Putting the "I !" Back in "Immigration"

Self-Employment Options under U.S. Immigration Law

"And I did it my way!" – Frank Sinatra

"C'est moi! C'est moi! C'est moi!" – Sir Lancelot in "Camelot"

Introduction

U.S. immigration law does not favor self-employment: A foreign national is, by and large, dependent on a job offer from a U.S. employer, to qualify for a work visa or become a permanent resident.

Are there other options, for talented individuals wishing to work in the United States? What are these options? And who are these fortunate souls?

Broadly speaking, they fall into several groups, which are further described in the course of this article:

1. **Business visitors ("B-1" visa and "WB" visa-waiver status) – compensated abroad, generally.**

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- Individuals who will provide *temporary* skilled-work or professional services, and will not receive remuneration *in the United States.*
- Individuals who will receive training to further their careers abroad – no compensation.
- Professional athletes - may compete for prize money.
- Business owners and principals abroad, who will perform preliminary work prior to establishing a U.S. business – no compensation.

2. **Canadian and Mexican management consultants ("TN" visa or status, under NAFTA) – U.S. compensation allowed.**
3. **Business principals ("E" and "L" visas, and permanent residence) – U.S. compensation allowed.**
4. **Individuals of international prominence (permanent residence) – U.S. compensation allowed.**

For purposes of this article, the term "self-employment" refers to all forms of *de facto* autonomy, or near-autonomy, in one's work while in the United States. That is, services rendered by independent contractors, as well as business principals. Significantly, "self-employment" in the context of this article also encompasses *uncompensated* services, as in artistic or creative endeavors, on the one hand, and in activities that lay the groundwork for subsequent for-profit operations.

Overview of Qualifying Temporary (Work Visa) Classifications

Miscellaneous Activities as a Business Visitor (the "B-1" visa or "WB" status)

Foreign nationals who can establish both strong ties abroad (including an intention not to relinquish a foreign residence) and the limited purpose of a visit to the United States, may

be admitted as business visitors.[2] The *Foreign Affairs Manual* (FAM), issued by the Department of State, and the legacy INS *Inspector's Field Manual* (IFM),each prescribe permissible business activities; the FAM, as they relate to issuance of visas and the IFM, relating to admission of individuals either with a visa or in "WB" status[3] under the Visa Waiver Program. Admission in either instance, that is with or without a formal visa, is generally for up to several months, with an absolute ceiling of 90 days for WB status.

Department of State (DOS)

As a starting point, DOS regulations interpret the term "business," as used in INA §101(a)(15)(B), relating to individuals who are "visiting the United States temporarily for business", to be limited to participation in "conventions, conferences, consultations and other legitimate activities of a commercial or professional nature." The term expressly *excludes* "local employment or labor for hire."[4] Moreover, the FAM confirms that "activities that constitute skilled or unskilled labor in the United States … are not appropriate on B status."[5]

The FAM expressly authorizes issuance of business visas to the following individuals, any of whom could conceivably perform services in the United States, within prescribed limitations:[6]

- Professional athletes[7]
- Investors seeking to set up an E-2 visa treaty investment (see discussion *infra*)[8]

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[2]Issues of visa eligibility, for example, proof of nonimmigrant intent to overcome the bar of INA §214(b), are covered elsewhere in this edition of the *Immigration & Nationality Law Handbook*.

[3]presumably, for "Waiver Business" status.
[4] 22 CFR §41.31(b)(1).
[5] 9 FAM 41.31 N7. But see discussion under "The Board of Immigration Appeals: *Matter of Hira", infra*. 9 FAM 41.31 N7 expressly adopts *Matter of Hira.*
[6] The justification in the FAM is that "[m]ost of the following examples of proper B-1 relate to the *Hira* ruling, in that they relate to activities that are incidental to work that will principally be performed outside of the United States." 9 FAM 41.31 N7. See discussion under "The Board of Immigration Appeals: *Matter of Hira", infra.*
[7] 9 FAM 41.31 N9.4; IFM §15.4(b)(1), Special Note (B)(4).
[8] 9 FAM 41.31 N9.7; IFM §15.4(b)(1), Special Note (B)(10).

