

# *Law Offices of Alex T. Barak, P.A.*

## ***SUMMARY OF AMERICAN IMMIGRATION GUIDELINES***

L-1 Temporary Working Visa. Intracompany Transferee, a manager or executive from a parent company is transferred to the subsidiary or related company of the foreign company in the U.S. This person must have been employed for at least one continuous year within the last three years by the foreign company in a managerial or executive capacity and desires to come to the U.S.

If the foreign manager/executive is coming to open and/or to be employed in a new office in the U.S., he can obtain the L-1 visa which authorizes him to work and allows the spouse and children to be legally in the United States, but they would not be allowed to work, although they could go to school.

An L-1 for a new U.S. company (in business for less than one year) is valid for only one year. After the one year, the L-1 manager/executive can apply for permanent residency if the company has sufficient proof of being legitimate and financially viable.

If the company does not have strong financial records, the L-1 person may lose out his L-1 status and lose his chance for a permanent residency.

An L-1 visa may be issued initially for three years if the business in the U.S. has been in business for more than one year. Buying an existing American business and creating the framework so that it is a subsidiary of the client's business in his home country will allow for a full three- year L-1 from the outset.

An L-1 visa can be renewed for up to seven years as long as the company remains financially viable.

The L-1 visa process involves mailing in applications and documentation to a central Immigration Center and waiting 2-3 months for a decision. If Immigration does not believe that the documents submitted were sufficient, it will issue a letter with a list of those items it must have and/or explanations or additional information. If approved, the client will need to go to the U.S. Embassy or Consulate in his own country to have the L-1 visa stamped in his passport, and the L-2 for the spouse and children. The same process can possibly be obtained at the U.S. Consulate in Toronto, Canada for those who have a problem with the U.S. Embassy or Consulate in their home country.

### **Multi-National Executive / Manager Permanent Residency Or Green Card Category**

This valuable immigration category, which has been effective since October 1, 1991, is similar to the L-1 visa, but provides an opportunity for direct access to permanent residency. Utilizing this category wisely, a foreign company can purchase an existing U.S. company and set it up as its subsidiary. This then allows the U.S. Company to apply for the foreign manager to come to the U.S. to manage the subsidiary. If the application is successful, permanent residency, also known as a green card, can be granted to the executive/manager, the spouse and children 21.

The foreign manager/executive cannot be a one-man show. He must have supervised other employees and/or managed specific functions of the foreign company. A large company in theory could send both a sales manager and an export manager and qualify under this category. The larger the company the greater is the number of possible transferring managers/executives. The smaller the foreign company, the less is the likelihood of more than one person being able to be transferred to the U.S.

Any green card holder must reside in the U.S. for 183 days per year to retain this status. In certain situations, a travel document called "Re-Entry Permit" can be obtained for the client, now green card holder, which will be valid for two years and which will enable him to travel outside the U.S. and not have the time outside the U.S. counted against the 183-day-a-year residency requirement.

### **Commentary And Analysis**

An L-1 can be approved simply on a business plan and certain inexpensive efforts to set up a subsidiary in the U.S. If the financial proof of the company after one year is not good, then the L-1 Visa holder may end up having nothing.

An approved L-1 visa by U.S. Immigration does not entitle the manager to begin working here. He must first get his passport stamped at the U.S. Embassy or Consulate in his home country.

Recent changes in procedures at many U.S. Embassies make it more difficult to have the L-1 visa stamped in the foreign manager's passport. A complete interview is now required in some embassies, with the manager being required to submit again all the documentation which was originally submitted to U.S. Immigration.

Green card categories, which are employment-based, such as the multi-national manager, now take an excessive amount of time to complete. What used to take 6-8 months now takes 2.5 to 3 years. Therefore, the best strategy may indeed be to get into the U.S. first on a temporary working visa and then later adjust to permanent residency.

### **Other Categories**

There are many other green card categories to consider, such as 1) a person who has extraordinary ability in

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music, the arts, writing, in the sciences, education, athletics; 2) outstanding professors and researchers; 3) a member of a profession with an advanced degree; 4) registered nurses and physical therapists and 5) ministers, priests and rabbis of recognized religious groups.

## **Entrepreneur— Million Dollar Investor**

A category available since October 1, 1991. If an individual who himself invests \$1,000,000.00, or in connection with a group of investors in which he will be the principal director/manager, invests \$1,000,000.00 of a larger investment in a new business which hires 10 or more American workers or permanent residents, or if an existing company is purchased with the one million dollars and it is expanded by at least 40% more, it is possible to obtain permanent residency (green card).

In certain areas of high unemployment in the U.S., the investment amount is reduced to \$500,000.00. From time to time, there are specific government approved projects where one can get in for only \$500,000.00. If the investor invests in a limited partnership, the requirement of active management may be relieved.

