

Millions of foreign immigrants come to work in the U.S. each year, looking for new opportunities and better working standards. The U.S. currently houses 60 different non-immigrant visas, to enable foreign workers to be legally employed. However, an application for a visa will depend on whether the U.S. employment is temporary or permanent. In the U.S, there are several different methods of applying for a temporary or permanent visa. In addition, different professions require different visa types.

WHETHER YOU WANT TO MOVE TO THE BIG APPLE, CITY OF ANGELS OR MAGIC CITY, THE U.S IS YOUR OYSTER

For example applicants who are transferring internally within a company but moving to the U.S may qualify for an L-1A or L-1B visa, nurses from abroad joining the health care profession may be best suited with a H1-C visa, temporary agricultural workers an H-2A visa etc. Anastasia Tonello, Head of the U.S Practice from Laura Devine Attorneys describes the legal complexities of working in the U.S.A. "Both the employer and the employee need to be aware of local and federal policies on immigration laws and are well advised to seek qualified legal counsel. There is a need for comprehensive immigration reform but whether the administration will act on this has yet to be seen.... In the U.S the main issues include caps for non-immigrant (temporary) and immigrant visas (permanent), delays, changing standards and rulemaking by memoranda as opposed to legislative channels, regional discrepancies in dealing with cases, and delays."

In order to obtain either a temporary working visa or permanent residence (also known as a Green Card) through employment, the applicant's U.S. employer must normally first file a petition which needs to be approved by the U.S Citizenship and Immigration Services (USCIS). ; there are numerous ways to apply for a Green Card. Green Cards applicants vary drastically from businessmen, to actors, to people in the

medical profession, as they may often be looked upon more kindly when applying for a visa because they are considered assets who bring their expertise and knowledge to the U.S. Even though a petition has been approved, and the visa issued, the applicant must still normally apply for admission to the U.S. which is not automatically approved.

Mr Rifkin from Rifkin and Fox-Isicoff talks about his vast and varied clientele. "We have processed an increased number of cases involving foreign nationals who wish to invest in businesses in the United States and extraordinary ability cases over the last year. Extraordinary ability cases are for individuals who have national or international acclaim and who are at the very top in their field. These individuals range from Ambassadors and businessmen to athletes and actors.....Our firm provides strategic guidance and tailored solutions for employing foreign nationals. We facilitate the transition of key employees and navigate bureaucracy and processing delays. We also provide clients with up-to-date information on current policies and procedures."

The U.S has treaty agreements with many different countries as a way of augmenting commerce and navigation trade between countries. Additionally there are countries such as France where French citizens are permitted to apply for a Treaty (E) visa; this includes metropolitan France and La Martinique, La Guadeloupe, French Guinea

and La Reunion. If an applicant is seeking to come to the U.S. as a Treaty Trader, then it can be a fairly difficult process, as the paperwork is complex and technical and specialist help may be required. The Treaty Trader (which would require an E-1 visa) or a Treaty Investor (which would require an E-2) visa is for the resident of a country with whom the U.S. has in place a treaty of commerce and navigation. The individual applying for a treaty trader visa must maintain significant trade between the two countries or develop a new business that will benefit the U.S. all the while meeting the U.S. regulations. Another condition of being granted a treaty visa is that the applicant must either own at least 50% of the company or be employed in an executive position or possess specialised skills that make the person unique, 'normal' or 'under-skilled' people do not qualify.

There are also specific non-immigrant visa types for representatives of the media employees who want to work in the U.S. As with other non-immigrant visas, the U.S. government would mirror the rules of the applicant's home country applied to U.S. citizens; this is known as 'reciprocity.' There are strict regulations that must be met in order for the application to be considered valid.

To qualify for a media visa, the applicant must normally provide proof of his or her profession within the foreign media. This includes press, radio, film or print industries. Additionally applications may be considered if individuals are thought to be indispensable for the media industry, such as film crew, editors etc. Normally a letter from the employer is also required. Once issued with an appropriate visa, the foreign press representative may apply to enter the U.S. to attend press meetings/conferences, engage in guest speaking and otherwise work in their professional capacity in the U.S.

In recent years freelance contractors such as IT professionals have been granted permission to work in Australia, the U.K and Continental Europe. However, this is not yet an option in the U.S, as people from the U.S do not usually act via personal service companies, due to laws that oblige them to be direct employees of the agency.

The financial crisis was not necessarily the cause of a decline in the immigration revenue. As legal regulations have become stricter and forced compliance costs and risks for companies that employ foreign workers have increased, there has been a decline in the workforce of a large amount of companies, even in the profitable and well appreciated I.T industry.

