



U.S. Immigration Guide: Small to Medium Sized Businesses

Immigration is a critical success factor for small to medium sized businesses competing in global markets. An efficient immigration process will result in recruiting and retention advantages and increased internal efficiencies. Use the following guide to manage your immigration process.

Select the Right Immigration Partner

Selecting the right immigration service provider can be difficult. Be sure to thoroughly screen potential providers by taking the following into consideration:

- **Capabilities & expertise**
 - Ability to commit to and achieve your business goals.
- **A sound cultural fit**
 - Bigger doesn't always equal better.
- **A fixed/flat fee structure**
 - Motivates your provider to do their best.
 - Controls your immigration costs.
 - Allows HR and employees unlimited legal consultation.
- **Technology specifically designed for HR**
 - Ease of use/efficiency to minimize HR involvement.
 - Direct access to case information & legal advice for employees.

Develop an Internal Immigration Process

- Define an internal immigration process from hire to termination to avoid inconsistencies, disputes, non-compliance, etc.
- Recommended immigration policy content
 - Internal hiring process for foreign national employees, including eligibility criteria
 - Clearly defined immigration responsibilities of HR, hiring manager, employee, immigration services provider
 - Documentation of immigration costs covered by the organization and employee
 - Termination procedures
- Review and benchmark immigration policy
- Distribute your immigration policy within the organization

Understand the Options

Understanding immigration options and who you can/cannot employ is a compliance fundamental. Some of the most common employment-based visa types for work authorization in the U.S. include:

- H-1B Visa: Temporary nonimmigrant visa (workers in specialty/professional occupations)
 - Cap numbers: 65,000 + 20,000 (U.S. master's)

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Eligibility/Requirements

- Temporary nonimmigrant visa allowing foreign nationals to work temporarily for a U.S.-based employer
- Employee must have Bachelor's degree

Validity/renewal terms:

- Duration of stay: three years, extendable to six
- "Dual Intent" – allows for permanent residence application and possible H-1B extension beyond six-year maximum

L-1 Visa: Intra-company transfer

- L-1A: managerial or executive level
- L-1B: "specialized knowledge" of the technology, processes, or procedures of a U.S. company and its foreign-related entity

Eligibility/Requirements

- U.S. employer must be affiliated with the company abroad
- Must have worked for the foreign entity for one year out of the last three years prior to coming to the U.S.
- Must be coming to work at the U.S. location as an executive/manager or have specialized knowledge

Validity/renewal terms: three years initially

- L-1A: extended in two-year increments up to a total of seven years
- L-1B: one-time two-year extension

Green Card: Permanent residence (also provides permanent work authorization)

Eligibility/Requirements

- Employment-Based
 - May take anywhere from one year to several years to be approved
 - Usually involves DOL certification that no qualified U.S. workers are available
- Investor

Validity/renewal terms: 10 years; renewable indefinitely

- Eligible for U.S. citizenship after 3 or 5 years
- Residence in the U.S. must be actively maintained

Staying Compliant: H-1B Compliance

With the increased scrutiny on H-1B compliance, it is vital for employers to stay compliant while moving through the immigration process. In the event of a government visit, your preparation and effort will be recognized as a "good faith" gesture.

LCA (Labor Condition Application)/ (PAF) Public Access File Compliance

- Post approved LCAs for ten days in two "conspicuous" locations at the H-1B's workplace.
- Maintain a PAF that is legally viewable by the general public.
- Ensure that H-1B employees' job/duties remain in compliance with USCIS regulations and visa application (substantial changes = file H-1B amendment).
- Notify DOL of employer changes (i.e. H-1B Dependency).

Risks:

- An additional 250 agents were hired specifically for LCA/PAF compliance last year.
- DOL penalties can range from \$1,000-\$35,000 per violation, payment of back wages, and future restrictions to the H-1B program and other immigrant programs.

Recommendations:

- Develop internal practices and training to prove "good faith."
- Establish an internal LCA tracking system and prepare all required PAFs.
- Conduct regular audits with your immigration services provider.
- Notify your immigration services provider if contacted by a federal agency.