

What To Look For When Recruiting a Foreign National

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This article provides short descriptions of frequently used nonimmigrant visa types that could be posted on the NVTC website for those NVTC members who are considering hiring foreign nationals. This list is by no means exhaustive, but is an example of the issues that human resources specialists need to consider when hiring foreign nationals.

The following three visa types are common place when companies are recruiting foreign nationals for employment. Three instances arise most frequently that would trigger a human resources specialist to consider the following visa types: 1) the desire to hire a foreign national student who is already in the U.S., 2) the desire to hire a foreign national who is already in the U.S. in H-1B status and 3) the desire to hire a foreign national who is outside the U.S.

F-1 Status - Students

When a student is studying pursuant to an F-1 visa they are allowed employment under limited conditions. Two of these options are curricular practical training and optional practical training.

Curricular Practical Training

This type of employment is available to a student as long as it is related to the student's course of study, such as an internship/externship coordinated between the school and the employer, or is mandated by the school in order to fulfill the degree requirements. In order to be eligible for curricular practical training, the student must have completed nine months of study at the undergraduate level. There is no such eligibility requirement for a graduate student.

The employment opportunity must qualify for academic credit and be listed in the course description book as employment with a purpose of promoting hands-on experience where a faculty member monitors the progress of the student. While there is no limit to the time a student may be employed in curricular practical training, if the student remains in curricular practical training for more than twelve months he or she will later be ineligible for optional practical training.

Optional Practical Training

This type of employment of a student is more common than curricular practical training. As with curricular practical training, optional practical training should relate to the course of study. Unlike curricular practical training, the school does not have to approve of or monitor the student's progress while employed. The student must have

pursued a full-time course of study for nine consecutive months prior to obtaining optional practical training and is limited to one year of employment.

Optional practical training may only be pursued at the following four times during a course of study: 1) during the school year while classes are in session (part-time only), 2) during the times when school is not in session (ie: summer vacations or other regularly scheduled vacations), 3) after all course requirements are completed if the student is pursuing a bachelor's, master's or doctoral degree and 4) after the degree is obtained.

An important item to remember with optional practical training is that if the INS grants work authorization for optional practical training and the student decides not to work or cannot find employment they have lost their opportunity to pursue optional practical training. They will not be able to apply later.

H-1B Status - Temporary Specialty Worker

The H-1B visa is available to those individuals whose services are sought by a U.S. employer in a "specialty occupation." To qualify for an H-1B temporary worker status, an alien must have at least a bachelor's level degree, the foreign equivalent or have the equivalent of a degree in professional work experience in a field which is regarded by the INS as a profession.

The H-1B is a two-step process involving the Department of Labor and the Immigration and Naturalization Service. The employer must make attestations to the Department of Labor that the foreign national is receiving a wage commensurate with that of a U.S. worker in the same job in the same region with similar educational background. The employer must also attest that U.S. workers are not being disadvantaged by hiring a foreign national. The employer must also make attestations to the Immigration and Naturalization Service. The employer must provide a job description, minimum education and experience necessary for the position, the wage offered to the foreign national and that the foreign national qualifies for the position offered.

An H-1B visa is employer-specific. If the employee leaves one company to join another the new employer must sponsor the foreign national for a new H-1B visa before the employee may begin working. A foreign national may only have H-1B status for a total of six years. After that time, he or she must remain outside the U.S. for a full year before reentering in H-1B status.

L-1A Status - Intracompany Transferee

The L-1 visa was created to allow international companies to transfer key employees from the company abroad to a parent company, majority-owned subsidiary, affiliate, branch or certain joint ventures in the United States. The duration of stay is for an initial three-year period, one year if the U.S. company is a new, start-up company,

with a maximum stay of seven years for a manager or executive (L-1A) or five years for an individual with "specialized knowledge" (L-1B). In order to qualify for an L-1 visa, an employee must:

1. Be employed by the company abroad (outside the U.S.) for one of the three years preceding the application for the L-1 visa.
2. Be in a managerial, executive, or "specialized knowledge" position.

An executive or manager is one who runs the company; supervises professionals; makes discretionary decisions on behalf of the company; has the authority to hire and fire; controls a reasonably sizable budget; receives only general supervision or direction from higher level executives, the Board of Directors, or shareholders of the company; and spends virtually all of this time performing executive or managerial duties.

A "specialized knowledge" employee is one who is employed primarily for his or her ability to carry out a key process or function which is important or essential to the company's operations. An employee who possesses knowledge of a proprietary or unique nature, such as a manufacturing process, business technique, or formula, has "specialized knowledge." The position which the employee will fill must involve knowledge central to the company's operation. The knowledge must be necessary for the company to compete or enhance its market position in the U.S. The knowledge should be narrowly held within the organization and unique.