



# Panel: U.S. Immigration - Current Issues and Trends

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# Topics Covered

- B-1 Visitor For Business
- Treaty NAFTA (TN)
- O-1 Extraordinary Ability
- E-1 Treaty Trader
- L-1 Intracompany Transferee
- EB1 Multinational Manager “Green Card”

# B-1 Visitor For Business

- Eligibility criteria include
  - Have a non-U.S. residence which the individual does not intend to abandon;
  - Intend to enter for a period of specifically limited duration; INTEND to depart U.S. at expiration of stay;
  - Have adequate financial arrangements for U.S. visit and departure; and
  - seek admission for the sole purpose of legitimate activities relating to business
- Permitted Activities
- Application Process- Apply at a U.S. Consulate in Mexico; Takes approximately 10 days to process, subject to appointment availability
- Required security clearances can cause delays
- Entry Process and Duration of Stay

# B-1 Visitor For Business (Cont)

- Employment Prohibited
- Practice Pointer- Employment is “work for hire”

# Treaty NAFTA (TN)

- Applicable to Canadian and Mexican citizens only
- Must be on NAFTA list of occupations- see <https://travel.state.gov/content/visas/en/employment/nafta.html>
- Procedures are different for Mexican and Canadian citizen. For Mexican citizens apply at U.S. Consulate; Takes approximately 21 days to process
- Duration - Issued for 1 year and may be renewed
- Spouse cannot work in U.S. unless he/she receives a separate work visa
- Spouse and children (up to 21) can attend school

# O-1 Extraordinary Ability

- For the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry and has been recognized nationally or internationally for those achievements
- To qualify for an O-1 visa, the beneficiary must demonstrate extraordinary ability by sustained national or international acclaim and must be coming temporarily to the United States to continue work in the area of extraordinary ability
- Extraordinary ability in the fields of science, education, business or athletics means a level of expertise indicating that the person is one of the small percentage who has risen to the very top of the field of endeavor
- Application Process – File petition with USCIS in the U.S.; then apply for the visa at a U.S. Consulate in Mexico; Takes approximately 30 days minimum to process
- Duration and Admission – Visa issued for 1 year and initial admission for up to 3 years; Extensions available in 1 year increments
- Spouse cannot work in U.S. unless he/she receives for a separate work visa
- Spouse and children (up to 21) can attend school

# E-1 Treaty Trader

- Requirements
  - Nationality of U.S. entity and visa applicant (i.e. the employee) must be Mexican
  - Trade must be “substantial” , between the U.S. and Mexico, and in existence at the time of the visa application; trade can be in goods or services
  - Employee must serve in an executive, supervisory/ managerial or essential skill
- Procedures – Generally apply at U.S. Consulate in Mexico (either Monterrey or Tiajuana); Takes approximatley 21 days to process
- Duration – Visa issued for 1 year and can be renewed indefinitely; Admitted for 2 years at time of admission
- No requirement to have any U.S. employees besides the visa applicant
- Spouse can work in U.S. only after he/she receives employment authorization. Spouse and children (up to 21) can attend school

# L-1 Intracompany Transferee

## ➤ Requirements

- Qualifying relationship between the U.S. and Mexican entity
- Prior overseas employment must be executive, managerial or specialized knowledge for at least 1 year out of last 3 years; and
- Proposed U.S. position must be executive, managerial or specialized knowledge

## ➤ Manager includes functional manager

## ➤ L-1 blanket

- Available provided U.S. and foreign entity are listed on the approved L-1 blanket list
- Can apply directly at U.S. consulate or embassy which has jurisdiction over where the prospective employee resides
- L-1B available only to specialized knowledge professional
- Permits employee to change position to another U.S. company on blanket provided new position is “same or similar” employment. Caution – USCIS has not defined “same or similar position



# L-1 (Cont)

## ➤ Duration

- For start-up company, L-1 petition approved for 1 year; For established U.S. entity, initial L-1 petition can be approved for 3 years
- For Mexican citizens, L-1 visa issued for 1 year

## ➤ Extensions

- L-1A manager and executive eligible for 2 year extensions, and maximum of 7 years
- L-1B specialized knowledge eligible for 2 year extensions, and maximum of 5 years

➤ Spouse can work in U.S. only he/she receives employment authorization; Spouse and children (up to 21) can attend school

➤ Comment: During the last year and since President Trump's election, the USCIS has increased the scrutiny for L-1s; The process has become more complicated and subject to delays

# EB1 Multinational Manager “Green Card”

- Similar to L-1A manager and executive
- Person employed outside the U.S. in the 3 years preceding the petition and entry to U.S. for at least 1 year by affiliate, branch, subsidiary or parent of U.S. entity and seeking to enter the U.S. to work for U.S. entity
- Company must be "doing business" in U.S. for one year
- Process currently takes approximately 14 to 26 months
- Comment: During the last year and since the Trump election, the USCIS has increased the scrutiny for this type of green card application; The process has become more complicated and subject to delay

# Conclusion

- Develop short term and long term strategy
- Consider temporary/ nonimmigrant visa options
- U.S. immigration law is dynamic and subject to change
- U.S. immigration decisions can have a material impact on the U.S. business and employees



**Questions?**

# *Thank You !*

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