- Service workers, pursuant to sales contracts requiring a foreign seller of "commercial or industrial equipment or machinery" to provide installation, service, repair, or training on such equipment; *provided* no remuneration is received from a U.S. source.[9]
- Aliens who will "merely and exclusively … observe the conduct of business or other professional or vocational activity"; provided they pay for their own expenses.[10]
- Aliens performing professional, H-1B-level services, or participating in H-3-nature training; provided they "receive no salary or other remuneration from a U.S. source other than an expense allowance or [incidental] reimbursement for expenses."[11] An exception is made for honorarium payments for academic speaking engagements, which are allowed under limited circumstances.[12]
- Artists, such as still photographers,[13] musicians,[14] and painters and sculptors,[15] with limitations.
- Professional entertainers who participate in cultural programs before nonpaying audiences, [16] or who will compete in international competitions for prize money.[17]

The common thread running through these profiles seems to be that issuance of a visa to a business visitor will be appropriate, *if* the individual already has a means of employment or self-employment abroad and, *if*, while pursuing vocational activities in the United States, he or she will not be compensated as an employee might be.

Department of Homeland Security (DHS) and legacy INS

[9] 9 FAM 41.31 N10.1; IFM §15.4(b)(1), Special Note (B)(16). See also 8 CFR§214.2(b)(4)(i)(F) relating to admission as a business visitor under NAFTA.
[10] 9 FAM 41.31 N10.4-2; IFM §15.4(b)(1), Special Note (B)(19).
[11] 9 FAM 41.31 N11, for both categories. See also 9 FAM 41.31 N11.9; IFM §15.4(b)(1), Special Note (B)(3), specifically relating to the B-1 visa in lieu of H-3 visa.
[12] 9 FAM 41.31 N11.2. See also INA§212(q).
[13] 9 FAM 41.31 N11.6.
[14] 9 FAM 41.31 N11.7.
[15] 9 FAM 41.31 N11.10.
[16] 9 FAM 41.31 N11.4; IFM §15.4(b)(1), Special Note (B)(7).
[17] 9 FAM 41.31 N11.5.

Assuming the individual can qualify for a visa, will he or she be allowed into the United States? It depends on whether DHS inspection personnel[18] are reading from the same set of rules as the ones laid out in the FAM.

While, to date, none of the branches of DHS has issued interpretations of the INA or DHS regulations, legacy INS published Operating Instructions (OIs) and the *Inspector's Field Manual* (IFM). As a baseline standard, the IFM provides that a "B-1 will be admitted for a period of time which is fair and reasonable for completion of the purpose of the visit", up to one year, with extensions permitted in increments of 6 months.[19]

The OIs contain similar provisions to some, but (alas) not all, of the FAM notes, *supra*.[20]As with the OIs, the IFM language generally tracks the primary categories laid out in the FAM, with the proviso that the alien may "*receive no salary or other remuneration from a U.S. source* (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay) …."[21] (Emphasis added.) Please refer to the footnotes relating to FAM provisions; they contain parallel IFM citations, where available. The IFM also recognizes

> [a]n alien coming to open or be employed [at a later date, in L-1 visa status] in a new branch, subsidiary, or affiliate of the foreign employer, if the alien will become eligible for status as an L-1 upon securing proof of acquisition of physical premises ….[22]

As with the "preliminary-to-E-2" provision in the *Foreign Affairs Manual*,*supra*, this would be appropriate activity for a business principal, as preliminary to subsequent for-profit business operations.

The Board of Immigration Appeals: **Matter of Hira**

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[18] *I.e.*, employees of the Customs and Border Protection (CBP) branch of DHS.
[19] IFM §15.4(b)(1).
[20] OI 214.2(b).
[21] *Id.*
[22] *Id.*, Special Note (B)(17).

