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SUMMARY OF COMMONLY USED NONIMMIGRANT VISAS

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The F-1, H-1B, TN and L-1 visa categories are the nonimmigrant (temporary) visa categories most commonly used by U.S. companies to employ foreign workers. They are described below.

A U.S. company may want to hire a foreign national who has recently graduated from a U.S. college or is continuing to study at a U.S. college. If the person has recently graduated, he is usually entitled to up to 12 months of "practical training" in F-1 (student) visa status. Practical training authorizes a foreign national to work for any employer. The foreign national must have a Form I-20 from the college that is endorsed for practical training and an employment authorization document ("EAD") issued by U.S. Citizenship and Immigration Services ("USCIS") in order to commence employment. Alternatively, a student may have work authorization for "curricular practical training" while continuing to study. This type of work authorization is limited to a particular employer as noted on the back side of the Form I-20 and does not require an EAD.

After a person begins employment with a company in F-1 practical training status, the most common avenue to continue employment is to file an H-1B visa petition with the USCIS to change the person's status from F-1 practical training to H-1B. The company's H-1B visa petition and the change of visa status from F-1 to H-1B for the foreign national must be approved before the expiration date of the F-1 practical training status to avoid a lapse in employment authorization.

If a U.S. company wants to hire a foreign national who is already working for another employer in a temporary visa status, the company will typically file an H-1B visa petition for that person to authorize a change in employer. Alternatively, if the person is a Canadian or Mexican citizen, the company may file an application for TN visa status. The company generally must obtain approval of the H-1B visa petition or TN application before the foreign national is authorized to work for the new employer. However, if the new employee has or had H-1B visa status with the old employer and will have H-1B visa status with the new employer, the employee may change jobs as soon as the new employer files its H-1B visa petition, without waiting for the approval of that petition.

Lastly, if a U.S. company wants to employ a foreign national who has been working for a foreign parent, subsidiary, branch or affiliate office for more than one year, the company can file an L-1 visa petition for that person to transfer him to the United States. Again, the approval of the L-1 visa petition must be obtained before the person is authorized to work in the United States.

H-1B Visa Status

There are three steps involved in obtaining H-1B visa status: (1) a Labor Condition Application ("LCA") that is filed with the U.S. Department of Labor ("DOL"); (2) an H-1B visa petition that is filed with the USCIS; and (3) in some cases, an H-1B visa application that requires the employee to appear in person at a U.S. consulate outside the United States.

By signing an LCA form, an employer certifies the following: (1) the H-1B employee will be paid at least the same wage paid by the employer to its other workers performing similar duties who have similar experience and qualifications, or the prevailing wage (average wage) paid by other employers for the same occupation in the same geographic area, whichever is higher; (2) the employment of the H-1B employee will not adversely affect the working conditions of other workers similarly employed by the company; (3) on the date the LCA is filed, there is not a strike, lockout or work stoppage in the course of a labor dispute in the same occupation at the place of employment; and (4) as of such date, notice of the LCA has been provided to the employer's other employees working in the same occupation and location where the H-1B worker will be employed, either by written notice to the bargaining representative of such workers, or by posting a notice in a conspicuous place where the H-1B worker will be employed, or by providing notice by email or intranet to other employees.

After the approval of the LCA, the H-1B visa petition is filed with the USCIS Service Center that has jurisdiction over the place of employment. If the foreign national is lawfully present in the United States, the H-1B visa petition can request either an extension of the person's existing H-1B visa status or change of the person's visa status to H-1B. The H-1B visa petition must include the approved LCA and must establish that the employee has at least a bachelor's degree in a relevant field (or equivalent work experience), and will work in an occupation where that specific degree or a closely-related degree is the normal minimum requirement for employment.

The four USCIS Service Centers have processing times ranging from two to four months. This can be reduced to two weeks by paying an additional \$1,000 premium processing fee to the USCIS. If the foreign national is not in the United States at the time the H-1B visa petition is filed, he will need to take the approval notice issued by the USCIS to a U.S. consulate outside the United States in order to obtain an H-1B visa in his passport. This final step takes only a day at some consulates, or several weeks at others. It is not necessary for Canadian citizens, as they can enter the United States in H-1B visa status without visas.

