

# VISA COMPLIANCE

## LEGAL ISSUES IN THE UNITED STATES

05 APRIL 2018

This provides a brief overview of general compliance issues you will face when hiring individuals in the US and some of the most common non-immigrant visa options for US work authorisation for company founders, executives, managers, or professional workers.

Non-immigrant visas can be used by company founders, executives, managers, or

professional workers, and they are distinct from immigrant visas ('green cards'). Specifically, non-immigrant visas are awarded by the United States Citizenship and Immigration Services ('USCIS') to provide work authorisation to foreign nationals for employment with specific sponsors/companies and durations. Foreign nationals may have different non-immigrant visas options available to them based on their professional background and/or nationality.

Category	Description	Basic attributes	Approval period
E-2	Treaty trader/Investor	For <i>citizens of treaty countries only</i> ; Employer must be at least 50% owned by nationals of Treaty Country	2 years initially; extensions in 2-year increments without limitation
E-3	Professionals	<i>Australian citizens only</i> ; for 'specialty occupation' positions, generally requiring at least a US bachelor's degree or equivalent	2 years initially; extensions in 2-year increments without limitation
H-1B	Professionals	Subject to annual quota, with approvals selected through a lottery; for 'specialty occupation' positions, generally requiring at least a US bachelor's degree or equivalent	3 years initially; extensions in 3-year increments; Maximum 6 years unless certain conditions are met
J-1	Trainees and Interns	Employment must be in the context of an approved exchange program; trainees must possess college degree or sufficient work experience;	18 months (trainees), 12 months (interns); 2-year home-residency after expiration



Australian Government  
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		interns must be recent college graduates	
<b>L-1A/B</b>	Executives, Managers (L-1A) and Specialized Knowledge Workers (L-1B)	Minimum 1 year of employment abroad with a qualifying employer entity (parent, subsidiary, or affiliate as defined by regulation)	Maximum 7 years for L-1A; 5 years for L-1B
<b>O-1</b>	Persons of Extraordinary Ability	Must demonstrate sustained national/international acclaim in sciences, business, arts, education or athletics	3 years initially; 1 to 3-year extensions, depending on changes to the position, available indefinitely
<b>TN</b>	NAFTA Professionals	<i>Mexican or Canadian citizens only;</i> US position must be included in prescribed list of occupations in NAFTA treaty	Max of 3-year validity periods; extensions available indefinitely

**Planning ahead for your US launch will save you time and money and allow you to gain and retain top talent.** Diversity leads to innovation and company growth. You will be better prepared to face the US market and concentrate on growth if you are able to implement immigration and human resource policies and procedures early. Creating a solid immigration plan will be a key factor in your success. Below you will find suggested actions that will ease your transition into the US market. You can use this list when working with an immigration professional to know you have covered key topics.

## PLANNING

Budgeting and predicting what your immigration program/cost might look like over the next six, 12, and 24 months is key in finding and retaining talent. Things you should consider include:

- › understand the short- and long-term effects of the hire on the company
- › cost projections and budgeting – Immigration costs can add up, so consider choosing flat fee immigration providers that are also knowledgeable in talent acquisition
- › internal staffing needs/responsibilities.

## PROGRAM SETUP

When you have found the right talent for your company, you don't want to waste time figuring out what the next step is. Creating necessary government accounts, collecting documents, or engaging in any other activities could delay

the on boarding process by days or weeks. Here is a list of agencies you will want to be aware of:

- › [Dun & Bradstreet VIBE registration](#)
- › [Department of Labour Federal Employer Identification Number \(FEIN\) verification](#)
- › I-9/E-Verify program considerations
  - [E-Verify immigration considerations](#)
  - [I-9 employment eligibility verification](#)
- › Understand how job descriptions affect immigration applications

## COMPANY POLICY

A properly prepared company immigration policy sets expectations for both the employees and the company, providing a roadmap through routine as well as complex immigration issues as they arise. Not only do such policies help streamline hiring, onboarding, and keeping employees satisfied, the fact that the company has one helps in its

compliance with immigration laws during audits and litigation.

- › well-defined job descriptions.

## BASIC TRAINING

Ensure that foreign national employees feel that their immigration cases with your company are in good hands from the first day they connect with you. Even though the company is young and still growing, it is important to show basic immigration understanding and empathy so that employees trust that their cases will be handled with care.

## UNDERSTANDING WHAT MAKES A GOOD IMMIGRATION APPLICATION

Most visa applications MUST include:

- › worksite location
- › US registered company
- › enough capital to fund the new business for one year
- › a strong five-year growth plan

## DISCLAIMER

While care has been taken to ensure the information in this document is accurate, the Commonwealth of Australia represented by the Australian Trade and Investment Commission does not provide warranty or accept liability for any loss arising from reliance on such information.

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