

Global Immigration Solutions for Multinational Businesses: How Meritas Can Help

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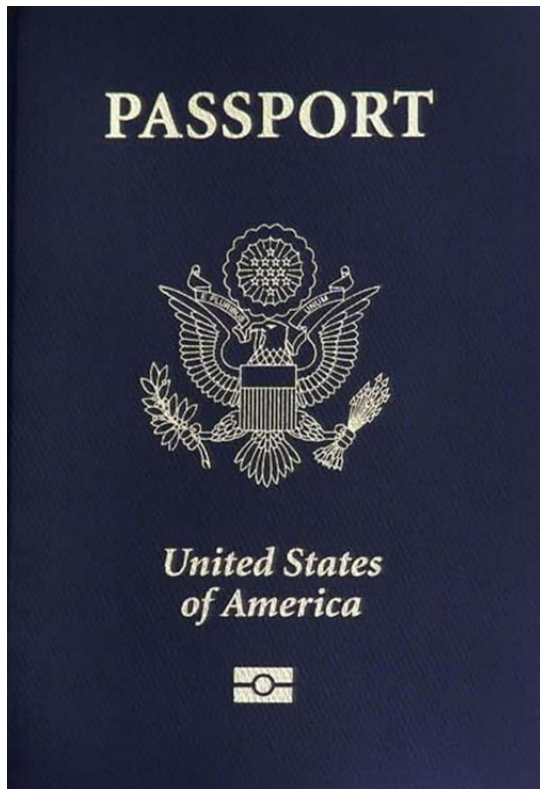
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Webinar Overview

Goals:

- Acclimate Meritas members to the immigration systems of each subject jurisdiction
- Highlight the key Visas and Work Permits for Multinational Businesses within each jurisdiction
- Explain the advantage of working with Meritas for Immigration Solutions

Overview of US Immigration System

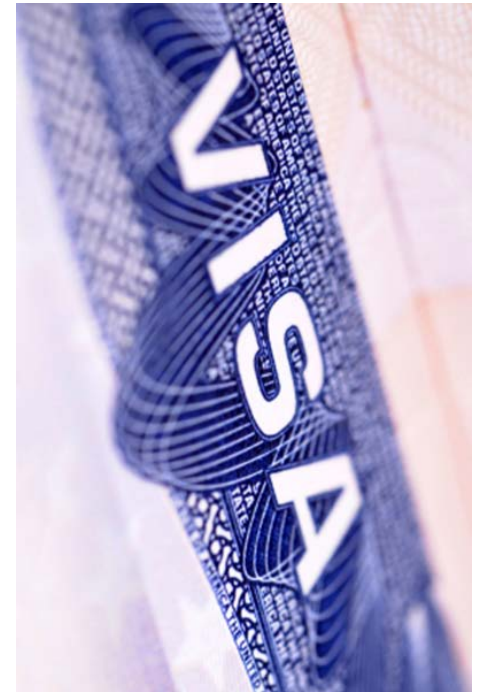


- Most visits to the US require advance clearance
- Virtually all work to be performed in the US by a foreign national must be preceded by issuance of a Work Visa or Work Permit
- Agencies: Department of Homeland Security, State Department, Department of Labor
- Process:
 - Immigration petition approved by DHS
 - Visa application approved by Embassy/Consulate
 - “Inspection” at the Port of Entry by DHS
 - Allow several weeks to several months from start to entry (varies greatly by visa type)

Immigration for Global Business – United States

Overview of US Options:

- B-1 Business Visitors
- L-1 Intracompany Transferees
- H-1B Professional
- E-1/E-2 Treaty Trader/Treaty Investor
- TN NAFTA



Business Visitors – B-1 Visas (US)

Permissible B-1 Visitor Activities:

Commercial transactions which do not involve employment in the U.S. (e.g. taking orders for goods)

Seek investment opportunities

Participate in scientific, educational, professional, or business conventions, conferences and seminars

Negotiate contracts

Meet with business associates

Participate in litigation

B-1 Visitors May Not:

Intend to remain in the U.S. for more than a few weeks (or a few months if need is clear)

Perform work for a US or foreign employer

Receive a salary from a U.S. source, however, s/he may receive an expense allowance or reimbursement for expenses incidental to the temporary stay

