

UT CLE 39th Annual Conference on
Immigration and Nationality Law

Introduction to Employment
Immigration Practice



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US Immigration Status under the INA

- Citizen or National
- **Permanent Resident**
 - Family Based
 - **Employment Based**
 - Other special programs
- **Non-Immigrant Visa Status**
 - A to WT, alphabet soup
 - Temporary stay; limited duration
 - Specific Purpose (e.g. **Work**, Study, Other)
- Other legal status under special laws – TPS, DACA, Asylee, Adjustment applicant, etc.
- Undocumented – EWI, Visa overstay, etc.

Non-immigrant Visas: The Alphabet Soup

INA §101(a)(15); 8 C.F.R. § 214.2; 9 FAM 41

- A to WB/WT
- Temporary Intent
- Some common visas for work:
 - H-1B – Professional, Specialty Occupation
 - L-1 – Intra-company Transferee
 - TN – Professional – Canada/Mexico
 - E-1/E-2 – Treaty Trader Investor
 - J-1 – Exchange Visitors
 - F-1 – Students
 - O-1 – Extraordinary Ability



H-1B Specialty Occupation Visa

INA §101(a)(15)(H)(i)(b); INA §212(n); 8 C.F.R. §214.2(h); 22 C.F.R. §41.53; 20 C.F.R. §655.700-760

- Job offer to work for U.S. employer; may only work for sponsoring company.
- “Specialty Occupation” test – the position normally requires at least a Bachelor’s degree (or equivalent) in an appropriate field of study, and Beneficiary has the required degree or equivalent.
- Labor Condition Application (LCA) – DOL regulations mandate payment of required wage and other compliance requirements.
- Form I-129, supplements, supporting documents filed with USCIS.
- Dual Intent is allowed (may pursue green card).
- H-4 Spouse is not eligible for a work permit.
- Maximum time period in U.S. is 6 years (less any time spent in L-1 visa status).
- Quota of approx. 85,000 per year by lottery – April 1st unless “cap exempt”

L-1 Intra-company Transferees

INA §101(a)(15)(L); 8 C.F.R. §214(l); 22 C.F.R. §41.54; 9 FAM 41.54

- Foreign National must have worked abroad for 1 continuous year within the last 3 years by a qualifying organization doing business for at least 1 year in the U.S., and will be coming to the U.S. to work for a parent, branch, affiliate or subsidiary of that employer.
- Foreign National must be coming to U.S. to work in a “managerial or executive capacity” (L-1A) or in position requiring “specialized knowledge” (L-1B), AND must have been a manager, executive, or have worked in a specialized knowledge position abroad.
- Eligible for up to 5 years (L-1B) or 7 years (L-1A) – initial 3 year stay plus 2 year extensions.
- L-2 Dependent Spouses: are eligible for work permits.
- Dual intent (may pursue green card).

TN Visa – Trade NAFTA

INA §214(e)(2); 8 C.F.R. §214.6; 9 FAM 41.59

- Limited to 63 designated professional occupations listed in NAFTA treaty. Most require a Bachelor’s degree.
- Engage in business activities at a professional level for a U.S. entity; however, no self employment allowed.
- Procedures:
 - Canadians: No visa required. Apply at border POE/PFI or file petition with USCIS. Valid in 3 year increments.
 - Mexicans: Apply for visa at U.S. Consulate. Can request approval and to be admitted for 3 years, **BUT** TN visas are limited to a 1 year validity.
- No regulatory visa limit.
- Unlimited extensions.
- Non-immigrant intent required; subject to INA §214(b).
- TD Dependent Spouses - not eligible for work permits.

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