply to change status at least six months before F-1/J-1 status ends*
- Not subject to FICA
  - Be mindful of H-1B cap
J-1 Trainee

- 20-38 years old, proper education and experience
- J-1 Umbrella Agencies
- 18 months maximum
- Spouse can work
- Caveat: Two-year home residency rule
Nonimmigrant Visa Alternatives Cont.

• **O-1 Person of Extraordinary Ability**
  – Among the few who have risen to the top of the field of endeavor

• **Must have:**
  – Major award or prize (Nobel, Fields, etc.); OR
  – Documentation from three of eight categories specified in the Regulations; OR
  – Other “comparable evidence”

• **Documentation extensive and high threshold**

• **Initially valid for three years and then renewable indefinitely in one-year increments**
E-3 Visa for Australians

- Passed by Congress on May 10, 2005 as part of REAL ID Act, 10,500 allotted per year
- No CIS petition required; apply for visa directly with Consulate
- All visa issuing US consulates in Australia accept applications
- US consulates in Canada now issuing E-3’s
- If in the US in an eligible status, can apply to change status to E-3 through the USCIS
Nonimmigrant Visa Alternatives Cont.

B-1 Business Visitor

• Paid outside of U.S.
• Activity limited: attend meetings, confer with colleagues, attend seminar or training, follow up on post-sale contractual obligation
Long-Term Processing and Sponsoring Employees for a Green Card

- Employment-based vs. Family-based
- “Per Country” limits
- Current backlogs for India, China, and the Philippines in EB-2 category/all countries in EB-3 category
- Priority Dates and their importance
Employment-Based Immigrants

- **EB-1: Priority Workers**
  - Extraordinary ability aliens, outstanding researchers and professors, and managerial or executive transferees

- **EB-2: Exceptional Ability**
  - Exceptional ability and advanced degree professionals

- **EB-3: Third Preference**
  - Professional, skilled, and unskilled workers
Sponsoring an Employee for a Green Card

Usually a three-step process:

1. Labor certification (approximately 9-12 months)
2. Immigrant visa petition (approximately 6 months)
3. Permanent Residence application (approximately 12-18 months)

• If priority date “current,” Steps 2 and 3 may be filed concurrently in the U.S.

• Step 3 requires current “priority date”
Green Card Processing

• I-140 Immigrant Visa Petition
• “Green Card” Application
  – I-485 Application for Permanent Residence with USCIS (can file for travel and work authorization for all eligible applicants)
  – Consular Processing filed at US Embassy or Consulate in home country or last country of residence (may not file for independent work authorization and must travel to US Embassy for final interview)
Alternative Paths to a Green Card

• Multinational Manager
• Extraordinary Ability, Outstanding Researcher, and Multinational Manager/Executive Petitions
• National Interest Waivers
• Immigrant Investor Petitions
• Diversity Lottery Applications
• Family-Based Petitions
• Asylum
Recognizing and Responding to Immigration Issues in the Workplace

- Maintaining reminders of expiration dates
  - Our case management systems helps with this
  - Always good to independently track as well
- Ensuring accurate job descriptions of minimum requirements are maintained
  - This is helpful for green card processing and determining which employment based immigration category the position will fall under
- Track salaries to ensure they are compliant with wage and hour and immigration requirements
- Track job changes and internal movement of employees to new locations as this may trigger amendments to their visas
- Immigration policy that covers both nonimmigrant and immigrant/green card sponsorship
PART 2
Global Mobility

• Most Common Issues Faced in Global Mobility
Most Common Issues Faced in Global Mobility

• Remember there is no “international law,” laws are local and sometimes conflict across borders
• Transfer costs sometimes do not justify the purpose or match the needs
  - Business needs outside “scope” of authorizations (corporate, tax, and/or immigration)
• Immigration issues are an afterthought
  - Timing concerns
  - Legal structure
• Some laws follow expatriates: Australia, Brazil, United Kingdom, United States and any country with a home country employment contract
• International Assignee Concerns
  - Wants home country compensation and benefits
  - Wants to avoid double taxation
  - Wants to avoid duplicate living costs
  - Wants family to relocate/visit
PART 3
Compliance and Enforcement

• Completion and Maintenance of I-9 Records
• Managing Compliance Standards
What is an I-9?

- Form I-9 is the Employment Eligibility Verification Form used to comply with IRCA.
- The Immigration Reform and Control Act of 1986 (IRCA, Nov. 16, 1986) requires “facially valid” documentation verifying the employee’s identity and legal authorization to accept employment in the U.S.
Completing Form I-9

- Section 1 – Employee Information
- Section 2 – Employee Documents
- Section 3 – Re-verification
By When Must the I-9 Be Completed?

- **Section 1** is to be completed by the employee on the first day they report to work (Day 1)
- **Section 2** must be completed by the HR Representative on the same day that the employee reports to work
- **Section 3** must be completed by the expiration date of the employee’s work permit
Section 2 – HR Representative Review and Certification

- One Document in LIST A  OR
- One Document in LIST B  AND
  One Document in LIST C
- HR Representative  Signature, Printed Name, Title
- Business Address
- Date
- Must be completed on the first day that the employee reports to work
HR’s Role in Section 2

- Establish the identity of the employee
- Verify employment eligibility of the employee
Reviewing the Documents

• If documents appear to be genuine, you must accept them, unless you have knowledge to the contrary.