Questions as to business activities will be investigated at the Consulate and Port of Entry



Business Visitors – Visa Waiver Program (US)

Business Visitor may enter on Passport (no US Visa Stamp required) if:

Business person possesses machine-readable and/or biometric passport (most passports issued after 2005 qualify; and

Is a national of one of the countries listed below:

Visa Waiver Program Participating Nations

Andorra	Brunei	Finland	Hungary	Japan	Luxembourg	New Zealand	Singapore	Spain
Australia	Czech Republic	France	Iceland	Latvia	Malta	Norway	Slovakia	Sweden
Austria	Denmark	Germany	Ireland	Liechtenstein	Monaco	Portugal	Slovenia	Switzerland
Belgium	Estonia	Greece	Italy	Lithuania	The Netherlands	San Marino	South Korea	Taiwan
United Kingdom								

Intracompany Transferees – L-1A/L-1B (US)

Program for Multinational Companies to transfer Managers, Executives and Specialized Knowledge Employees to the U.S. from a foreign office

L-1A Executives/ Managers: 7 years
L-1B Specialized Knowledge: 5 years

Foreign National must have been continuously employed abroad for one of the previous three years at time of admission

Employee may be compensated by US entity or by foreign entity

US entity and company abroad must be related as parent, branch, affiliate, subsidiary or joint venture



L-1 Visa category has come under special scrutiny by USCIS in the past several years and now requires extra diligence

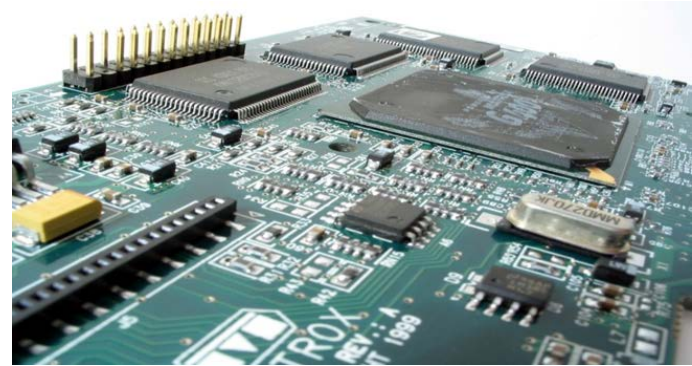
Professional Visas – H-1B (US)

The “Professional Visa” requires employment in a Specialty Occupation

At least a Bachelor’s Degree for hire as industry standard

Engineers · Executives · Computer Programmers · Teachers · Scientists · Professors · Researchers · Professional Consultants · Accountants · Lawyers

Foreign Worker must possess closely related Bachelor’s degree or its equivalent



H-1B Cap - Only 65,000 new H-1B visas available each year on October 1 (extra 20,000 for persons with US Master’s Degrees)

Employers must pay the employee the prevailing wage for the geographical area

6 year limit on visa status with several exceptions

Other US Work Visa Options for Global Business

E-1/E-2 Treaty Trader/Treaty Investor

- A treaty of friendship, commerce and navigation /bilateral investment treaty or similar must exist with US
- Nationality of company must be same as E visa holder; 50% of investors and/or owners must have same nationality
- E-1 Treaty Trader for companies with substantial trade primarily between US and treaty country
- E-2 Treaty Investor for making a substantial business investment in the United States
- E Visas conferred for 2 or 5 years terms and can be renewed without limit

TN (Trade NAFTA) Visas

- TN authorized under NAFTA for Canadians and Mexicans only
- For professional positions listed on the TN Schedule: systems analysts, engineers, management consultants, some medical and scientific positions
- Most positions require a minimum of a Bachelor's degree and/or licensure
- Visas may be obtained in three year increments and renewed without limit

The Australian Experience - Outline

- Background to Australia's immigration system
 - Historical
 - Temporary v Permanent
- Temporary Work Options
 - Short Term
 - Long Term
 - Rights of temporary workers
 - Obligations of sponsoring employers
- Permanent Work Options

