EMPLOYING FOREIGN WORKERS:
Immigration Law Basics for Your Company

Presented to:
Maine International Trade Center
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Special Guest Star:
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Manager, Physician Recruitment Services
The Aroostook Medical Center
Discussion Topics

• Business Visa
• Investment/Work Visas
• H-1B Visa
Business Travel to the U.S.

*B-1 Business Visitor Visa activities allowed in the U.S.*:

- Commercial transactions which do not involve employment in the U.S. (e.g. taking orders for goods)
- Seek investment opportunities
- Participate in scientific, educational, professional, or business conventions, conferences and seminars
- Negotiate contracts
- Undertake independent research
- Meet with business associates
- Litigation

- A B-1 Visitor may not receive a salary from a U.S. source, however, s/he may receive an expense allowance or reimbursement for expenses incidental to the temporary stay

- Questions as to business activities will be investigated at the Consulate and Port of Entry
Business Travel to the U.S.

Visa Waiver Program (ESTA)

- No Visa Stamp required
- Must have machine-readable and/or biometric passport (most passports issued after 2005 qualify)
- Only nationals of designated countries may participate in the Visa Waiver Program

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<th>Visa Waiver Program Participating Nations</th>
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EMPLOYMENT VISAS

- H-1B Professionals
- L-1 Intracompany Transferees
- E-1/E-2 Treaty Traders Treaty Investors
- TN NAFTA Professionals
- O-1 Extraordinary Ability
L-1A/L-1B INTRA-COMPANY TRANSFEREES

Program for Multinational Companies to transfer Managers, Executives and Specialized Knowledge Employees to the U.S. from a foreign office

L-1A - Executives/ Managers - 7 years
L-1B - Specialized Knowledge - 5 years

Foreign National must have been continuously employed abroad for one of the previous three years at time of admission

Employee may be compensated by US entity or by foreign entity

US entity and company abroad must be related as parent, branch, affiliate, subsidiary or joint venture

L-1A Managers/Executives may qualify for EB-1C Green Card Category and therefore skip the Labor Certification process
E VISAS – TREATY TRADER/TREATY INVESTOR

- E-1 Treaty Trader for companies with trade primarily between US and treaty country
- E-2 Treaty Investor for making a business investment in the United States
- A treaty of friendship, commerce and navigation /bilateral investment treaty or similar must exist with US
- E-1 global trade must be primarily between the US and treaty country
- E-2 makes a investment in the US business, no set amount but must be substantial
- Nationality of company must be same as E visa holder; 50% of investors and/or owners must have same nationality
## E VISAS – TREATY TRADER/TREATY INVESTOR

### E Visa Treaty Countries

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TN – NAFTA VISAS

- TN Visas authorized under NAFTA for Canadians and Mexicans only

- For professional positions listed on the TN Schedule:
  - Systems analysts, engineers, nurses, management consultants, some medical and scientific positions

- Most positions require a minimum of a Bachelor's degree and/or licensure

- TN Visas may be obtained at the border Port of Entry or filing with USCIS Service Center

- Visas may be obtained in three year increments indefinitely
O-1 EXTRAORDINARY ALIEN VISAS

O Visa for extraordinary ability in the sciences, arts, education, business or athletics.

- Acclaimed Artists
- Acclaimed Professors, Scientists, Engineer
- Highly-Specialized Doctors
- Renowned Business Persons

- Extraordinary ability demonstrated by sustained national or international acclaim, OR
- One of the small percentage who have risen to the very top of the field of endeavor
- Receipt of a major internationally recognized award will automatically qualify (Nobel, Oscar)
- May qualify for special Green Card processing, though bar is higher
- Allowed a 3 year stay with extensions in 1 year increments without limit
O-1 VISAS SUMMARY

✔ YES

× NO
H-1B VISAS – SPECIALTY OCCUPATION

• The “Professional Visa” requires employment in a Specialty Occupation

• At least a Bachelor’s Degree for hire as industry standard

  Physicians · Engineers · Executives · Computer Programmers · Teachers · Scientists · Professors · Researchers · Professional Consultants · Accountants · Lawyers

• Foreign Worker must possess closely related Bachelor’s degree or its equivalent
Employers must pay the employee the prevailing wage for the geographical area.

Employers are obligated to pay certain fees when filing an H-1B visa.

6 year limit on visa status with several exceptions.

H-1B REGULATIONS

The Vanishing Visa

“H-1B Cap” - Only 65,000 New H-1B visas available for professionals on October 1 each year.

20,000 New H-1B visas for persons with Master’s Degrees from US Universities.

Exceptions to the H-1B Cap:

• Worker who already has H-1B Visa, or
• When Employer is:
  • Institution of Higher Education
  • Non-profit Research Institute
  • Government research organization
Physician talent pool in the US

- Chronic and deepening Physician shortage—fewer US graduates in Family Practice and Internal Medicine
- Aging workforce
- Generational differences
- Competition for talent is nationwide
- 25-30% all MDs in US are Foreign Medical Graduates (FMG)
Not providing care is not optional...nor is quality

- TAMC has long sourced top physician talent from both the US and FMG talent pools

- Jan 2017 research from BMJ proves that survival rates are slightly hirer if treated by and FMG

- And they make sublime employees!
Key Takeaways

• Get a good attorney
• Screen candidates carefully
• Teleconference with attorney during interview
• Dual representation
• Above all, this process is not that daunting
Questions?

Thank you for attending

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