• However, if you have knowledge that they are not valid, you must contact your attorney.
When you have a rehire or reverification, Section 3 of the existing I-9 must be completed.

If current I-9’s Section 3 is already filled in, complete a new I-9.

On reverification you will not be confirming a List B document.

You will keep employee hard copies together.
Updating and Reverification

- Required to reverify if employment authorization document (List A or C) expires
- Do not reverify identity (List B) documents
- Do not reverify Permanent Resident Cards
Reverification Procedures: Who Must Be Reverified?

- Expiration Date listed by employee in Section 1
- Work Eligibility Document in Section 2 has an expiration date
- Receipt presented by employee
- 240-Day Rule applies to E, H, L, O, P, and TN non-immigrants
- H-1B portability
Reverification Procedures: When Must Reverification Be Completed?

- Employer must conduct reverification on or before the expiration date of the employee’s employment authorization.
- Employers should remind employees well in advance of the actual date of expiration of employment authorization (four to six months).
Where Must the I-9 Be Stored?

• I-9s may be maintained at the local worksite or at the company’s headquarters
• Important to conduct reverification promptly, when necessary
• Important to produce I-9s for inspection if necessary, without undue difficulty
What is the Receipt Rule?

- Under the receipt rule, an individual may present a “receipt” in lieu of a listed document to complete Section 2 of the I-9 Form.
- The receipt is valid for a temporary period and the document must be lost, stolen or damaged.
Retaining I-9s

- Current Employees – Everyone hired after 11/6/1986 has to have I-9
- Terminated Employees –
  - Three years from the date of hire or one year from the date of termination, WHICHEVER IS LATER
  - Example
    - Hire date is 1/1/2000 – term. date is 1/1/2001
    - Hire date is 1/1/2000 – term. date is 1/1/2005
<table>
<thead>
<tr>
<th>Photocopying and Retaining Form I-9</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Enter date employee started work: (year, month, day)</td>
</tr>
<tr>
<td>Add 3 years to line 1</td>
</tr>
<tr>
<td>2. Termination date: (year, month, day)</td>
</tr>
<tr>
<td>Add 1 year to line 2</td>
</tr>
<tr>
<td>Which date is later: A or B? Enter later date here</td>
</tr>
</tbody>
</table>
Civil Penalties – Insufficient Checking

- I-9 paperwork violations result in penalty of $110 to $1,100 for each individual
- Document abuse discrimination violations result in a fine of $110 to $1,100
Fine per unauthorized alien for Illegal Employment Violations

- $375 to $3,200 - First Violation
- $3,200 to $6,500 - Second Violation
- $4,300 to $16,000 - Third & Other Violations
• ICE may decrease or enhance the penalty depending on the following:
  – Business size (+/− 5%)
  – History of violations (+/− 5%)
  – Good faith (+/− 5%)
  – Seriousness of violation (+/− 5%)
  – Unauthorized workers (+/− 5%)
• Criminal Sanctions Likely After First Violation
Criminal Penalties – Insufficient Checking

“Pattern or practice” of knowingly employing unauthorized aliens:

- Use of federal criminal regulations
- Increased civil penalties
Violation Basics

• Technical Violations
  – Minor paperwork violations *unlikely* to result in hiring someone without proper identity and/or work authorization (*e.g.*, incomplete address, undated signature)

• Substantive Violations
  – Major paperwork violations likely to result in hiring someone without proper identity and/or work authorization (*e.g.*, missing form, Section 2 certification not complete)

• Knowingly Hire/Continue to Employ
  – Actual knowledge, which means . . .
  – Constructive knowledge, which means . . .
Civil Penalties – Over Documentation and Discrimination

Disparate impact on protected class – e.g., requiring more documents than required by law or rejecting documents that “on their face appear to be genuine”:

• Civil penalties: $110 to $1,100 per individual discriminated against
Role of the Office of Special Counsel

- These two generally go hand-in-hand during the I-9 process, during which employees affirm identity and work authorization, and also present documents establishing both.
- Employers are obligated to take the necessary steps to confirm employee identity and work authorization but not engage in discriminatory conduct. Two federal agencies underscore this fine line:

<table>
<thead>
<tr>
<th>U.S. Immigration and Customers Enforcement, Homeland Security Investigations Unit (ICE)</th>
<th>U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (DOJ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigative arm of U.S. Department of Homeland Security</td>
<td>Enforces the federal laws prohibiting employers from engaging in discriminatory practices, including:</td>
</tr>
<tr>
<td>Conducts “worksite enforcement” audits to confirm (a) employees fully comply with the federal Form I-9 requirements, and (b) employers do not knowingly employ unauthorized workers</td>
<td>o Citizenship or immigration status discrimination</td>
</tr>
<tr>
<td>Conducts criminal investigations, including of employers (e.g., harboring undocumented workers)</td>
<td>o National origin discrimination</td>
</tr>
<tr>
<td></td>
<td>o Document abuse (e.g., requesting additional or different documents than required during I-9 process)</td>
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Questions & Answers