

U.S. Immigration Options for the Canadian MBA

Options for Employment

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- **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. She advises employers on immigration compliance, responding to government investigations, and immigration strategy and planning.
- 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.
- Lisa is an active member of the American Immigration Lawyers Association, where she has served as co-chair of the AILA Philadelphia Chapter's Pro Bono Committee, and on the organizing committee of the chapter’s annual conference. Lisa is a returning member of NAFSA: Association of International Educators.
- Lisa is a 2005 graduate of Temple University’s Beasley School of Law.



Andrew J. Zeltner, Esq.

- **Andrew Zeltner** is an Associate in the Firm's Philadelphia office and focuses his practice on both business and family-based immigration. Drew received his law degree from the Quinnipiac University School of Law. Drew is currently admitted to practice in New York and is a member of the American Immigration Lawyers Association. He also has particular experience in complex corporate immigration issues including labor certifications, L-1 petitions and EB-1 filings.

Agenda

- Current topics in immigration
- Nonimmigrant employment options after graduation
 - Using your OPT
 - H-1B and TN
 - E, L, O, H-3, etc.
 - Entrepreneur Parole
- Introduction to employment-based permanent residence
 - Self-sponsored
 - Employer-sponsored
 - Investment
- Questions & discussion

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2018 Issues

- Questions regarding Trump Administration
- H-1B quota and adjudication issues
- Support for entrepreneurs in flux
- Legislative changes?

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Employment Options for the F-1 Student

- Use your OPT after complete studies
- Options for the entrepreneur
 - On-campus employment must be services for students
 - OPT employment must be related to studies
 - Starting company while a student – self-employment

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H-1B Visas

- Basic requirements
 - ❑ Job Offer (Part-time or full-time)
 - ❑ Bachelors or higher degree
 - ❑ Specialty occupation
 - Job requires bachelors or higher degree in specific field
 - ❑ Prevailing wage
- Length of approval and extensions
 - ❑ 3 year initial approval and 3 year extension
 - ❑ 6 year maximum – any combination of employers
 - ❑ Extensions beyond 6 years

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H-1B Quota & Exemptions

- What is it, and what does it mean?
 - 65,000 visas
 - Separate quota (20,000) for US-educated advanced degree holders
- Separate options for Canada and Mexico (TN), Australia (E-3), Chile and Singapore (H-1B1)
- Cap-exempt employers:
 - Universities and nonprofit institutions affiliated
 - Employed “at” university vs. concurrent employment
 - Nonprofit or government research organization
 - Previous H-1B

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Strategies to Enhance Chances of Getting H-1B

- Filing multiple years
- Filing first day
- Using previously-obtained degree
- Start your own business
 - Apply as H-1B employee?

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H-1B Issues for Start-Up Business

(cont'd)

- Importance of business plan/financial projections
- Can company be owned by H-1B employee?
 - Must be W-2 employee
 - Company separate entity from owner/employee
 - Company right of control over employee
- Other employees helpful – not required
- Prevailing Wage
 - CEO vs. function-descriptive position

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Other Visa Options

- F-1
 - Going back to school
 - Advantages of Masters or PhD
- Working overseas for U.S. employer
 - Entering U.S. as B-1
 - Eligibility for L-1 after one year
- Look at spouse's status
 - Spouse of J, E and L can work
- Country-Specific Options: TN-1, E-3, H-1B1

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Other Nonimmigrant (Temporary) Options

TN Visas

- Based on NAFTA Treaty
- Must be citizen of Canada or Mexico
- Specific professions
- Special issues:
 - Management Consultant
 - Economist

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TN Visas

- No quota
- Spouse cannot work
- Length of visa
 - 3 years
 - Renewable indefinitely *
 - * Not dual intent

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Other Nonimmigrant (Temporary) Options

Treaty (E) Visas

- Must be national of treaty country
 - <http://www.travel.state.gov/visa>
- Company must be owned at least 50% by treaty country nationals
- No quota
- Can be manager, supervisor or “essential skill” employee

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Other Nonimmigrant (Temporary) Options

Treaty (E) Visas

(cont'd)

- Treaty traders (E-1)
 - “Substantial” import or export
 - Majority between U.S. and treaty country

- Treaty investors (E-2)
 - “Substantial” investment
 - No exact amount and varies dep upon type of investment
 - Business plan and financial projections critical

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Intracompany Transferee (L-1) Visas

- Must be an “international” company *(cont'd)*
 - Company outside U.S. with at least 50% common ownership
 - Must be employed by that business one year
 - New office L-1
- Type of employment (in U.S. and overseas companies)
 - Manager or executive
 - “Specialized knowledge” employee

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Intracompany Transferee (L-1) Visas

- National of any country
- No quota
- Spouse can work
- Length of visa
 - Start up 1 year
 - Established business 3 years
 - Maximum length 7 years

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Extraordinary Ability (O-1) Visas

- National or international renown
- “One of a few at the top of his peers”
- Must be employer or agent
 - Can be own company
- Length of visa
 - 3 years
 - 1 year extensions
 - Can extend indefinitely

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Trainee (H-3) Visa

- Corporate trainee
- Training not available overseas
- Formal training program required
- Productive employment incidental to training
- Training will qualify for position abroad

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Parole for Entrepreneurs

- Availability in flux
- Requires:
 - Substantial ownership interest in start up within past 5 years
 - “Central and active role”
 - Either:
 - Significant investment from US investor; or
 - Significant government awards or grants for economic development, research and development or job creation; or
 - Compelling evidence of potential for rapid growth and job creation

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Permanent Resident Status

- Employment
- Family
- Investment
- Asylum
- Lottery

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Permanent Resident Status Employment

- Employer-sponsored or self-sponsored
- Multiple petitions allowed
- Can provide the basis for extending an H-1B beyond 6 years

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Permanent Resident Status Employment

■ Self-Sponsored

(cont'd)

- Extraordinary ability (EB-1)
 - “One of the very small percentage at the top of the field”
 - National or international recognition
- National Interest Waiver (EB-2)
 - Exceptional ability or advanced degree
 - National priority (“interest”)
 - Entrepreneurship recognized as national interest
Examples: increasing employment; increasing exports; new technology

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Permanent Resident Status Employment

Employer-Sponsored:

(cont'd)

- ❑ Multinational Manager (EB-1)
 - Same as L-1 except must be manager or executive overseas
- ❑ Outstanding Professor/Researcher (EB-1)
 - Academic or research positions
- ❑ Labor Certification (EB-2 or EB-3)
 - DOL is involved
 - Employer must demonstrate unavailability of qualified, interested, and available U.S. worker
 - Employer must pay prevailing wage as set by DOL

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Permanent Resident Status Investment (EB-5)

- (cont'd)*
- ❑ Individual investment
 - Requires 10 full time US citizen or permanent resident employees
 - ❑ Regional center investment
 - Over 800 USCIS – approved regional centers
 - Mostly \$500,000 investment
 - Indirect employment creation ok
 - 90-95% of all EB-5 applications

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Materials

Please visit www.klaskolaw.com to download this PowerPoint presentation and relevant articles.

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Questions?

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For Further Information



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