

## NONIMMIGRANT EMPLOYMENT VISAS IN THE UNITED STATES

Many European companies we represent in the United States are often faced with a challenge when they are looking to transfer employees to their U.S.-based subsidiaries or hire other foreign employees, as they have to navigate U.S. immigration regulations pertaining to the employment of foreign workers and their eligibility for a type of work visa entitling them to work legally in the United States. There are different types of work visas available and most of our European clients and their prospective United States employees usually fit into one of the following categories.

- **The L-1 Visa**

The L-1 visa is typically used to transfer current employees of a foreign corporate entity to its U.S. subsidiary or affiliate. To be eligible, the beneficiary must have been employed for at least one year in the last three years by a foreign-based company affiliated (wholly owned or owned by the same holding entity for instance) to an existing U.S.-based entity which has physical premises and operations in the United States. It is important to demonstrate that both the foreign company its U.S. affiliate, which will sponsor the L-1 visa, are in existence and fully operational.

The L-1 visa has two categories, the L-1A and L-1B visas.

- For the L-1A visa, the beneficiary has to be currently employed by the foreign-based company in a managerial or executive capacity for at least one year and must be transferred to the United States to assume a managerial or executive position, where he/she typically has supervisory duties and is at the top of the company's organizational chart. The visa L-1A visa is valid for up to seven consecutive years.
- For the L-1B visa, the beneficiary has to be currently employed by the foreign-based company in a specialty position for at least one year and must be transferred to the United States to assume in a specialty position, where he/she typically has specialized knowledge (of the company's products or services for instance) not readily available on the U.S. job market. The visa L-1B visa is valid for up to five consecutive years.

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**ERNST & LINDER LLC** is an international law firm based in New York City. The main focus of our international and multilingual attorneys is counseling of corporate and high net worth individuals in the US and Europe. Our daily practice involves advisory services in corporate, commercial, intellectual property, immigration, visa, product liability, litigation and tax law as well as bankruptcy and estate matters.

- **The E-2 Visa**

The Investor's Visa program is based on an international treaty between the United States and numerous countries such as Austria, France, Germany, Italy or Switzerland. It is a very useful tool for companies or individuals who wish to invest a substantial amount in the United States, through the formation of a U.S.-based entity. As long as the U.S. entity is owned, for at least 50%, by citizens of the same treaty country who are not U.S. residents (or by companies ultimately owned by citizens of such treaty country), and invests a substantial amount proportional to its proposed activity (the investment can also consist of the acquisition of an existing U.S. entity), such U.S. entity can be granted treaty investor status for up to five years. As for the L-1 visa, the U.S. entity must have physical premises and operations in the United States (which can be in a start-up phase) and a comprehensive business plan with financial and workforce projections over the next five years which includes the hiring of U.S. citizens or permanent residents.. As an accredited treaty investor, the investors/owners and their employees in a managerial, executive or specialist capacity can benefit from E-2 visa status as long as they are citizens of the same treaty country. Such status can be renewed indefinitely as long as the U.S. entity is still in operation. Contrary to the L-1 visa, the E-2 visa beneficiary does not need to have worked for the foreign-based entity if such entity exists.

It is to be noted that spouses of L-1 and E-2 visa holders are eligible for a specific work authorization valid for the duration of their visas and renewable.

- **The H-1B Visa**

The H-1B visa is the most commonly used employment visa which does not have any citizenship or foreign employment prerequisite as the E-2 or L-1 visa. Beneficiaries who hold the equivalent of a U.S. college degree (four years of post-secondary studies) and are employed in a specialty position are eligible for this visa. The U.S. employer has to pay the beneficiary at least the prevailing wage established by the U.S. Department of Labor for the given position and geographical area.

This visa is valid for a total of six years and its beneficiary can easily transfer from one U.S. employer to another. Unlike the L-1 and E-2 visa, spouses of H-1B visa holders are not directly eligible for employment through their dependent visa.

Because of its great success, the visa has an annual quota of 65,000 for all the United States. For the 2008-2009 fiscal year, the United States Citizenship and Immigration Services (USCIS) received more than 163,000 visa applications and had to organize a random lottery process to select those they would adjudicate.

Please do not hesitate to contact us should you have any questions or require any information. We remain at your entire disposal.