Immigration Pointers for Businesses

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Presentation Overview

Part 1: Working in the United States

Part 2: Employment-Based Green Cards

Part 3: Compliance

Part 4: Immigration Audit Process

Part 5: Recent Changes in Immigration Law
Part 1: Working in the United States
Working in the United States

Foreign nationals who wish to come to the United States to work must typically be sponsored by the prospective employer.
H1B-Work Visa

The US H1B visa is a non-immigrant visa that allows US companies to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields such as in architecture, engineering, mathematics, science, and medicine. Under the visa a US company can employ a foreign worker for up to six years.
H-1B Visas

“Specialty Occupation”
Eligibility & Qualification Requirements

1. Specialty Occupation
2. Employee Qualifications
3. Employer-Employee Relationship
4. Valid Job Offer
5. H-1B Cap-Exemption
H-1B Visas

The H-1B Cap

• What is it?

• Are there exemptions?
H-1B Visas

Period of Stay

• How Long?

• How much?

• Who pays?
H-1B Visas

3 Step Application Process

H-1B Application Process

ETA9035 Labor Condition Application (LCA)

I-129 H Petition

I-797 Approval Notice
H-1B Visas

Step 1: Complete and Submit the Labor Condition Application (LCA)
H-1B Visas

Step 1 (cont.): Determine the Prevailing Wage

FLC Wage Results

You selected the All Industries database for 7/2016 - 6/2017.

Your search returned the following: Print Format

Area Code: 35614
Area Title: New York-Jersey City-White Plains, NY-NJ Metropolitan Division
OES/SOC Code: 11-3021
OES/SOC Title: Computer and Information Systems Managers
GeoLevel: 1

Level 1 Wage: $53.23 hour - $110,718 year
Level 2 Wage: $69.11 hour - $143,749 year
Level 3 Wage: $84.99 hour - $176,779 year
Level 4 Wage: $100.87 hour - $209,810 year
Mean Wage (H-2B): $84.99 hour - $176,779 year

This wage applies to the following O*Net occupations:

11-3021.00 Computer and Information Systems Managers

Plan, direct, or coordinate activities in such fields as electronic data processing, information systems, systems analysis, and computer programming.
O*Net™ JobZone: 4
Education & Training Code: 4-Work experience, plus a bachelor's or higher degree

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the Skill Level page.

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is $7.25/hr effective July 24, 2009.
H-1B Visas

Step 1 (cont.): Determining the Prevailing Wage

Four-Tier System

- Level 1: Entry/beginning level
- Level 2: Qualified/competent in basic tasks
- Level 3: Experienced/exercise judgment
- Level 4: Senior management

- Recent Level 1 and Level 2 Wage Issues
- Responding to Requests for Information from USCIS

![Prevailing Wage Levels](image)
H-1B Visas

Step 2: Complete and File Form I-129, Petition for a Nonimmigrant Worker
Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States

(For H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions only. This section of the form is not required for all other classifications. See Page 3 of the Instructions before completing this section.)

Check Box 1 or Box 2 as appropriate:

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

☐ 1. A license is not required from either U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or

☐ 2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.
H-1B Visas

Step 3: Apply for a H-1B Visa
H-1B Visas

The Public Access File

- Certified LCA (ETA9035)
- Rate of pay for the H-1B worker
- Actual wage memorandum
- Prevailing wage determination
- Proof of LCA posting
H-1B Visas

Maintaining the Public Access File

- **Required Contents:**
  - LCA, including instructions executed by employer and employee
  - Prevailing Wage Documentation
  - Health Benefits Summary
  - Actual Wage Memorandum

- **Highly Recommended Contents:**
  - Notice of Posting
  - Posting Notice Certification
  - Written acknowledgment or other proof that the beneficiary received a copy of the LCA
  - Specific salary data the employer used to calculate actual wage
L-1 Visas

The L-1 Visa Classification enables a U.S. employer to transfer a nonimmigrant worker from one of its affiliated foreign offices to one of its offices in the United States.
L-1 Visas

Two types of L-1 Visas:

- **L-1A**: Intracompany Transferee Executive or Manager
- **L-1B**: Intracompany Transferee Professional Employee with Specialized Knowledge
L-1 Visas

Application Process

- Same as H-1B application process

- EXCEPT: Employer Completes the L Classification Supplement to Form I-129
L-1 Visas

L Classification Supplement to Form I-129

- Section 1, Part 1: Classification Sought
- Employer will select **either** L-1A manager or executive **or** L-1B specialized knowledge