Australia's Immigration System

- Migration Act 1958 and Migration Regulations 1994
 - One of Australia's most complex pieces of legislation
- Any non-citizen in the Migration Zone must hold a visa.
 - The Australian government gives permission for people who are not citizens of Australia to enter and remain in Australia by the issue of a visa. There are over 100 different types of visa
- Migration Program focused on:
 - Skilled visas
 - Business visas
 - Family visas
 - Protection Visas

Visa Applications and Processing

- Visas are separated into classes and subclasses with specific criteria attached to each
- Types of visa include
 - Temporary
 - Permanent
 - Bridging
- Majority of applications are now submitted online
- Heavy focus on “decision ready” applications, with a high evidentiary burden on the applicant
- Move towards streamlined application processing for certain passport holders seeking to enter Australia for certain types of short-term visits – these are non-evidentiary visas, known as “eVisas”

Temporary Work Options

Short Term - Electronic Visas

• Subclass 601 - Electronic Travel Authority

- Valid for up to 12 months, permitting visits of up to 3 months' duration per visit.
- No Application Form (instead it is commonly granted on purchase of an airline ticket)
- Certain passport holders only (including, Austria, Canada, France, Germany, Japan, UK, USA and others)
- \$20.00 Application Fee

• Permits “business visitor activities”

- General business/employment enquiries
- Investigating, negotiating and entering into contracts
- Participation in a conference, trade fair, seminar (unless the person is paid for that participation)
- NOT:
 - Undertaking work for, or supplying services to an organisation or person in Australia
 - Sale of goods

Temporary Work Options (continued)

Short Term - continued

• Subclass 651 – eVisitor

- Valid for up to 12 months, permitting visits of up to 3 months' duration per visit.
- No paper application form – use the online eVisitor Service
- Certain passport holders only (including, Austria, Denmark, France, Germany, UK and others) but not USA, Canada or Japan
- No Application fee

• Permits “business visitor activities”

- General business/employment enquiries
- Investigating, negotiating and entering into contracts
- Participation in a conference, trade fair, seminar (unless the person is paid for that participation)
- NOT:
 - Undertaking work for, or supplying services to an organisation or person in Australia
 - Sale of goods

Temporary Work Options (continued)

Short Term - continued

• Subclass 400 - Temporary Work (Short Stay) Visa

- Allows a person to enter Australia to:
 - Undertake highly specialised non-ongoing work; or
 - Participate in non-ongoing events as an invited participant; or
 - Participate in activities judged to be in Australia's interest
- Up to 3 months
- May bring family members
- Work or activity must be non-ongoing and must be capable of being finished within three months
- Applicant must be able to support themselves
- No study in Australia
- No renewal or extension

Temporary Work Options (continued)

Long Term

• Subclass 401 – Temporary Work (Long Stay) Visa

- Allows a person to enter Australia in one of 4 streams:
 - Sport
 - Exchange (reciprocal work opportunities between two organisations)
 - Religious Workers
 - Domestic Workers (to be employed by certain Subclass 457 senior executives or senior executives of foreign government agencies)
- Up to 2 years validity and may be extended onshore
- May bring family members
- Applicant must be **nominated** by an organisation or institution which is approved as a **sponsor** by the Department of Immigration
- Applicant must have the skills necessary to undertake the work

Temporary Work Options (continued)

Long Term - Continued

• Subclass 457 – Temporary Work (Skilled) Visa

- Allows a person to enter Australia to work in a skilled position
- Up to 4 years validity and may be extended while onshore
- May bring family members
- Applicant must be **nominated** by a business which is approved as a **sponsor** by the Department of Immigration
- Sponsors may be
 - businesses operating inside Australia, or
 - business which do not yet operate inside Australia, but which seek to send employees to Australia to establish, or assist in the establishment of business operations in Australia, or to fulfil a contractual obligation of the Sponsor
- Applicant must have the skills necessary to undertake the work.
- Applicant must have English language abilities
- Applicant must meet health and character requirements
- Nominated position must be genuine, skilled, and paid a minimum salary

Rights of Temporary Workers

- Temporary visa holders in Australia are entitled to industrial relations protections, including workplace safety, award wages, etc, as if they were Australian citizens.
- Australia strictly enforces visa conditions including:
 - Limitations on study (no study, limited study, etc)
 - Limitations on work (no work, employment with one employer only, etc)
 - Limitations on future onshore applications (known as “no further stay”)
- These vary from visa subclass to subclass – understanding the effect and application of conditions is essential
- Visa conditions can be waived or varied in only very limited circumstances