Despite its admonition that "activities that constitute skilled or unskilled labor in the United States … are not appropriate on B status"[23] the FAM expressly endorses a much more liberal standard, one it borrowed from a 1966 Board of Immigration Appeals decision, *Matter of Hira.*[24]As explained in 9 FAM 41.31 N7:

> *Hira* involved a tailor measuring customers in the United States for suits to be manufactured and shipped from outside the United States. The decision stated that *this was an appropriate B-1 activity, because the principal place of business and the actual place of accrual of profits, if any, were in the foreign country.*[25]

(Emphasis added.) More precisely, in the language of the decision itself:

> The significant considerations to be stressed are that there is a clear intent on the part of the alien to continue the foreign residence and not to abandon the existing domicile; *the principal place of business and the actual place of eventual accrual of profits, at least predominantly, remains in the foreign country;the business activity itself need not be temporary, and indeed may long continue;* [and] the various entries into the United States made in the course thereof must be individually or separately of a plainly temporary nature in keeping with the existence of the two preceding considerations.[26]

(Emphasis added.)

The North American Free Trade Agreement (NAFTA)[27]

A few diverse observations about NAFTA, and business professionals:

Non-Limiting Language for Activities of Business Visitors

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[23] 9 FAM 41.31 N7, *supra*.
[24]*Matter of Hira*, Interim Decision #1647, 11 I & N Dec. 824 (BIA 1966). Shepardizing on LexisNexis® reveals that the Hira decision has been cited only once, in *International Union of Bricklayers & Allied Craftsmen v. Meese*,616 F. Supp. 1387 (N.D. Cal. 1985)), with disapproval. *See also* IFM §15.4(b)(1), *Special Note (B)(1).*
[25] 9 FAM 41.31 N7, *supra*.
[26]*Matter of Hira, supra.*
[27] North American Free Trade Agreement, U.S.-Can.-Mex., December 17, 1992, 32 I.L.M. 289 (entered into force Jan. 1, 1994).

In its section on admission of business visitors, NAFTA generously provides that business professionals who meet the general requirements for admission as business visitors may engage in any occupation or profession, beyond the prescribed activities in the Agreement:

> Nothing … shall preclude a business person engaged in an occupation or profession *other than those listed in Appendix 1603.A.1 to Annex 1603 of the NAFTA* from temporary entry under section 101(a)(15)(B) of the Act, if such person otherwise meets the existing requirements for admission as prescribed by the Attorney General.[28]

This is significant, because it permits Canadian and Mexican business visitors to render services *beyond* the activities described in Appendix 1603.A.1.[29]-- activities typically conducted by rank-and-file employees of a Canadian or Mexican business.

B-1 in Lieu of TN

In a different vein, NAFTA also generously allows self-employed professionals who otherwise meet the criteria for "professionals engaging in a business activity at a professional level in a profession set out in Appendix 1603.D.1 to Annex 1603," to qualify for admission in the "TN" classification; *provided they will be "receiving no salary or other remuneration from a United States source* (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay) and otherwise [will be] satisfying the requirements of Section A to Annex 1603 of the NAFTA."[30]

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[28] 8 CFR §214.2(b)(4)(ii) ("Occupations and professions not listed in Appendix 1603.A.1 to Annex 1603 of the NAFTA").

[29] These activities are limited to pursuits carried out "for an enterprise located in the territory of another Party", in the fields of Research and Design; Growth; Manufacture and Production; Marketing; Sales; Distribution; After Sales Service; and General Service.

[30] 8 CFR §214.2(b)(4)(i)(G)(1) ("General Services").

Management Consultant under NAFTA, for Canadian and Mexican Independent Contractors (the "TN" visa classification).