Rami Fakhoury from Fakhoury Law Group (U.S. and India) advises what new methods are being introduced: "In response to these challenges, hybrid forms of multinational management in the IT and legal support industries have emerged. Near-sourcing, in-sourcing, and "in-shoring" are hot topics in the professional literature and with clients, as companies scramble to maintain U.S. market share while avoiding increasingly draconian immigration audits, stepped-up enforcement, and sanctions of technical violations.

Even very large, reputable multinationals such as IBM have suffered massive compliance cost escalation due to audits and administrative penalties by USCIS and the US Department of Labor in recent years, and this, along with a broad downturn in U.S. sales and as a shrinking percentage of total global sales, appears to be hastening pre-existing shifts toward moving operations and personnel offshore.

Meanwhile, many large companies that continue to serve the U.S. market, such as AT&T, have responded to strongly expressed retail preference for native customer service, and have replaced some offshore call centres with domestic operations staffed by employees who speak with American regional accents."

People who feel they have an above average capacity in science, education, business or athletics may be eligible for the O-1 visa. This category may also apply to individuals who have reached a level of distinction the arts or in the motion picture or television industries. An O-2 visa is for the O-1's essential support personnel.

Ms Sostrin from Sostrin Immigration Lawyers, LLP explains general difficulties experienced by individuals applying for a U.S. visa. "Today, a critical concern is the difficulty many of these individuals now face trying to stay in the United States or immigrate here. The non-immigrant (O-1) and the immigrant (EB-1) visas for persons of extraordinary ability have been regularly delayed and denied. The extent of these delays and denials has reached such proportions that it is beginning to cause a reverse brain drain: Individuals who cannot stay in or enter the U.S. are simply finding work at institutions and companies in other countries.

The loss of this vital intellectual and creative capital only serves to undermine the fragile and recessionary economic environment the United States is currently confronting. Persons of extraordinary ability inspire and drive innovation, and their presence represents tremendous potential not only in creating companies and jobs but also elevating the lives of everyday

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Americans through their products and services. This reverse brain drain is certainly reversible, but it will necessitate the concerted efforts of all those who wish to see America welcome the world's best and brightest."

There are exceptions of countries that are part of the Visa Waiver programme which allows certain countries to travel to the U.S for business or tourism without the need of a visa and are able to perform regular business functions. These countries are Andorra, Australia, Austria, Belgium Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. Residents of other countries will need a visa to perform business activities in the US.

The B-1 visa is unique as it allows the visa holder to travel to the U.S as a business visitor. The B-1 visa enables the business visitor to conduct negotiations, solicit sales, discuss planned investment, make purchases, attend and participate in meetings fully, interview and hire staff and conduct general business based research. However, running a business, U.S. employment, and participating as a professional in an entertainment event require a work visa.

Mr Rifkin from Rifkin and Fox-Isicoff believes "Some of the common challenges faced by corporate clients applying for a visa include increased enforcement measures as a result of illegal immigration; increased security at U.S. borders and ports of entry, violations of status; maintenance of employment authorization, employment verification and I-9 compliance issues; visa processing; and bureaucracy and processing delays, among others. Corporate clients can avoid potential pitfalls by implementing structured immigration programs that continually evaluate the company's procedures to ensure compliance with

immigration regulations. Legislative change is needed to reduce backlogs in employment based immigration."

Alternatively there is an H-1B non-immigrant visa under the Immigration and Nationality Act section 101. This enables U.S companies to employ foreign workers in specialist positions. If a foreign worker who was working on an H-1B visa quits his work position or is made redundant, then the individual must find a position with another company, change their status to another non-immigrant status or simply leave the U.S.

Alexander Dgebuadze from Sostrin Immigration Lawyers, LLP, explains "The challenges faced by high-tech start-up companies in securing qualified personnel are daunting. This is deeply regrettable as these businesses are the engines of job growth and prosperity. Indeed, studies show that between 1985 and 2005, 40 million new jobs were created by such companies, but the contribution of larger, established corporations to job growth was essentially flat for the same period. By far, the largest number of H-1B visa denials issued by U.S. Immigration Service is for professional positions at small-to-medium sized start-up firms. If the government's main concern is that H-1B visa holders displace U.S. workers, it seems as though they would be least likely to displace U.S. workers at companies that actively create new jobs for both American citizens and foreign nationals. Given the current economic downturn and perils faced by start-up firms in prosperous years – let alone difficult years – the U.S. government's refusal to award H-1B visas to these companies is tantamount to undermining the economic security of the country."

All in all there are many diverse options available for people looking to apply for job and visa in the U.S. However, it is highly advisable for those interested in working in the U.S. to seek out professional legal experts who can advise and represent an applicant. **LM**