

A top-down view of a desk with a laptop, glasses, and a pen. The laptop is on the left, the glasses are at the top right, and the pen is on the right side. The background is a light, neutral color.

Work**Smarts** Half-Day Seminar

Tackling I-9 Compliance and Employment-Based Immigration: Employer Be Aware

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 Spencer**Fane**[®]



Introduction

Understanding the Lingo

- Aliens
- Citizens
- Lawful Permanent Resident
- Undocumented
- Unauthorized
- Immigrant vs. Nonimmigrant



The Pillars of the System

- Basis of US Immigration Law
 - Admitting immigrants with valuable skills to US economy
 - Reunification of families
 - Protecting refugees
 - Promoting diversity
- Agencies Involved
 - US Citizenship and Immigration Services (USCIS, formerly INS)
 - US Customs and Border Patrol (CBP)
 - Department of Homeland Security (DHS)
 - US embassies and consulates abroad

Pillars (cont.)

- Important Concepts
 - Types of aliens:
 1. Immigrants
 2. Nonimmigrants
 3. Students
 4. Visitors
 - Employment-Based vs. Family-Based
 - Status vs. Visa
 - Ineligibility | Unauthorized Stay | Overstay



Common Nonimmigrant Visa Categories “The Alphabet Soup”

Sponsorship

- Employer sponsor needed
 - H-1B
 - L
 - EB
 - TN
 - O
- No sponsor needed
 - E

Es and TNs

- E visas
 - For treaty traders and investors
 - Must invest a “substantial amount of capital” in a bona fide enterprise in the US
 - Must enter US to develop and direct the enterprise
 - Must apply at a US consulate abroad
- TN (NAFTA) visas
 - Foreign worker must be citizen of Canada or Mexico
 - Worker is qualified for, and has a degree in, a pre-approved profession
 - Ex: accountant, architect, engineer, economist, lawyer, medicine and scientists, professor
 - Initial period up to 3 years, can be extended indefinitely
 - No dual intent

H-1Bs and OPT: The Basics

- H-1B
 - Nonimmigrant status
 - Requires bachelor's degree or higher (or foreign equivalent) in a "specialty occupation"
 - Capped at 65,000 new visas for bachelor's
 - Additional 20,000 visas for master's or higher
 - Term of stay up to 3 years
 - Family and certain dependents can enter and work in US
- Optional Practical Training ("OPT")
 - Pre-completion vs. post-completion
 - STEM OPT extension
 - Term of stay of up to 1 year
 - Additional 2 years for STEM students
 - Cap-gap extension with H-1B

H-1B Specifics

- “The Lottery”
- Period of stay
 - Initial period: up to 3 years
 - 1 extension of up to 3 years
- Important dates (2022)
 - March 9: Lottery opens
 - March 25: Lottery closes
 - March 31: Selected registrants notified
 - April 1: First date H-1B petitions may be filed
 - October 1: First day of work for new visa holders
- Exemptions from the cap
- Dual intent: can pursue Green Card while in H-1B status

L Visas for Intracompany Transferees: The Basics

- L-1A
 - For executives or managers from affiliated foreign office of US employer
 - Work 1 continuous year abroad w/in last 3 years
 - Initial period of stay up to 3 years
 - Up to 2 extensions of 2 years each (total 7 years)
- L-1B
 - For workers with specialized knowledge from affiliated foreign office of US employer
 - Worked 1 continuous year abroad w/in last 3 years
 - Initial period of stay up to 3 years
 - Up to 2 extensions of 2 years each (total 7 years)

L Visa Specifics

- No annual limits
- Dual intent: can pursue a Green Card while in L-1A/B status
- Blanket petition option
 - US company and its affiliates and subsidiaries must have annual revenue of > \$25 million; or
 - US company employees > 1,000 people



The Green Card

Path to Permanent Residency

- EB-1: noncitizens of extraordinary ability
- EB-2: professionals holding advanced degrees or persons of exceptional ability
- EB-3: skilled workers and other professionals and unskilled workers
- EB-4: certain special immigrants
- EB-5: immigrant investors
- Approved workers granted a Green Card
- Numerically limited by country
- Multiple hurdles for employers

Permanent Residency (cont.)

- Prevailing Wage Determination
- Recruitment: Where / How Long?
- Labor certification
- Priority Date: What Is It?
- USCIS Application
- “Green Card”



I-9 Compliance

I-9: Employment Eligibility Verification

- All US employers must comply
- Verification completed with “List A,” “List B,” and “List C” documents
- Must be completed within 3 business days of the date of hire
- Standard of investigation: Accept documents that reasonably appear to be genuine
- E-Verify: Required for federal contractors or subcontractors, certain others; otherwise voluntary
- Keep the I-9 for 3 years after date of hire or 1 year after employment ends, whichever is later



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Top Tips

Our Takeaways

- Usually a way to employ someone legally here
- Be prepared for a wait
- Expect the unexpected
- Over-prepare and over-deliver
- Don't do it alone!

Thank You



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