A key feature of the TN classification, for purposes of this discussion, is that it authorizes lawful admission, in limited circumstances, of a Canadian or Mexican *management consultant* who may render services for a U.S. business client, *as an independent contractor*

Overview

Admission as a *"Management Consultant"* under NAFTA is available to an individual who demonstrates that:

- He or she has either a baccalaureate degree in a field related to the consulting, or five years' experience in consulting or a related field.
- He or she intends to come only for a short period (generally no more than one year), and has no intention in applying for permanent residence.
- The purpose of his or her admission is to advise a U.S. corporate management on solving a particular problem or set of problems, or improving a particular area of the company's business.
- The individual will not be part of the regular work force but will either be an independent contractor or will be a "supernumerary" employee.
- Once the assignment is over, he or she will depart the United States, or may move on to another approved TN assignment.

Standards Set out in NAFTA – Professional-Level Activities for TN Admission

The North American Free Trade Agreement (NAFTA), which came into being in 1994,[31] created the TN work permit, for Canadian citizens,[32] and TN visa, for Mexican citizens, "seeking temporary entry to engage in business activities at a professional level."[33]

The term "business activities at a professional level" means those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.[34]

To "engage in business activities at a professional level", in turn, means

> the performance of prearranged business activities for a United States entity, including an individual. It does not authorize the establishment of a business or practice in the United States in which the professional will be, in substance, self-employed. A professional will be deemed to be self-employed if he or she will be rendering services to a corporation or entity of which the professional is the sole or controlling shareholder or owner.[35]

NAFTA Requirements for "Management Consultant"

Under Appendix 1603.D.1 , an individual wishing to qualify as a "Management Consultant" must present appropriate professional credentials: either a U.S. or foreign university degree, or equivalent professional experience as established by a statement or professional credential attesting to five years experience. Such experience must be as:

- a management consultant; or
- in a field of specialty related to the consulting agreement.

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[31] Its predecessor, the U.S.-Canada Free Trade Agreement (FTA), enacted in 1989, created a "TC" classification for Canadian citizens for purposes fairly identical to those described in NAFTA.
[32] As a general rule, Canadians do not require a visa, issued by the U.S. Department of State, to apply for entry to this country. The E-1 and E-2 visa classification, discussed *infra*, is an exception.
[33] INA §214(e); 8 CFR §214.6(a).
[34] 8 CFR §214.6(a).
[35] 8 CFR §214.6(b).

General documentary requirements are set out in 8 CFR §214.6(d)(3), including proof of "engagement in business activities at a professional level", and proof of "professional qualifications."

Legacy INS Guidelines

Legacy INS issued guidelines which narrowed the grounds for the entry of a person as a management consultant under the former FTA. Legacy INS's *Inspector's Field Manual* limits admission as a management consultant to an individual who

> provides services which are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems[;] and thereby improving the entity's goals, objectives, policies, strategies, administration, organization, and operation. Management Consultants are usually *independent contractors* or employees of consulting firms under contracts to U.S. entities.[36] [Emphasis supplied.]

The earlier FTA Guidelines, also issued by legacy INS, provided that:

> A management consultant should generally not be a regular, full-time employee, of the entity requiring service …. In cases [of full-time employment] the management consultant should not be assuming an existing position, replacing someone in an existing position, or filling a newly created permanent position. In short, the management consultant *should either be an independent consultant* or the employee of a consulting firm under contract to a U.S. entity or the consultant, if salaried, should be in a supernumerary temporary position.[37]

Emphasis added.

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[36] *INS Inspector's Field Manual*, sec. 15.5(f)(2)(G) at 15-59.

[37] Memo, Puleo, Asst. Comm., Adjudications CO 1773-C (Oct. 4, 1989), reprinted in 9 AILA Monthly Mailing 253-54 (Apr., 1990).

Conclusion

In brief, it is indeed possible for a self-employed Canadian or Mexican citizen to qualify for admission as a "management consultant" under NAFTA. He or she must be coming to the United States for a one-time assignment, to advise U.S. corporate management on solving a particular problem or set of problems, or improving a particular area of the company's business. And when the consulting assignment is over, he or she must return to the home country or to another consulting assignment in the United States.

The mechanics of securing admission under NAFTA are covered elsewhere in this edition of the *Immigration & Nationality Law Handbook*.

Treaty Trader or Treaty Investor Visas, for Principal Owner-Managers of U.S. Businesses ("E-1" and "E-2" visas).