Anyone seeking a green card in this category must prove that his/her funds were earned legally and must be content with a two-year conditional green card, which must be later converted into the permanent green card.

Anyone interested in a legitimate investor category needs to look for a plan, which guarantees that a minimum of \$500,00.00 is invested in a business and that you are entitled to a percentage of the dividends this business generates. This investor category can be utilized by a wealthy person without a criminal background who does not qualify for the multi-national manager category, such as a doctor, lawyer, or any wealthy non-manager/executive.

There is a category called "SKILLED WORKER IN SHORT SUPPLY". This would allow a person with two years or more experience in a special or unique job skill which is not found among the Americans in a particular area of the country to be able to obtain a green card after a prospective employer passes through a specific process required by the U.S. Department of Labor to ensure that no Americans can fill the position offered. The prospective employer is like a sponsor and must advertise this job.

The "SKILLED WORKER" category could involve a Chinese and English speaking import/export businessman where use of the Chinese language is a business necessity; a certified Greek chef; a Russian artist or performer who is not so famous; a legal secretary with experience in Portuguese and English. There are countless job skills which can fit this category. But it is most important to consult an experienced lawyer before utilizing this category.

## **University Studies With Student Visas**

The two best areas of study which can lead to permanent residency (a green card) in the fastest way are: nursing and physical therapy.

Once a student graduates with a degree in nursing or physical therapy, he/she must then take a state licensing examination. The successful one obtains the title of "Registered Nurse" (R.N.) or "Registered Physical Therapist" (R.P.T.). For all foreign health care workers, an English language proficiency test must be passed as a condition of receiving a temporary working visa or a green card.

Since both of these professions are pre-certified by the American government as being in short supply, it is relatively easy to obtain a working H-1B visa and afterwards, a green card after a potential employer makes a written job offer. These two areas of study are strongly recommended as a means of obtaining a respected profession and a green card.

## **H-1B Working Visa**

A university graduate with a degree can obtain a working visa if he/she can find a company or firm willing to offer a job. The intention is that the employer hire this individual on a "temporary basis," which can actually last up to several years. The employer must pay the fair market rate for a similar job. The H-1B visa can be converted into a green card by passing the labor certification process. This temporary working visa category has the highest filing fees with Immigration, a total of \$1,110.00. It takes from two to four months of processing for the approval of an H-1B.

## **E Visas**

Some countries have agreements with the U.S. to provide for two categories of working visas, E-1 and E-2.

The E-1 is known as the TREATY TRADER. This involves a person who will come to the U.S. and manage/direct a business, which conducts over 50% of its entire business with hi/her home country. This visa category is designed to promote international transactions between the U.S. and specified countries in the world. The list expands each year, but some countries, for political reasons, will never make the list.

The E-2 is the TREATY INVESTOR. This category involves a person making a "substantial investment" in the

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U.S. for which he/she will manage/direct. The amount to be invested is never published. Each U.S. Embassy abroad makes its own determination what is a "substantial investment." For Canada and some western European countries, the amount could be as low as \$70,000.00 to \$90,000.00. In the past, for Hong Kong, it was \$250,000.00. Key employees may also be approved for E-2 visas, as long as the business is large enough to require a second "manager" or "director."

The E visas are not automatically convertible to green cards, These visas can be renewed as long as the managers/directors continue the business and the business is viable. Some countries have both the E-1 and E-2 visas available to their citizens. Some have only one.

There are certain Caribbean island nations which sell citizenship. Grenada is one of them. Grenada's citizens are eligible for E-2 visas.

## **Retirement Visas Or Green Cards**

There is no category for either temporary visas or green cards/permanent residency for retired persons. A person may be able to visit the U.S. and stay less than a half a year each year.

## **Asylum**

A person can obtain a protected status for one year of "asylum", which after one year can be converted into a green card. Grounds for asylum include persecution back in the home country because of race, nationality, religion, political beliefs, membership in a particular social group. Mistreatment or threats by authorities in the home country or a group controlled by the government are also grounds for asylum.

Each asylum case is decided on its own merits and much documentation is needed, such as articles written anywhere in the world about the feared conditions, affidavits from persons with personal knowledge, etc.

## **Penalties For Living In America Illegally**

Anyone who has lived in the United States illegally for six months to one year beginning April 1,1997, and then becomes eligible for a green card, will be barred for a period of three years. If he or she is illegal in excess of one year and then becomes qualified, then there is a 10 year ban.

## **Canadian Option**

There is an investor category to immigrate to Canada for a passive investment of the equivalent of \$233,333.33. The processing time is 9-12 months.