

PERSONAL FINANCE

Getting cleared to work in U.S.

Here's some advice on getting that coveted 'green card'

DAVID A. ALTRO
SPECIAL TO THE GAZETTE

If you acquire a residence in Florida or elsewhere in the U.S., you might then wonder about starting up a business there, or perhaps looking for work there. Foreigners wishing to work in the United States must have either obtained a work visa or have been granted lawful permanent residency (LPR) status. It is the lawful permanent resident who qualifies for the so-called "green card."

The person who wishes to obtain a green card may apply by one of two methods. The first method involves applying for a non-immigrant work visa. This is a temporary status. This can eventually lead to an "adjustment of status" to that of a lawful permanent resident and thus acquire a green card. The second method is the direct petition for the green card.

The non-immigrant work visa is usually the most practical route to follow. For example, this would make sense when an executive is transferred from a Canadian company to its U.S. office, or to establish a U.S. office. It also would be practical when a U.S. organization recruits a critical-care nurse, when an internationally recognized music group performs in the U.S., or when a Canadian manages an investment in the United States.

Temporary work visas

L-1: Intra-Company Transferee

This classification is an effective method for Canadian companies in the transfer of executive, managerial and specialized personnel to the U.S. to work. This category may work for you if you are the owner or an executive or

manager in a Canadian corporation that wishes to establish a subsidiary corporation in the United States. The basic requirements for an L-1 visa are:

- The employee must have worked outside the U.S. for the foreign company for a continuous period of one year in the preceding three years.

- The foreign company which the employee worked for a year abroad (in Canada) must be related to the U.S. company (existing or to be incorporated) in a specific manner.

- The company must be a "qualified organization" – one that is doing business in the United States and one other country during the whole period of the transfer.

- The employee to be transferred must have been employed abroad in an executive or managerial position or a position involving specialized knowledge.

- The employee must be coming to the U.S. company to fill one of such positions.

- The employee must be qualified for the position by virtue of his prior education and experience.

- The employee must intend to depart the U.S. upon completing the authorized stay but may also petition for U.S. permanent residency – a green card – at the same time.

The L-1 transfer is an effective method of transferring yourself from your Canadian company to a U.S. subsidiary to be incorporated for the purpose of establishing the same type of business in the United States. Although it is a temporary visa, once it has been obtained the alien may apply to adjust the status to a lawful permanent resident status and obtain a green card.

H1b: Specialized Workers

The H-1B non-immigrant visa

category is used by companies and other organizations to employ foreign nationals temporarily who qualify as persons in "specialty occupations".

A designated group of Canadian professionals has been given special consideration in entry to the United States under the terms of the U.S.-Canada Free Trade Agreement. These professionals can enter the United States on temporary work assignments without the need to obtain approval from U.S. authorities through the usual H-1B petition procedure. Specialized workers include:

- Health-care professionals.
- University professors and other teachers.
- Engineers.
- Systems-analysts and other computer professionals.
- Financial analysts and other persons in advanced business specialties.
- Accountants.
- Lawyers, architects and other service professionals.
- Fashion models.

E1, E2: Treaty Trader/Treaty Investor Visas

E visas are issued to nationals of countries having a treaty of commerce and navigation with the U.S., including Canada. These aliens seek to enter solely to engage in substantial trade, principally between the U.S. and the treaty country, or to develop and direct a qualifying investment enterprise.

An E-1 ("Treaty Trader") or E-2 ("Treaty Investor") Visa also is available to employees of a qualifying treaty company, provided they serve an executive or supervisory capacity or have essential skills.

Other temporary work-visa categories

The other categories of tempo-

PLEASE SEE GREEN CARD, PAGE F15

GREEN CARDS

*If you have an 'extraordinary' ability
— or are married to an American, go to the head of the line*

CONTINUED FROM PAGE F11

rary work visas include:

- B: Business and pleasure visitor.
- F: Students.
- H2b: Skilled or unskilled workers.
- H3: Employee training program.
- J1: Exchange visitors.
- O: Extraordinary ability in sciences, arts, education, business or athletics.
- P: Entertainers and athletes.

Direct green-card applications

The two major categories of green card or LPR applications are family immigration and employment-based immigration. Other methods include political asylum and refugee claims.

FAMILY-BASED IMMIGRATION

Immediate Relatives

This category includes the parent, spouse, or child of a U.S. citizen, and the spouse of a deceased U.S. citizen if the marriage existed at least two years prior to, and the petition is filed less than two years after, the death of the citizen.

Preference Categories

Aliens applying for family-based permanent residence who do not qualify as "immediate relatives" of U.S. citizens may qualify for one of the family relationship preference categories. They are, in order of preference:

1. Unmarried sons and daughters of U.S. citizens over the age of 21.
2. Spouse or children of LPRs.

3. Married sons and daughters of U.S. citizens. These are persons who would be eligible either as an immediate-relative child or first-preference son or daughter, except for the fact that they are married.

4. Brothers and sisters of U.S. citizens.

JOB-BASED IMMIGRATION

Category 1 ("Priority workers")

- People with extraordinary ability.
- Outstanding professors and researchers.
- Multi-national executives and managers.

Category 2

- Those with advanced degrees or their equivalent in a professional field.

- Those with exceptional abilities in the sciences, arts or business.

Category 3:

- Professionals. The first sub-category include professionals who hold at least a U.S. bachelor degree or a foreign equivalent degree and who are members of the professions.

- Skilled Workers. The regulation requires that the skilled worker be capable of performing skilled labor, requiring at least two years training or experience, not of a temporary or seasonal nature and for which qualified workers are not available in the U.S.

- Unskilled workers. Unskilled workers or "other workers" are defined under the regulation as aliens capable of performing unskilled labor, requiring less than two years training or experience, not of a temporary or seasonal nature and for which qualified workers are not available in the U.S.

Category 4

- Special immigrants/religious

workers. Clergy with at least two years of experience and "other religious workers" qualify to obtain special immigrant status. The cleric must be coming to the U.S. solely for the purpose of carrying on the vocation of a minister of that religious denomination.

Category 5

- Investors. The U.S. Immigration Act provides for the allotment of 10,000 visas annually for qualified immigrants seeking to enter the U.S. for the purpose of engaging in a "new commercial enterprise."

The latter is defined as the creation of an original business, the restructuring of an existing business such that a new commercial enterprise results, or the expansion of an existing business through investment of the requisite amount such that a 40-percent increase in either the net worth or the number of employees results.

The entrepreneur must invest \$1 million U.S., or \$500,000 if in a "targeted employment area." Such areas are defined as a rural area that has experienced an unemployment rate of at least one and a half times the U.S. national average.

Debt will qualify as capital only when the alien entrepreneur is primarily and personally liable for the indebtedness. The assets of the commercial enterprise to be purchased cannot be used to secure the indebtedness for the purposes of qualifying. The commercial activity must employ at least 10 full-time workers.

An existing business referred to as a "troubled business" may qualify without creating new employment if it will maintain the existing level of employees for a period of at least two years.