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# Employment Life Cycle of Non-Citizen Employees

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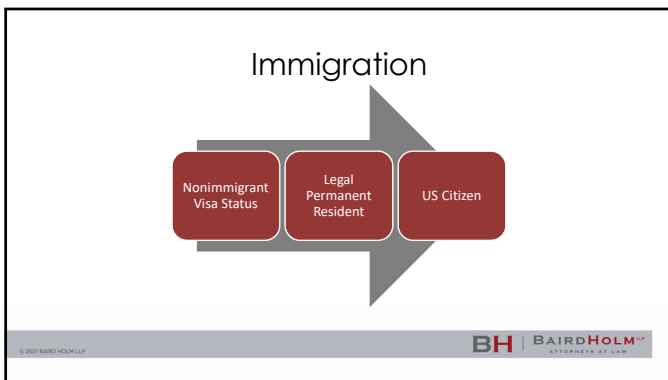
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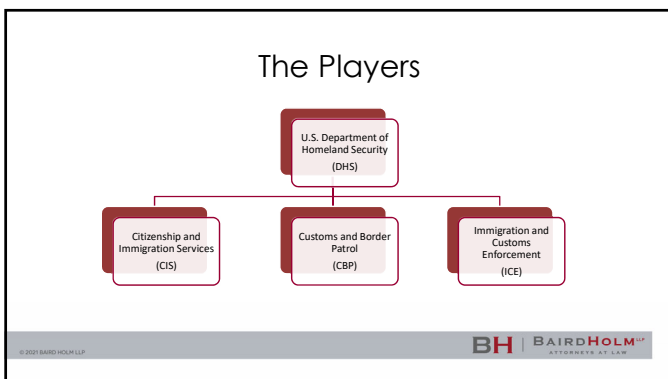
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## Nonimmigrant Visa

Visa status issued to individual who seeks to reside in the U.S. on a temporary basis

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## Immigrant Visa

Status assigned to an individual who desires to remain in the U.S. on a permanent basis

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## Green Card

Nickname for card issued to individual who has legal Permanent Resident status

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## Nonimmigrant Visa Status

- Predetermined duration
- Specific purpose
- Typically conferred at U.S. consulate in individual's home country
- Approximately 80 types: employment-based and non employment-based

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## Immigrant Visa Status

- Status of being eligible to apply to become an Legal Permanent Resident
- Visa must be available from annual quota before can apply for LPR status
- Four methods: Lottery, Asylum, Employment, and Family Relationships
- Divided into preferences

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## Lawful Permanent Residents

- Must have immigrant visa or be approved for asylee status
- Apply to USCIS or Department of State
- If approved, receive a green card

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## Citizens

- By Birth:
  - Most US Citizens
  - Physically born in the United States or
  - Born abroad to USC parents

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## Citizens

- Naturalization:
  - LPR for at least five years (two years if immigrant visa based on marriage to USC)
  - Meet residency and other requirements
  - Security and background checks, interview, civics exam, English test

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Nonimmigrant  
Visa  
Categories

Authorized to  
work

Not authorized  
to work

Can work for  
any employer

Can only work  
for a specific  
employer

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## B Visitors (Pleasure or Business)

- B-1 available for business-related trips by employees of foreign companies paid by non U.S. sources
- B-2 available for tourists or visitors for pleasure may not be employed in any capacity
- 90 day period of stay common but up to six month stay allowed
- Must show ties to home country and no intent to remain

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## Student Visas

- F visas enable participation in academic program of study leading to undergraduate or graduate degree(s)
- M visas enable participation in a vocational program
- May allow employment in some circumstances: on-campus; off-campus; curricular practical training; or optional practical training

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## Asylum

- Individuals who enter seeking protection from persecution or fear of persecution on the basis of race, religion, nationality, social group, or political opinion
- Must apply within one year of entering U.S.
- If granted, can work immediately

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## Refugee Status

- Individuals located outside the U.S. and who seek permission to enter to escape persecution or fear of persecution due to race, religion, nationality, social group, or political opinion
- If approved, assistance provided for travel and to re-settle
- Allowed to work immediately

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## Temporary Protected Status

- DHS can designate any foreign country for TPS based on conditions that temporarily prevent the country's nationals from returning safely
- Not "permanent" as the designation is reviewed regularly and may not be renewed
- TPS approval includes work and travel authorization

