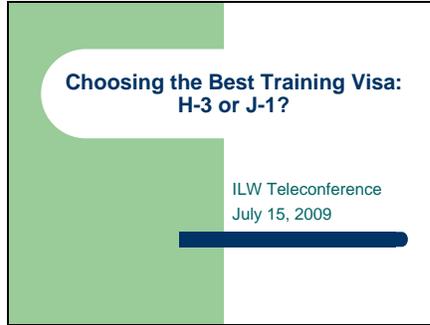


Slide 1



**Choosing the Best Training Visa:
H-3 or J-1?**

ILW Teleconference
July 15, 2009

Slide 2

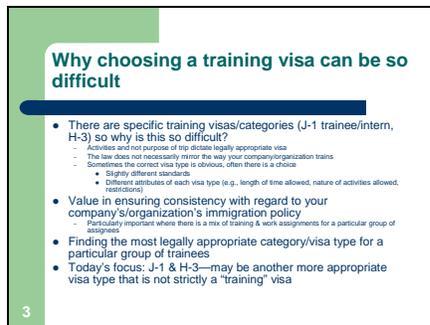


Overview

- Why choosing a training visa can be so difficult
- H-3 legal standards
- J-1 trainee & intern legal standards
- Comparison of H-3 & J-1
- Considerations which influence choice of visa

2

Slide 3



Why choosing a training visa can be so difficult

- There are specific training visas/categories (J-1 trainee/intern, H-3) so why is this so difficult?
 - Activities and not purpose of trip dictate legally appropriate visa
 - The law does not necessarily mirror the way your company/organization trains
 - Sometimes the correct visa type is obvious, often there is a choice
 - Slightly different standards
 - Different attributes of each visa type (e.g., length of time allowed, nature of activities allowed, restrictions)
- Value in ensuring consistency with regard to your company's/organization's immigration policy
 - Particularly important where there is a mix of training & work assignments for a particular group of assignees
- Finding the most legally appropriate category/visa type for a particular group of trainees
- Today's focus: J-1 & H-3—may be another more appropriate visa type that is not strictly a "training" visa

3

Slide 4

Why choosing a training visa can be so difficult

- Identify the training activities
 - Possible training activities (list not exhaustive):
 - Classroom training
 - Observation/shadowing
 - One-on-one (1:1) training
 - On-the-job training
 - Define terms
- Where/how is the training administered?
 - At work site or vendor location?
 - In normal course of operations or simulation/module?

4

Slide 5

Why choosing a training visa can be so difficult

- Performing the analysis:
 - Understand the business
 - Spend time with colleagues in the various business groups that impart training
 - Dig in and get your hands dirty: take a tour to ensure understanding
 - Get a translator if necessary; it does not help for you to say "apple" and your business partner to think "orange"
 - Identify and define the activities that constitute training & get buy-in on those definitions
 - Periodically revisit the definitions with business partners
 - Develop a comprehensive strategy for how you will use each visa type to ensure consistency
 - Take into account other relevant factors: tax & export license implications, visa reciprocity schedules, skills list countries, etc.

5

Slide 6

H-3 legal standards

- H-3 (8 CFR 214.2(h)(7)(ii))
 - Any productive employment (on-the-job training) must be "incidental & necessary"
 - Attempt to quantify for your organization or business unit, if possible
 - Cannot be placed in a position in the normal operation of the business and in which citizens & resident workers are regularly employed
 - Training must be unavailable in beneficiary's home country
 - Purpose to prepare for position abroad
 - Not workaround for extending OPT
 - Unabandoned residence abroad
 - Maximum stay: 24 months

6

Slide 7

J-1 trainee & intern legal standards

- J-1
 - Depending on profile, not everyone will qualify due to gap in "intern" and "trainee" definitional requirements
 - "intern":
 - Enrolled at a degree or certificate granting institution abroad –or–
 - Graduated within 12 months from such an institution
 - "trainee":
 - Degree or certificate from institution abroad plus one year of work experience abroad –or–
 - 5 years of related experience abroad
 - Must provide:
 - bona fide training as opposed to merely "gaining additional work experience"
 - Work-based learning in academic field as opposed to unskilled labor
 - Cannot displace U.S. workers
 - Maximum duration: intern (12 months); trainee (18 months)