There is an annual limit on the number of new foreign workers who can be granted H-1B status. This limit causes H-1B status to become unavailable for months at a time, which

poses serious problems for foreign students whose practical training authorization is expiring, and for graduates of foreign universities who are seeking H-1B visa status for the first time. The annual limit does not apply to: (1) people who already have H-1B visa status and are seeking extension of stay, or a visa to allow travel; (2) people who already have H-1B status and are seeking to change employers; (3) people seeking to work for an institution of higher education or a related or affiliated nonprofit entity, a nonprofit research organization, or a government research organization; and (4) physicians seeking H-1B status to work in a medically underserved area.

H-1B visa status is initially granted for a period of three years. It can be extended for three more years, up to a maximum stay of six years in H-1B visa status. Extensions beyond six years are not available unless the employee has applied at least one year previously for permanent resident status. Unless this exception applies, after six years in H-1B visa status the foreign national must live outside of the United States for one year to be eligible to obtain H-1B visa status again. The spouse and unmarried minor children of an H-1B worker are admitted in H-4 status for the same duration of stay as the H-1B worker. They are not authorized to work in the United States.

TN Visa Status

The North American Free Trade Agreement authorizes Canadian and Mexican citizens to enter the United States in TN visa status for employment in certain professional occupations. TN visa status is similar to the H-1B visa category, but it does not require the filing of an LCA with the DOL or a visa petition with the USCIS.

With a few exceptions, a bachelor's level college degree or a professional license is the minimum qualification necessary for TN status. A Canadian citizen seeking TN status can apply directly to a U.S. immigration inspector at a U.S. port-of-entry (either land border or pre-flight inspection at a designated airport in Canada). The application is normally processed within one to two hours, after which the person can enter the United States to commence employment. A Mexican citizen must first apply for a TN visa, which requires a personal appearance at a U.S. consulate outside the United States before applying for entry at a port of entry. Alternatively, a Canadian or Mexican citizen who is already present in the United States can apply by filing a TN petition with a USCIS Service Center, where the processing times are similar to H-1B processing times.

TN status is granted in one year increments and can be renewed in one year increments, with no upper limit. The spouse and unmarried minor children of a TN worker are admitted in TD status for the same duration as the TN worker. They are not authorized to work in the United States.

L-1 Visa Status

The L-1 visa category is used to transfer employees within multinational corporations and between affiliated corporations. L-1 visa status is available to a person who has worked outside the United States continuously for at least one year within the three years prior to

entering the United States in a managerial or executive position, or in a position requiring highly specialized knowledge of the company's business, and who will be working in the United States for the same company, or a U.S. parent, subsidiary or affiliate of the foreign employer.

In most cases the U.S. company must file an L-1 visa petition with a USCIS Service Center in the United States and obtain USCIS approval before the employee can obtain an L-1 visa or change to L-1 visa status from another visa status. Processing times for L-1 visa petitions are similar to H-1B processing times, except that no LCA is needed. As with H-1B visa petitions, the processing time can be reduced to two weeks by paying an additional \$1,000 premium processing fee to the USCIS. There is a special rule for Canadian citizens that allows them to file an L-1 visa petition with a U.S. immigration inspector at a U.S. port-of-entry. The petition is processed within one to two hours, and the foreign national can enter the United States to commence employment immediately. Another special rule allows employees of large companies to file their L-1 visa petitions directly at U.S. consulates rather than with the USCIS.

The maximum initial duration of L-1 visa status is three years, or one year if the U.S. company where the employee will work has been doing business for less than one year. L-1 visa status can be extended up to a maximum duration of seven years for executives and managers, or five years for other employees. Extensions beyond these limits are not available unless the employee remains outside the United States for one year. The spouse and unmarried minor children of an L-1 worker are admitted in L-2 status for the same duration of stay as the L-1 worker. The spouse can obtain authorization to work in the United States but the children cannot.

Additional Information and Assistance

For additional information or assistance in preparing applications, please contact any of the attorneys listed below. You can reach us by telephone at (202) 537-4830, by fax at (202) 537-4831, or by e-mail at:

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