

Fundamentals of Immigration Law

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Andrew J. Zeltner
Associate

Andrew J. Zeltner is an Associate in the Firm's Philadelphia office. Mr. Zeltner handles a wide array of corporate immigration matters including those involving the processing of permanent resident applications (green cards) on behalf of multinational corporate and individual clients, including labor certification applications, immigrant visa petitions and adjustment of status applications.



He has significant experience providing employment-based U.S. immigration services for large corporate clients, including applications for B-1 OCS, E-1/E-2, H-1B, H-3, J-1, L-1, O-1, TN, labor certifications, multinational manager and executive immigrant petitions, outstanding researchers, extraordinary ability aliens, and national interest waivers. He has provided extensive advice to human resources professionals and corporate counsel regarding immigration compliance matters including I-9 and LCA compliance issues.

Mr. Zeltner received a Bachelor of Arts degree in Politics (cum laude) from The Catholic University of America. He earned his J.D. (cum laude) from Quinnipiac University School of Law. While in law school, Mr. Zeltner served as Opinions Editor of the Quinnipiac Probate Law Journal.



Lisa T. Felix
Associate

Lisa Felix represents corporate and educational clients who seek to hire or transfer foreign employees, as well as foreign individuals seeking employment in the United States as scientists, highly skilled professionals, executives, managers, and artists. She advises employers on immigration compliance, responding to government investigations, and immigration strategy and planning.



Lisa has experience representing individuals in self-sponsored immigration matters based on professional qualifications and business development, as well as personal matters including naturalization, family-based immigration matters, consular processing and asylum claims.

Before practicing as an attorney, Lisa worked extensively in higher education, providing immigration services to students, faculty, researchers, and administrators at the University of Pennsylvania, the State University of New York at Buffalo, and at Southern Illinois University–Carbondale's branch campus in Niigata, Japan. As a Designated School Official and Alternate Responsible Officer, she advised academic and administrative departments, foreign faculty, and students in the areas of hiring, enrollment, non-resident tax compliance, and academic, cross-cultural and personal concerns.

Overview

- Key Concepts
- Employment-Based Nonimmigrant Procedures and Categories
- Employment-Based Immigrant Procedures and Categories/Green Cards
- Recruitment Questions About Immigration Status
- Family-Based Immigrants and Related Issues



Essential Immigration Concepts

- Key Distinctions
- Citizen vs. Foreign National
- Immigrant vs. Nonimmigrant
- "Visa" vs. "Status"

Key Distinction #1

- Citizen vs. Foreign National
 - All Noncitizens are subject to immigration law (including exclusion and deportation for violations of the law), whether on a temporary visa or admitted for permanent residence
 - U.S. Immigration law treats all non-U.S. citizens the same (mostly)



Key Distinction #2

- Immigrants vs. Nonimmigrants
 - Immigrants/Permanent Residents are allowed to live and work in the United States without restriction
 - Law Presumes "Immigrant Intent" of All Noncitizens (unless they can prove qualification for a nonimmigrant category)
 - Nonimmigrants are admitted for a specific, temporary purpose enumerated in the Immigration and Nationality Act
 - Nonimmigrant intent and dual intent

Key Distinction #3

- Visa vs. Status
 - Permission to enter
 - Visa is a stamp in the passport – used for entry into the U.S.
 - Permission to stay – how long and for what purpose
 - I-94 record indicates status (purpose and length of authorized stay)



Key Documents

- Passport – issued by the country of citizenship
- Visa Stamp – a stamp in the passport used for entry into the U.S.
- I-94 record – record indicates status (activity/purpose and length of authorized stay)
- Evidence of eligibility (I-20, DS-2019, I-797)



Nonimmigrant Concepts and Procedures



- Basic Procedures
 - Employer or Individual Petition
 - Employee Visa Stamp Application
 - Change of Status
 - Extension of Status
 - Adjustment of Status



Employment-Based Nonimmigrant Categories



- Visitors for Business or Tourism (B) (includes Visa Waiver Program/ESTA)
- Students (F)
- Professional Workers (H-1B)
- Exchange Visitors (J)
- Extraordinary Ability (O-1)
- Canadian & Mexican Professionals (TN-1)
- Intra-Company Transferees (L-1)
- Treaty Traders and Investors (E-1/E-2)
- Family Members (F-2, J-2, H-4, L-2, O-3, TD)