Permanent Visa Options

- **Employer Nomination Scheme (ENS) – Subclass 186**
 - A permanent visa for employees of an Australian business
 - Employer must lodge a Nomination and be approved before it can employ the Applicant
 - Position must be
 - a skilled position,
 - paid market salary and
 - available for at least three years
 - Employee must demonstrate English ability, skills, as well as meet health and character requirements
- **Regional Sponsored Migration Scheme (RSMS) – Subclass 187**
 - Similar to ENS, however relaxed criteria
 - Designed to encourage employment in regional Australia

Permanent Visa Options (continued)

- **Skilled Visas – Subclasses 189 and 190**
 - Points-tested visas for skilled individuals
 - May seek nomination from a state/territory government
 - No link to employer
 - Applicants must meet certain criteria based on age, English-language, skill, education, work experience, health and character
 - Applicants submit Expression of Interest and wait for an invitation to apply.

Permanent Visa Options (continued)

Business Skills Visas

- Two-staged process (provisional first and only qualify for permanent visa if meet certain requirements whilst holding provisional visa)
- This visa is for people who want to own and manage a new or existing business in Australia, or to invest in an Australian state or territory
- The visa includes three streams:
 - **Business Innovation stream:** for people with business skills who want to establish, develop and manage a new or existing business in Australia.
 - **Investor stream:** for people who want to make a designated investment of at least AUD1.5million in an Australian state or territory and maintain business and investment activity in Australia.
 - **Significant Investor stream:** for people who are willing to invest at least AUD5million into complying investments in Australia and want to maintain business and investment activity in Australia

The Canadian Experience - Outline

- Fundamental Principles of Canadian Immigration and Rights of Entry
- Permanent Residents vs. Temporary Residents
- Labour Market Opinions
- Exemptions from Labour Market Opinions: the Intra-Company Transferee

Canadian Citizens and Permanent Residents

- Canadian Citizens and every person registered as an Indian under the *Indian Act* have an absolute right of entry
- Entry for permanent residents is qualified by such matters as:
 - the commission or conviction of a criminal offence;
 - a breach of terms and conditions under which the permanent resident was admitted;
 - a determination of misrepresentation or fraudulent or improper means in acquiring permanent resident status;
 - Failure to maintain 730 days of residence in Canada in any 5 year period

Temporary Residents

- No right of entry
- Must ultimately satisfy an officer at a Port of Entry that they are entering for a temporary purpose as a worker, student or visitor and will leave Canada at the end of their stay
- Workers and students are normally documented on permits
- Visitors are documented on visitor records when the officer determines that there is a need to control the length of stay

Temporary Resident Visas (TRV)

- Certain foreign nationals require a TRV regardless of the purpose for seeking entry
- There is a specific list of countries that are exempt from the TRV under s. 190 of the *Immigration and Refugee Protection Regulations*
- Apply at a diplomatic post outside of Canada

Entry of Foreign Workers

Labour market opinions - the process

- Unless an exemption applies, the following three step process is required to hire a foreign national:
 - The employer applies to Service Canada (commonly referred to as Human Resources and Skills Development Canada (“HRSDC”)) for validation of the offer of employment;
 - If the employment offer is validated an LMO will be issued;
 - The foreign national applies for the work permit attaching the LMO.

LMO Issuance Criteria

- Generally, will the issuance of an LMO have a neutral or positive effect on the labour market?
- Specifically, will the issuance of an LMO lead to:
 - Job creation;
 - Transfer of skills & knowledge;
 - Alleviation of a labour shortage;
 - Wages offered consistent with the prevailing wage rate for the occupation;
 - Whether the employer has made reasonable efforts to hire or train Canadians or Permanent Residents.
- *If the LMO is issued, the next step is obtaining a work permit

LMO Issuance Criteria (continued)

- Usually when an LMO is issued the work permit follows
- Previously, work permits were denied if the worker had worked without authorization or if the visa office determined that the foreign national was not qualified
- Now amendments to the Regulations have placed further obstacles in front of the employer and the worker