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## Deferred Action for Childhood Arrivals (DACA)\*

- Discretionary determination by DHS to defer removal of a qualified person for two years
- Does not confer any lawful status
- Deferral limited to two-year grant with ability to apply to renew
- Does not provide path to permanent residence or citizenship

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## H-1B Professionals

- Professional who will work temporarily in "specialty occupation" or as "distinguished model"
- Specialty occupation is one that requires theoretical and practical application of body of specialized knowledge and a four-year degree (or equivalent)

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## H-1B Professionals

- Limited to six total years of visa validity except under special circumstances
- 65,000 available each year + 20,000 available for graduates of U.S. advanced degree programs
- Employer must pay the prevailing wage determined by the USDOL

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## H-2A Temporary Agricultural Workers

- Available for agricultural workers entering the U.S. temporarily or for seasonal labor
- Employers must demonstrate there are no available, capable U.S. workers by conducting required recruitment
- Employer must pay the prevailing wage determined by the USDOL

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## H-2B Temporary Seasonal Workers

- Available for temporary or seasonal nonagricultural positions for which qualified U.S. workers are unavailable
- Skilled or unskilled
- Common positions: landscapers, hotel/resort employees, sports instructors
- One year stay with two annual extensions available
- 66,000 available annually

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## L Intracompany Visas

- Transfers of individuals among related companies
- Executives and Managers
- Specialized Knowledge
- Initial three year grant of visa validity

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## TN Visas

- Created under NAFTA
- Only available to those from Canada or Mexico who are members of the professions listed in the treaty
- No quota and not subject to prevailing wage rules
- Up to three year visa validity period with no limit on extensions except may not intend to immigrate permanently to U.S.

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## J Visa Exchange Visitor

- Students, scholars, trainees, interns, teachers, au pairs, professors, research assistants, specialists, and leaders in a field of specialized knowledge
- Requires an approved exchange program
- No annual quota or wage rate minimums
- Varying validity periods after which most are subject to a two-year home residence requirement

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## Immigrant Visas and the Permanent Residence Process

- Once eligibility approved for immigrant visa, may apply to USCIS for Legal Permanent Resident status
- Four methods to become LPR:
  - Familial relationship with USC or LPR
  - Employment with U.S. company
  - Refugees and asylees
  - Diversity visa (the "green card lottery")

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## Hiring and Recruiting – Pre-Hire

- What can you ask?
- Who is protected?
- When can you ask?
- Are you willing to sponsor a nonimmigrant status?

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### Hiring and Recruiting – Pre-Hire

- Are you legally authorized to work in the U.S.?
- Will you now or in the future require sponsorship for employment?

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### Hiring and Recruiting – Pre-Hire

- Nonimmigrant visa holders are not protected from citizenship status discrimination
- They are protected against national origin discrimination

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### Hiring and Recruiting – Offers

- If candidate is not currently work authorized, any offer should be contingent upon obtaining
- Start date must be after any required filing and after approval for most nonimmigrant visa holders
- Prevailing wage required and salary above?

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## Hiring – Getting Started

- What visa status held currently?
- Transfer or change of status needed?
- For which NIV does the position and candidate qualify?
- What needed from the employer to obtain employment authorization?

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## Employing a Noncitizen

- Form I-9 completion
  - EAD
  - Permanent Resident Card/Form I-551
  - Foreign passport
  - Form I-94
- E-Verify
  - STEM OPT Extensions

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## Employing a Noncitizen

- Employment Taxes
  - What withholdings are required?
- Social Security Numbers
  - Form I-765
  - In person application
- Compliance Files
  - Public Access Files

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## Employing a Noncitizen

- Changes during employment
  - Worksite
  - Duties
  - Position
  - Merger
  - Home Address

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## Employing a Noncitizen

- Extension of nonimmigrant visa status
  - Is an extension needed?
  - How early can it be requested?
- Re-verifying Form I-9
  - Is re-verification required?

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## Employing a Noncitizen

- Travel Outside the United States
  - Will the employee be able to re-enter based on his or her status?
  - Is there a ban?
    - Are there exceptions?
  - Is a new visa stamp required?
    - Is the embassy/consulate open and setting appointments during the travel?
  - What COVID-19 restrictions are in place?

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## Ending the Employment Relationship

- Reporting Obligations
  - USCIS
  - DOL
  - Updating the compliance file
- Transportation Costs

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## Questions?

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