The E-1 and E-2 visas allow qualifying foreign nationals to own and operate their own businesses in the United States. These visas are creations of treaties[38] the United States has entered into with several dozen foreign nations. Under the terms of these treaties, their nationals may obtain renewable work visas, as principals, either in:

(a) Established businesses which will trade in goods or services (hence, "treaty trading"); that is, the E-1 visa; or
(b) New or established, and sufficiently capitalized, businesses that will employ U.S. citizens (hence the notion of "treaty investment"); that is, the E-2 visa.[39]

In each "E" classification, the business-principal applicant must persuade the immigration authorities that he or she has a firm intention to depart from the United

[38] Please refer to the list at the end of this article.
[39] See INA §101(a)(15)(E). Note that the E-1 and E-2 visas are also available for key employees. See discussion of the L-1A visa, *infra.*

States when (and if) the E-1 or E-2 status terminates.[40] For this and other reasons it is rarely compatible with a plan to move up to permanent residence.

The E-1 Visa for "Treaty Traders"

To qualify for the E-1 visa, the applicant must show that he or she has established a business that will engage in "substantial" trade with the home country. "Trade" can be in goods or services or trade technology.[41] An importer of Iranian or Pakistani rugs, a German engineering consultant, a principal in a French accounting firm, are examples of individuals who qualify for an E-1 visa.

The E-2 Visa for "Treaty Investors"

To qualify for the E-2 visa, the applicant must have invested, or be irrevocably committed to investing, a "substantial" amount of at-risk capital into a "real and operating commercial enterprise." He or she must also prove that the investment is more than a "marginal" one solely for earning a living, and that he or she is in a position to "develop and direct" the enterprise.[42]

There is no minimum investment threshold for the E-2 visa, provided the amount invested is "substantial" enough to guarantee the financial success of the enterprise and to allow the E-2 investor to develop and direct its operations.[43]

Multinational Upper-Level Transferee Visa, for Principal of U.S. Businesses ("L-1A" Visa)

The L-1A visa allows qualifying foreign nationals who are sole owners or principals in a foreign entity, to open subsidiary or affiliate organizations in the United States.

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[40] 8 CFR §§214.2(e)(1)(ii), 214.2(e)(2)(iii); 9 FAM 41.51 N15.
[41] INA §101(a)(15)(E)(i); 8 CFR §214.2(e)(1); 9 FAM 41.51 N4.
[42] INA §101(a)(15)(E)(ii); 8 CFR §214.2(e)(2); 9 FAM 41.51 N7-N11.
[43] 8 CFR §214.2(e)(2)(i); 9 FAM 41.51 N10.1.

Briefly, principals in closely-held foreign corporations, with commensurate organizational responsibilities,[44] may qualify for this work visa, in order to direct the operations of new or existing U.S. companies, of existing overseas affiliates, subsidiaries or parent companies. As a baseline requirement, they must have been employed by the overseas organization for at least 12 continuous months prior to the transfer.[45]

The L-1A visa classification is open to nationals of any foreign country.

An E-1 or E-2 Visa as an Alternative to an L-1A Visa

On occasion, multinational executive-level transferees may elect not the L-1A visa, but the E-1 or E-2 visa instead. This would typically occur during the initial start-up operation phase, as the L-1A visa is limited to one year for "new office" situations (requiring renewal and additional expense at the end of the one-year term), whereas the "E" visa is generally issued with a term of up to five years, depending on the visa reciprocity schedule for the particular treaty country.

Unlike the TN and E visas[46], the L-1A visa may be considered appropriate as a preliminary step to permanent residence. In fact, it offers a relatively streamlined permanent residence procedure, as discussed briefly below.

Let's review the several options for business principals and self-employed individuals--even *unemployed* individuals--to attain permanent residence.

Avenues to Permanent Residence

Generally speaking, there are three ways to acquire permanent residence:[47]

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[44] US immigration law uses the technical terms "executive capacity" and "managerial capacity", both of which denote oversight responsibility for essential functions of an organization. Note that the individual must have previously been employed in such a capacity prior to, and will occupy a similar position following, his transfer to the United States.