H-1B Visas



- Basic requirements
 - Job Offer
 - Prevailing Wage
 - Bachelors or higher degree
 - Specialty occupation
 - Dual intent
- Procedure and processing times
 - Quota & Exemptions
 - Length of approval
 - Extensions
 - Spouses and work authorization

Other NIV Options

- Extraordinary Ability (O-1)
 - National or international renown
 - Employer-sponsored
- Canadian/Mexican Professionals (TN)
 - Profession must be on the NAFTA list
- Intra-Company Transferees (L-1)
 - Oversees subsidiary/affiliate transfers
 - Manager/Executive or Specialized Knowledge
- Treaty Traders/Investors (E-1/E-2)
 - National of treaty country
 - 50% of company owned by treaty nationals

Employment Visa Comparison

	H-1B	L-1 A / L-1B	TN
Basic requirements			
Specific country	No	No	Canada and Mexico
Job Offer Required	Yes	Yes	Yes
Prevailing Wage	Yes	No	No
Bachelor's or higher degree	Yes	No (except for L-1 Professional)	Each profession has its specific requirements
Specialty occupation	Yes	L-1A = Managerial/Executive L-1B = specialized knowledge	NAFTA designated professions
Procedure and processing			
Quota	Yes	No	No
Length of approval	6 years (1, 3)	L-1A = 7 years (2, 3, 3) L-1B = 5 years (2, 3)	Renewable indefinitely in 3-year increments
Work authorization for spouses	No (except when green card is in process)	Yes – must apply for EAD	No
Dual intent	Yes	Yes	No

What is Permanent Residency?

- Authorization to live & work indefinitely in the United States
- “Immigrant Visa”
- The “Green Card” or “Form I-551”
- Not always ‘forever’ – may be abandoned or taken away



Employment-Based Immigrant Procedures and Categories

- First Preference (EB-1)
 - Extraordinary Ability, Outstanding Researcher, Multinational Executive
 - Exempt from Labor Certification Requirements
- Second Preference (EB-2)
 - Nat'l Interest Waiver of the Labor Cert,
 - Labor Cert required: Advanced Degree Professionals, Bachelors plus 5 years experience
- Third Preference (EB-3) (Labor cert required)
 - Skilled Worker (2+ years experience), Bachelor's Degree

Employment-Based Permanent Residency Procedure

- Employer-sponsored or self-sponsored
- Labor certification or extraordinary/national interest/exceptional
- Multiple petitions
- Multi-step process (Labor Cert → I-140 → I-485)
- I-485 approval = green card
- Non-immigrant status?
- Policy issue: evaluation of permanent residence eligibility at time of hire

Permanent Residency Quotas, Where Are We Now?

Visa Bulletin for April 2019

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	01FEB18	22FEB17	01FEB18	22FEB17	01FEB18	01FEB18	01FEB18
2nd	C	01APR16	C	12APR09	C	C	C
3rd	C	01AUG15	C	22JUN09	C	01MAR18	C
Other Workers	C	22AUG07	C	22JUN09	C	01MAR18	C
4th	C	C	08MAR16	C	01APR18	C	C
Certain Religious Workers	C	C	08MAR16	C	01APR18	C	C
5th Non-Regional Center (CS and TS)	C	15SEP14	C	C	C	C	22AUG16
5th Regional Center (US and RS)	C	15SEP14	C	C	C	C	22AUG16

Recruitment Questions About Immigration Status

- Non-Discrimination Requirement
 - No Discrimination Allowed Between U.S. Citizens, U.S. Nationals, Permanent Residents, Asylees, Refugees, and 1986 amnesty program's "Temporary Residents."
 - Recruiters NOT allowed to ask "Are you a U.S. Citizen?" or "Do you have a Green Card?"
 - Recruiters NOT allowed to request specific documents or to require "more or different" documents than the minimum required.



Recruitment Questions About Immigration Status

cont'd

- Employers May Elect Not to Hire Candidates Needing "Immigration Sponsorship"
- Recruiters ARE allowed to ask "Are you legally authorized to work in the United States?" followed by "Will you now or in the future require sponsorship for an employment visa status?" (e.g., H-1B visa status)



Family-Based Immigration

- Sponsored
 - "Immediate relatives" (never a quota)
 - Green Card holders sponsoring their spouses, children, unmarried sons & daughters
 - U.S. Citizens sponsoring sons/daughters, siblings
- Derivative – can apply to Employment too
 - Spouses
 - Children under the age of 21
- Same-Sex marriages recognized



Questions?



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