7

Slide 8

J-1 trainee & intern legal standards

- J-1
 - Special requirements:
 - Cultural component
 - English language proficiency
 - Evaluations required
 - Only offered in certain occupational categories
 - Vetting of third party trainers
 - SEVIS reporting obligations
 - Requires a J-1 program designation or use an umbrella program
 - 2 year home residency requirement may attach (INA 212(e))

8

Slide 9

Comparison of H-3 & J-1

- Comparison of various visas that might be used for training:
 - B-1
 - B-1 in lieu of H-3
 - J-1 intern/trainee
 - H-3
 - L-1



9

Slide 10

Considerations which influence choice of visa

Other considerations:

- reciprocity schedules for various visa types
- two-year home residency requirement
- practices of particular Consulate(s)
- importance of spouses' ability to work
- possible need to bring employees back in for future training or work

10

Slide 11

Hypotheticals

- Tamaho Yakamoto intends to enter U.S. for six weeks to engage in training to prepare her to return to Japan to assume the role of AsiaPac Marketing Manager, the role of which is currently being performed from the U.S. She will spend the first three weeks at a management seminar conducted by a management consulting firm on her company's premises. During the remaining three weeks she will work side by side with the incumbent to ensure that she fully understands the role. Part of that time will be spent discussing the business, but the majority of that time will involve actually performing the duties she will be expected to perform when in Japan.

11

Slide 12

Hypotheticals

- Company X manufactures high-tech equipment in several countries throughout the world but conducts its R&D exclusively in the U.S. In order to ensure that there are no flaws with the way its new product is manufactured in Brazil, it sends one of its top engineers to the U.S. to assist in learning the new manufacturing process as it is being developed so that the technology can be seamlessly transferred to Brazil. During this nine month training assignment, the Brazilian engineer will assist in co-developing the technology.

12

Slide 13

Hypotheticals

Pharmaceutical Co. is designated by the State Department as a sponsor of J-1 trainees and interns. It periodically brings its new researchers around the world to its primary research facility in the U.S. for fourteen months to learn the company's proprietary researching methods. What visa type should Pharmaceutical Co. use to bring these new employees to the U.S.?

- Lucy received her Ph.D. degree 10 months ago from Oxford and has no prior work experience.
- Jorge earned his Ph.D. degree at Columbia University two months ago and has no prior work experience.
- Giovanni received his Ph.D. from the University of Florence ten years ago, has two years of research experience working with a company in Rome, and eight years of work experience with a competitor located in New Jersey.

13

Slide 14

Hypotheticals

Semiconductor Co. brings employees from its site locations abroad to the U.S. to train on new technology prior to ramping a new factory or technology. Its trainees will undergo the following twelve month training program:

- One month classroom training
- One month observing U.S. colleagues
- Eight months of training 1:1 in the factory with a U.S. colleague
- One month of productive employment to ensure they have acquired the skills necessary to ramp the factory abroad
- One month of on-call activities to practice making decisions under pressure

14

Slide 15

Hypotheticals

Employee in U.K. is member of multinational client's internal audit team and is asked to enter the U.S. for three weeks to:

- Review the audits already performed by the U.S. team in training
- Review the audits as above but also analyze the results using his expertise in U.K. privacy law which have been adopted globally by the company
- Perform the audits alongside his U.S. counterparts

15

Slide 16

Hypotheticals

- Employee of subsidiary abroad wants to enter U.S. for 8 weeks of training at parent company site involving:
 - Attending classroom sessions
 - Observing U.S. colleagues working in the factory
 - Operating the machine to complete a training module
 - Operating the machine on the production floor to ensure that she really understands how it works and can reproduce what needs to be done when she returns to the factory in her home country
 - What if the training involves various percentages of the above activities?

16

Slide 17

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17