[45] See INA §214.2(l)(i)(1).

[46] Except, that is, the use of the "E" visa in lieu of the L-1A visa by multinational upper-level transferees, discussed immediately above.

1. Active sponsorship by a close family member who is a U.S. citizen or permanent resident.
2. Active sponsorship by a prospective U.S. employer, who must satisfy rigorous requirements relating to testing the U.S. job market.
3. Family status, as a spouse or unmarried minor child, of an individual who is sponsored in either a family-based or employment-based case.

Returning to the theme of this article: How can one acquire permanent residence, either on one's own (*i.e.*, as a "self-petitioner"), or as a principal in an established or prospective U.S. business? There are two primary ways to accomplish this, under the rubric of what U.S. immigration law calls the "Priority Worker" category. [48]

"Priority Worker" – Permanent Residence for "Aliens of Extraordinary Ability"

This refers to foreign nationals with "extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation."[49]

But it is not enough to rest on one's laurels. At a minimum, the individual must be coming to the United States to continue work in the area of extraordinary ability, and his or her entry *"will substantially benefit prospectively the United States."*[50] (Emphasis added.)

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[47] There is a fourth path to permanent residence, referred to as "asylum", based on a well-founded fear of persecution if one were to return to one's country of nationality of place of last residence. INA §208. While it is a stand-alone case and does not require a sponsor, it is outside the scope of this discussion.

[48] INA §203(b)(1).

[49] INA §203(b)(1)(A)(i).

[50] INA §§203(b)(1)(A)(ii) and (iii).

What does this mean, in practical terms? It allows the individual to *propose* to work, as an independent consultant, in his or her field of proven expertise; *provided* that this proposed work will render some tangible benefit to this country.

That seems daunting. But consider that this proviso has never been implemented by regulation. For guidance, we have two sources, a single federal district court decision[51] and a 1995 letter from legacy INS.[52] In the former, the court analyzed the statute and applicable persuasive evidence and concluded that INS[53] should assume that "persons of extraordinary ability working in their field of expertise will benefit the United States." In other words, it is reasonable to assume that an individual who proposes to work in his or her field of expertise *will* in fact "substantially benefit prospectively the United States."[54]

Additional support is found in a 1995 INS memorandum, stating that "prospective advantage" may generally be assumed, unless the field has potential to be detrimental to U.S. interests.

Immigration practitioners have assisted a number of individuals attain permanent residence under this standard, based on their recognized, high-level professional credentials, and a willingness to continue working in the field of endeavor. Several of my clients, for example, had intended to retire permanently in the United States, only to learn this would not be feasible under our immigration laws. Instead, through use of the "Extraordinary Ability" classification, they were able to secure permanent residence, as independent consultants or in principal positions with U.S. firms, based on their commitment to continue to work in their field of expertise.

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[51] *Buletini v. INS*, 860 F. Supp. 1222, 1229 (E.D.Mich. 1994).

[52] Letter from Edward H. Skerrett, Chief, Immigrant Branch, Adjudications, INS (Mar. 8, 1995). See also fn. 54.

[53] The former INS, with respect to its function of adjudicating cases for work visas, permanent residence and the like, is now the Citizenship and Immigration Services (CIS) branch of the Department of Homeland Security.

[54] Letter from Edward H. Skerrett, *op. cit.*: "Ordinarily, the 'substantial benefit' criterion is met through satisfying the other statutory requirements … [and] … there may be very rare instances where an extraordinary alien's admission may be damaging or detrimental to the interests of the United States."

In short, the "Extraordinary Ability" classification, despite its high qualitative threshold, can on occasion serve the accomplished, active professional well in his or her quest for US permanent residence.