![Form Image]
L-1 Visas

Period of Stay

- All qualified L-1 employees will be allowed a maximum initial stay of 3 years
- Qualified L-1 employees entering the United States to establish a new office will be allowed a maximum initial stay of 1 year

L-1 Petition Fees

- Carefully review USCIS’s webpage titled “H and L Filing Fees for Form I-129, Petition for a Nonimmigrant Worker” to determine which supplemental fees are required
Part 2: Employment-Based Green Cards

Adjustment of Status
# Adjustment of Status

## 9 Steps for Adjustment of Status

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Determine if you are eligible to apply for a Green Card</td>
</tr>
<tr>
<td>2.</td>
<td>You or someone else must file an immigrant petition for you (if applicable)</td>
</tr>
<tr>
<td>3.</td>
<td>Check visa availability (if applicable)</td>
</tr>
<tr>
<td>4.</td>
<td>File Form I-485</td>
</tr>
<tr>
<td>5.</td>
<td>Go to your Application Support Center appointment</td>
</tr>
<tr>
<td>6.</td>
<td>Go to your interview (if applicable)</td>
</tr>
<tr>
<td>7.</td>
<td>Respond to request for additional evidence (if applicable)</td>
</tr>
<tr>
<td>8.</td>
<td>Check your case status</td>
</tr>
<tr>
<td>9.</td>
<td>Receive a decision</td>
</tr>
</tbody>
</table>
Adjustment of Status

- Non-Immigrant Status (H-1B, L1, etc.)
- PERM Labor Certification
  - Prevailing Wage Request
  - Recruitment Period
  - File PERM Application (Priority Date)
- I-140 Immigrant Petition
- I-485 Adjustment of Status (Green Card Application)
- Receive Green Card (Permanent Residency)
Adjustment of Status

Eligibility for Adjustment of Status
Adjustment of Status

Employment-Based (EB) Visa Preference Categories

**EB-1**
First Preference
Extraordinary Ability
No Labor Certification Required

**EB-2**
Second Preference
Advanced Degree Holders
Labor Certification Required

**EB-3**
Third Preference
Professionals
Labor Certification Required

**EB-4**
Fourth Preference
Special Immigrants
No Labor Certification Required

**EB-5**
Fifth Preference
Business Investors
Labor Certification Required
Adjustment of Status

Permanent Labor Certification Process (PERM)

PERM is a test of the US Labor Market ads searching for qualified workers who want the job
Adjustment of Status

Form I-140
Immigrant petition for Alien Worker

Instructions for Petition for Alien Workers

Department of Homeland Security
U.S. Citizenship and Immigration Services

What is the Purpose of This Form?

Form I-140 is used to petition U.S. Citizenship and Immigration Services (USCIS) for an immigrant visa based on employment.
Adjustment of Status

Form I-485
Application to Register Permanent Residence or Adjust Status
What happens after?
Form I-9 Overview

• The Immigration Reform and Control Act (IRCA)

• Revised Form I-9 Now Mandatory
Form I-9 Overview

- Form I-9 MUST be completed for each newly hired employee
- Form I-9 must be completed within 3 days of employment
- There are 3 Sections to Form I-9
Form I-9: Section 1

Newly hired employees **MUST** complete and sign **Section 1 no later than** the first day of employment, but not before accepting a job offer.
Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

<table>
<thead>
<tr>
<th>Field</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Last Name (Family Name)</td>
<td></td>
</tr>
<tr>
<td>First Name (Given Name)</td>
<td></td>
</tr>
<tr>
<td>Middle Initial</td>
<td></td>
</tr>
<tr>
<td>Other Last Names Used (if any)</td>
<td></td>
</tr>
<tr>
<td>Address (Street Number and Name)</td>
<td></td>
</tr>
<tr>
<td>Apt. Number</td>
<td></td>
</tr>
<tr>
<td>City or Town</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td></td>
</tr>
<tr>
<td>ZIP Code</td>
<td></td>
</tr>
<tr>
<td>Date of Birth (mm/dd/yyyy)</td>
<td></td>
</tr>
<tr>
<td>U.S. Social Security Number</td>
<td></td>
</tr>
<tr>
<td>Employee’s E-mail Address</td>
<td></td>
</tr>
<tr>
<td>Employee’s Telephone Number</td>
<td></td>
</tr>
</tbody>
</table>

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

- [ ] 1. A citizen of the United States
- [ ] 2. A noncitizen national of the United States. (See Instructions)
- [ ] 3. A lawful permanent resident (Alien Registration Number, USCIS Number)
- [ ] 4. An alien authorized to work (expiration date, if applicable, mm/dd/yyyy):
  - Some aliens may write "NA" in the expiration date field. (See instructions)

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:
An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number:

1. Alien Registration Number/USCIS Number
   - OR
2. Form I-94 Admission Number
   - OR
3. Foreign Passport Number
   - OR
   - Country of Issuance

Signature of Employee

Today’s Date (mm/dd/yyyy)

Preparer and/or Translator Certification (check one):

- [ ] I did not use a preparer or translator.
- [ ] A preparer(s) and/or translator(s) assisted the employee in completing Section 1.

