



Leveraging Immigration to Address Labor Shortages

Employers sometimes lean on foreign workers to temporarily fill job vacancies. Nonimmigrant workers can assist in addressing temporary or specialized skill gaps in the workplace, foster innovation, and transfer skills or specialized knowledge to other workers. Here's what employment lawyers and clients need to know.

BY SAMANTHA J. WOOD

The United States has experienced a decline in labor-force participation for many years. Employers are constantly working to rethink and recreate recruitment, workplace culture, and employee-benefit policies to attract and retain workers. However, one area that is often overlooked and undervalued is an employer's ability to lean on foreign workers to temporarily fill job vacancies. Nonimmigrant workers can assist in addressing temporary or specialized skill gaps in the workplace, foster innovation, and transfer skills or specialized knowledge to other workers.

H-1B Visa Program: A Common Option

A common option for temporary work visas is the H-1B program. The H-1B program is a visa program used by U.S. employers to temporarily hire foreign workers for specialized occupations. The program is intended to help employers who cannot otherwise obtain needed business skills and abilities from the U.S. workforce by authorizing the temporary employment of qualified individuals from outside the U.S. The program is commonly used in information technology, software development, architecture, engineering, mathematics, physical sciences, medicine and healthcare, and education positions, among others requiring an advanced degree.

For an employer and first-time candidate to benefit from the program, the employer must enter the candidate into the H-1B lottery process. This lottery process runs on an annual basis. At its conclusion, the U.S. Citizenship and Immigration Services (USCIS) randomly selects candidates to apply for the visa. On an annual basis, USCIS issues 65,000 H-1B visas, with an additional 20,000 visas issued to foreign professionals with a master's degree or higher from a U.S. institution.

If an individual is selected to apply, the employer will need to produce evidence that the position is a specialty occupation, the employee has the qualifications for the job, and the employer will (and has the ability to) pay the employee the prevailing wage, according to a Labor Certification Application. If the petition is approved, it will typically be valid for three years, with the ability to extend the visa an additional three years (for a maximum stay of six years).

Other Common Nonimmigrant Visa Categories

If the H-1B petition is not appropriate or an employer misses the lottery deadline, there are several other options for employers that want to temporarily fill job vacancies or transfer specialized knowledge. Although it would be impractical



Samantha J. Wood, U.W. 2013, practices labor and employment law, including business immigration, with Lindner & Marsack S.C., Milwaukee. She is a member of the State Bar of Wisconsin's Labor & Employment Law and Litigation sections. Access the digital article at www.wisbar.org/wl. swood@lindner-marsack.com



to list all nonimmigrant visa categories, some of the more common options include the following.

TN USMCA (formerly NAFTA) Visa.

The TN Visa permits qualified Canadian and Mexican citizens to temporarily work in the U.S. in specific professional occupations. To be eligible for this status, the following must be established: 1) the candidate must be a citizen of Canada or Mexico; 2) a U.S. employer must offer a position to the candidate; 3) the position must require a USMCA professional; 4) the candidate's profession must qualify under the regulations, and 5) the candidate must have the qualifications to practice in the profession. With a few exceptions, most categories require a bachelor degree or licensure. The types of professionals who are eligible to seek admission as a TN professional include accountants, engineers, lawyers, pharmacists, scientists, and teachers, among others.

L-1 Visa. The L-1 Visa allows multinational companies to transfer employees from foreign offices to a U.S. office. This program is commonly used by U.S. companies that have a qualifying relationship with a foreign company (that is, parent company, branch, subsidiary, or affiliate) for managers, executives, or employees with specialized knowledge.

R-1 Visa. The R-1 Visa allows individuals to come to the U.S. to temporarily work as a minister or in a religious vocation or occupation. This program is often used by religious organizations, such as churches or private religious

Contacting the U.S. Citizenship and Immigration Services (USCIS)

The U.S. Citizenship and Immigration Services (USCIS) is an agency of the U.S. Department of Homeland Security that administers the country's naturalization and immigration system. Visit <https://www.uscis.gov>.

I-129, Petition for a Nonimmigrant Worker, <https://www.uscis.gov/i-129>. Petitioners use this form to file on behalf of a nonimmigrant worker to come to the U.S. temporarily to per-

form services or labor, or to receive training, as an H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, or R-1 nonimmigrant worker. Petitioners may also use this form to request an extension of stay in or change of status to E-1, E-2, E-3, H-1B1, or TN, or one of the above classifications for an alien. Visit the website for forms, document downloads, and other information. **WL**

schools, to hire ministers, pastors, clergy members, or teachers.

O-1 Visa. The O-1 Visa is a nonimmigrant visa for individuals who possess extraordinary abilities in science, art, education, business, or athletics or who have a demonstrated record of extraordinary achievement in the motion picture or television industry and who have been recognized nationally or internationally for those achievements. This program is commonly used for entrepreneurs, professors, researchers, computer scientists, medical specialists, data scientists, CEOs, directors, and actors.

E-2 Visa. The E-2 Visa, also known as the "Investor Visa," allows a national of a treaty country to be admitted to the U.S. when investing a substantial amount of capital in a U.S. business for the purpose of developing and directing the investment enterprise. A *treaty country* is defined as a country with which the U.S. maintains a treaty of commerce and navigation, with which the U.S. maintains a qualifying international agreement, or that has been deemed a qualifying country by legislation.

B-1 Visa. The B-1 Visa allows an individual to enter the U.S. if the individual will be participating in business activities of a commercial or professional nature. However, there are limited

activities in which the individual can participate, and, generally, the visa does not allow an individual to maintain ongoing or continuous employment in the U.S. Permitted business activities include, but are not limited to, consulting with business associates; traveling for a scientific, educational, professional, or business convention or conference; negotiating a contract; or participating in short-term training.

Conclusion

While there are a variety of nonimmigrant visa categories from which employers can benefit, employers should be prepared for scrutiny and enforcement efforts under the new administration. It is no secret that under the Trump administration, there will be delays in visa issuances, additional requests for information, and increased denials. However, engaging legal counsel or immigration experts in the process will ensure employers understand all their options, select an appropriate visa category to match their workforce needs, and appropriately prepare and retain business records, including public access files, for legal compliance. **WL**

For The

Record

Inc.

Excellence in Court Reporting

888-892-0392

To Schedule, please email office@FTRMadison.com or visit our scheduling page on our website

Full-Service Court Reporting – Covering Wisconsin

Proudly celebrating our 21st year in business
Fully certified Court Reporters you know and trust.

www.ftrmadison.com