"Priority Worker" – Permanent Residence for Multinational Upper-Level Transferees Who Are Principal Owner-Managers of US Businesses

The owner or other principal of a U.S. affiliate or subsidiary, who is already in L-1A visa status is favored with a relatively short and straight path to permanent residence. The qualifications for permanent residence in this classification are virtually identical to the L-1A visa, with one exception: The U.S. affiliate (or parent or subsidiary) must have been in active operation for a minimum of 12 months, before its key upper-level personnel may become eligible for permanent residence on this basis.

As mentioned above, on occasion, multinational executive-level transferees may find it advantageous to elect not the L-1A visa, initially, but the E-1 or E-2 visa instead. This path to permanent residence for the upper-level multinational transferee would apply equally, whether the individual holds the L-1A visa, or either "E" classification visa, provided he or she could have qualified for the L-1A visa in the first instance.

Procedures for "Priority Workers"

Processing of permanent residence cases for Priority Workers, in either category above, is much more straightforward than the usual, job-offer-based case, which is driven by a need to test the U.S. labor market--a need which, fortunately, has no relevance for Priority Workers.

That is not to say these cases are easy to prepare. They are very challenging from a different perspective. For the individual of extraordinary ability, there is naturally a high qualitative, and documentary, threshold to meet, or better yet, to surpass. Permanent

residence cases for multinational executive-level transferees are also intensively documented with materials for U.S. and overseas affiliate companies. These materials will have been prepared previously in a well-prepared L-1A visa case.

In any event, the procedures for "Priority Workers" allow for a simple, powerful "one-step" filing; *provided*, the individual is already in the United States, in a temporary visa status.[55] In such situations, two sets of applications are combined into a single package for filing:

(1) Employer application: proof that the "Priority Worker" requirements have been met; and
(2) Employee application: individual applications for permanent residence by the employee and family members.

The effect is to expedite processing times, and conferral of benefits, to the individual and his family members. That is, the individual, and family members,[56] may actually apply directly for permanent residence, directly, without having to wait on preliminary approval of the employer's immigrant visa petition (Form I-140).[57] Within a period of approximately 12 months, the applicants may typically receive USCIS "welcome notices" and permanent resident cards.

This one-step approach assumes that the first set of papers, proving "Priority Worker" qualifications, will be approved. If it is not approved, then the second set of paperwork will be denied as well. In other words, the success of the individual and his or her family's applications depends on meeting the "Priority Worker" standards.

A safer, but longer, process requires a two-step filing: first, to establish the "Priority Worker" qualifications. Then, after perhaps a year of processing and ultimate approval,

[55] If, on the other hand, the foreign national is outside the United States, processing will be in two steps: (1) The employer files its sponsoring papers with the stateside CIS processing center; and upon approval, (2) the employee and family members apply for their "immigrant visas" through the U.S. Department of State, and U.S. consular offices abroad.

[56] That is, spouse (though not civil or "life" partners, as in Europe) and unmarried children under age 21.
[57] Incidentally, this offers a great advantage to family members, including teen-age children, who wish to work. Shortly after filing the applications for permanent residence, they will be able to get work permits.

the individual and family may safely apply for permanent residence. An experienced immigration lawyer can advise a client which of these alternatives to follow, the one-step or two-step procedure.

Conclusion

In the U.S. immigration system, approval for work visas and green cards is restricted. Challenging legal requirements and processing backlogs discourage even the mainstream cases, which are based on a job offer from a U.S. employer. Fortunately, the law does allow qualified individuals to secure their own places on the U.S. immigration stage, in several instances:

- Business visitors providing temporary services, but not receiving remuneration from a U.S. source (B-1 visa or NAFTA B-1 status, or WB visa waiver);
- Canadian and Mexican management consultants (TN work permit or TN visa);
- Principals in multinational businesses (E-1, E-2, or L-1A visas, then permanent residence); and
- Individuals who intend to work in their field of established international expertise (permanent residence).

Such cases, while challenging, offer advantages to the individuals and to the beneficiaries of their services in the United States. In our current, challenging global economy, effective advocacy under the U.S. immigration laws can encourage highly-qualified foreign nationals to bring their talents to benefit our country.