(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator

Today’s Date (mm/dd/yyyy)

Last Name (Family Name)

First Name (Given Name)

Address (Street Number and Name)

City or Town

State

ZIP Code
Form I-9: Section 2

• Employers or their authorized representatives **MUST** complete and sign Section 2 within three (3) business days of the employee’s first day of employment.

• Employers or their authorized representatives **MUST** physically examine one document from List A or a combination of one document from List B and one document from List C on the “Lists of Acceptable Documents.”
**Form I-9: Section 2**

**Section 2. Employer or Authorized Representative Review and Verification**

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee’s first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the “Lists of Acceptable Documents.”

<table>
<thead>
<tr>
<th>Employee Info from Section 1</th>
<th>List A Identity and Employment Authorization</th>
<th>OR</th>
<th>List B Identity</th>
<th>AND</th>
<th>List C Employment Authorization</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Document Title ①</td>
<td></td>
<td>Document Title ①</td>
<td></td>
<td>Document Title ①</td>
</tr>
<tr>
<td></td>
<td>Issuing Authority ②</td>
<td></td>
<td>Issuing Authority ②</td>
<td></td>
<td>Issuing Authority ②</td>
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<tr>
<td></td>
<td>Document Number ③</td>
<td></td>
<td>Document Number ③</td>
<td></td>
<td>Document Number ③</td>
</tr>
<tr>
<td></td>
<td>Expiration Date (if any) (mm/dd/yyyy) ④</td>
<td></td>
<td>Expiration Date (if any) (mm/dd/yyyy) ④</td>
<td></td>
<td>Expiration Date (if any) (mm/dd/yyyy) ④</td>
</tr>
<tr>
<td></td>
<td>Document Title ⑤</td>
<td></td>
<td>Document Title ⑤</td>
<td></td>
<td>Document Title ⑤</td>
</tr>
<tr>
<td></td>
<td>Issuing Authority ⑥</td>
<td></td>
<td>Issuing Authority ⑥</td>
<td></td>
<td>Issuing Authority ⑥</td>
</tr>
<tr>
<td></td>
<td>Document Number ⑦</td>
<td></td>
<td>Document Number ⑦</td>
<td></td>
<td>Document Number ⑦</td>
</tr>
<tr>
<td></td>
<td>Expiration Date (if any) (mm/dd/yyyy) ⑧</td>
<td></td>
<td>Expiration Date (if any) (mm/dd/yyyy) ⑧</td>
<td></td>
<td>Expiration Date (if any) (mm/dd/yyyy) ⑧</td>
</tr>
</tbody>
</table>

Additional Information ⑨

**Certification:** I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee’s first day of employment (mm/dd/yyyy): ⑩

(See instructions for exemptions)

Signature of Employer or Authorized Representative ⑪

Today’s Date (mm/dd/yyyy) ⑫

Title of Employer or Authorized Representative ⑬

Last Name of Employer or Authorized Representative ⑭

First Name of Employer or Authorized Representative ⑮

Employer’s Business or Organization Name ⑯

Employer’s Business or Organization Address (Street Number and Name): ⑰

City or Town ⑱

State ⑲

ZIP Code ⑳
Form I-9: Section 2

- USCIS Anti-Discrimination Notice: An employer cannot specify which document(s) the employee may present from the List of Acceptable Documents.