Exemptions to the LMO Process

- By reason of international agreement (NAFTA)
- By a determination that the employment of the foreign national will create a benefit for Canadians

The Intra-Company Transferee

- The intra-company transferee is the product of the two LMO exemptions
- Practice Points:
 - If a U.S., Mexican, Chilean or Peruvian national: use the free trade agreements
 - If not a national of these countries: use the significant benefits clause of the *Immigration and Refugee Protection Regulations*
- The qualifying criteria are identical

Intra-Company Transferee Qualifying Criteria

- Employed by a multinational corporation outside of Canada
- Seeking entry to work in a parent, subsidiary, branch or affiliate of the multinational corporation
- Undertaking employment at a legitimate and continuing establishment of that company
- Transferred to a position in an Executive, Senior Managerial or Specialized Knowledge capacity

Intra-Company Transferee Qualifying Criteria (continued)

- The transferee must be coming to Canada for a temporary period of time only
- However that does not preclude the holder of the work permit from seeking permanent residence due to the concept of dual intent
- Dual intent does not preclude individuals who may ultimately seek permanent residence from acquiring temporary resident status
- The transferee must comply with all other Immigration requirements, such as obtaining a TRV, if necessary, and passing criminal checks

Duration of Work Permits for Intra-Company Transferees

- The initial period of stay is for a maximum period of three years
- Executives and senior managers may obtain extensions from within Canada, but the total period of stay may not exceed 7 years
- Persons with specialized knowledge may remain in Canada for a maximum of 5 years
- Applicants will be credited for documented time periods outside of Canada, such that the full extent of the authorized time is permitted

Start-Up Companies

- It is permissible for an intra-company transferee to transfer to a new entity set up in Canada
- Generally, the company must secure physical premises to house the Canadian operation, but it is acceptable to use the registered and records office of the company until premises are secured
- Transferees to new entities are normally only provided with an initial one year work permit but may apply for an extension up to the 5 or 7 year cap

Start-Up Companies (continued)

- The company must demonstrate that it will be large enough to support an executive or management function
- If the transferee is a specialized knowledge worker, the company must demonstrate that it will be doing business and that the work will be directed by management personnel
- For renewal of the work permit for the transferee, Immigration Officers are instructed to seek confirmation that the new office has been staffed and has engaged in the continuous provision of goods or services for 1 year
- The Canadian and foreign companies must have a qualifying relationship

Qualifying Relationships

- The Canadian and foreign enterprises must be legal entities that have a parent, subsidiary, branch or affiliate business relationship
- The definitions for the terms “enterprise,” “parent,” “subsidiary,” “branch” or “affiliate,” are adopted from definitions set out in NAFTA
- Both the foreign and the Canadian companies must be doing business
- “Doing business” means regularly, systematically and continuously providing goods and services

Qualifying Relationships (continued)

- “Enterprise” means any entity constituted or organized under applicable law, either privately owned or owned by government, and includes any corporation, trust, partnership, sole proprietorship, joint venture or other association
- Key point: after the operating entity is created in Canada and an employee has received intra-company transferee status, any decision to windup the foreign entity would block the transferee’s ability to continue working in Canada

Executives / Managers

- Executives:

- Direct the management of the company or a major component or function of the company
- Establish the goals and policies of the company

- Managers:

- Manage the company or a department, subdivision, function or component of the company

Specialized Knowledge Workers

- Have specialized knowledge of the company's products or services and their application in international markets; OR
- Have an advanced level of knowledge of the company's processes and procedures

BC Labour Market Outlook 2010-2020 *

- More than one million job openings are expected in British Columbia in this decade
- The growth in demand for workers is expected to outpace supply
- 78% of jobs will require a post-secondary education
- Tight labour market conditions are projected overall by 2016
- The availability of new labour market entries is expected to decline
- Conclusion: Companies will import foreign workers to fill labour shortages

Why Use Meritas for Immigration?

- Assurance of high quality legal work in complex field
- Predictability: use flat fee billing for different types of visas
- Ease of Use: use of client portals for entering data and tracking progress
- “Boots on the Ground”: In country expertise when your key employees need it most.
- The power of a global law firm, with the prices of a smaller market

Thank you.

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