- Form I-9 Acceptable Documents can be found on USCIS’ website by clicking: Forms → I-9, Employment Eligibility Verification → I-9 Central → Acceptable Documents.
Form I-9: Section 2

Acceptable Documents: List A
Form I-9: Section 2

Acceptable Documents:

List B

List C
Section 3 should be completed by employers in either a reverification or rehire situation.
Form I-9: Section 3

Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)

<table>
<thead>
<tr>
<th>Employee Name from Section 1:</th>
<th>Last Name (Family Name)</th>
<th>First Name (Given Name)</th>
<th>Middle Initial</th>
</tr>
</thead>
</table>

A. New Name (if applicable)

B. Date of Rehire (if applicable)

<table>
<thead>
<tr>
<th>Last Name (Family Name)</th>
<th>First Name (Given Name)</th>
<th>Middle Initial</th>
<th>Date (mm/dd/yyyy)</th>
</tr>
</thead>
</table>

C. If the employee’s previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

<table>
<thead>
<tr>
<th>Document Title</th>
<th>Document Number</th>
<th>Expiration Date (if any) (mm/dd/yyyy)</th>
</tr>
</thead>
</table>

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

<table>
<thead>
<tr>
<th>Signature of Employer or Authorized Representative</th>
<th>Today’s Date (mm/dd/yyyy)</th>
<th>Name of Employer or Authorized Representative</th>
</tr>
</thead>
</table>
Correcting I-9 Forms

Correcting Form I-9 Mistakes
- Add an initial and close by dating the correction
- Put in the correct facts
- Line out the incorrect information

Missing Forms
- Do not back date a Form I-9
- Allow the employee 3 business days to provide the documents for filing the fresh form
- Furnish the employee with a new form
Retention of Documents

Retention of I-9

- Duration of employment
- Later of either 3 years after date of hire or 1 year after termination of employment ended
- Copies of form I-9
Part 4: Immigration Audit Process

Businesses are receiving Notices of Inspection ("NOI") from DHS’ Immigration and Customs Enforcement ("ICE") Division
Results of Inspection

 Following an inspection of documents, ICE will provide notification to an employer. The most common notices include:

- Notice of Suspect Documents
- Notice of Discrepancies
- Notice of Technical/Procedural Failures
- Warning Notice
- Notice of Intent to Fine (NIF)
Notice of Intent to Fine (NIF)

ICE will issue a NIF if there is evidence of violations for substantive, uncorrected technical, knowing hire and continuing to employ.
Technical or Substantive Violations
Penalties for Non-Compliance

• Monetary penalties may range from $375 to $16,000 per violation

• Penalties for substantive violations, including failing to submit an I-9 when requested by ICE, range from $110 to $1,100 per violation. 8 CFR §274a.10(b)(2)

• Five criteria in determining size of penalty
Fraud - Generally

18 U.S.C. § 1546(a)

Anyone who knowingly makes a false statement on an application to USCIS for anything requiring a representation under oath of a material fact (i.e. visas, work authorizations, sponsorship applications for alien employees) is subject to imprisonment for up to 25 years. Foreign nationals may be imprisoned and/or removed from the U.S.
Document Fraud
Fraud Investigations

Fraud Detection and National Security Directorate (FDNS): developed to enhance national security and ensure that the right benefits are offered to correct beneficiaries.

FDNS developed Administrative Site Visit and Verification Program (ASVVP) to enable FDNS to randomly visit employers that have submitted I-129 petitions on behalf of employees.
FDNS Site Visits

Examples of FDNS questions to employer:
- How many persons employed
- How long has company been in business
- Number of H-1B employees employed – full and part-time
- Number of lawful permanent residents or foreign nationals

Examples of FDNS questions to employee:
- Employee’s title, responsibilities and salary
- Employee’s education
- Who paid the H-1B filing and legal fees
FDNS Site Visits

How to prepare for FDNS site visits:

- Establish protocols
  - Verify credentials
  - Counsel involvement

- Train stakeholders
  - Do not guess
  - Ask for time
  - Coach employees in advance, including reception
  - Counsel review
Part 5: Recent Changes in Immigration Law
USCIS Will No Longer Provide Deference to Prior Adjudications for Nonimmigrant Petitions

Policy Memorandum

SUBJECT: Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status
USCIS Issues New Form to Obtain Work Authorization Document and Social Security Number Simultaneously

New USCIS Form Streamlines Process to Obtain a Work Authorization Document and Social Security Number Simultaneously

Release Date: Oct. 2, 2017

Versión en español
The DHS Terminates Deferred Action for Childhood Arrivals (DACA) Program

U.S. Department of Homeland Security

Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA)

Release Date: September 5, 2017
USCIS Expands In-Person Interview Requirements for Certain Permanent Residency Applications

USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants

Release Date: Aug. 28, 2017
USCIS is Denying Pending Forms I-131 for Abandonment Due to International Travel

Practice Alert: USCIS Is Denying Pending Forms I-131 for Abandonment Due to International Travel

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Questions?
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