



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

Book Outline

Finally, employing foreign nationals has been demystified! **Business Immigration Law: Strategies for Employing Foreign Nationals** guides you step by step through this intricate legal maze. An impressive array of specialists provides helpful and pragmatic advice on the nonimmigrant work authorization, including: specialty occupations (H-1Bs); intra-company transfers from abroad (L-1); and treaty traders and investors (E-1 and E-2). Coverage includes: tax issues; discrimination law problems raised by screening foreign nationals during hiring; and how to avoid sanctions for I-9 violations. This book's appendices provide forms, guidelines, regulations and other helpful materials. Please see its companion volume, [Business Immigration Law: Forms and Filings](#).

CHAPTER 1

Basic Concepts

§ 1.01 Legislative Authority

§ 1.02 Agencies

[1] Department of Homeland Security (DHS): USCIS, ICE, and CBP

[2] Department of State (DOS)

[3] Department of Labor (DOL)

[4] Other Agencies

§ 1.03 Statutes, Regulations, and Other Guides

§ 1.04 Immigrant and Nonimmigrant Status

[1] Essential Concepts

[2] Extending, Changing, or Adjusting Status

[3] Immigrants versus Nonimmigrants

§ 1.05 Nomenclature of Visa Categories Such as E, L, and H-1B

§ 1.06 Visa Waiver Permanent Program

§ 1.07 Obtaining Nonimmigrant Status

[1] Petitioning the USCIS

[2] Obtaining a Visa

[3] Avoiding Problems upon Admission to the United States

[4] Change of Status from Within the United States

[5] Procedure for Filing a Nonimmigrant Petition

§ 1.08 Dependents of Nonimmigrants

[1] Obtaining Nonimmigrant Visas

[2] Obtaining Nonimmigrant Status

[3] Employment

[4] Education

§ 1.09 Maintenance and Limitations of Nonimmigrant Status

§ 1.10 Extension of Nonimmigrant Status

[1] Contents, Structure, and Purpose of Extension Petitions

[2] Filing Extension Petitions

[3] Employment During Pendency of Extension Petitions

[4] Denials

§ 1.11 Inadmissibility

[1] Grounds

[2] Determinations of Inadmissibility

[3] Overcoming Inadmissibility to Obtain Entry



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

CHAPTER 2

Recruiting Foreign Nationals

§ 2.01 The Need for a Strategy

§ 2.02 Potential Disadvantages of Recruiting

- [1] Delay in Obtaining Employment Authorization
- [2] Cost of Obtaining Employment Authorization
- [3] Limited Length of Employment Authorization
- [4] Subsequent Costs: Changes in Terms and Employment Termination

§ 2.03 Deemed Export Rule

- [1] Sources of Export Regulation
- [2] "Export" and "Deemed Export" Defined
- [3] Which Employees Are Subject to the "Deemed Export" Rule
- [4] Items and Activities Subject to Export Regulation
- [5] When a License Is Required for a Deemed Export
- [6] Screening for Export Control Issues in Recruitment and Hiring

§ 2.04 Discrimination Issues

- [1] Overview
- [2] Which Employers Are Subject to Antidiscrimination Laws
- [3] National Origin Discrimination
- [4] Citizenship Status Discrimination
- [5] Document Abuse
- [6] Wage and Hour Laws/Workers' Compensation Benefits
- [7] The Retaliation Case
- [8] RICO

§ 2.05 Hiring Practices and Employment Policies

- [1] Interviewing Applicants
- [2] Limiting Visa Status Sponsorship
- [3] The Labor Certification Process: Who Is a "United States Worker"?
- [4] United States Citizens-Only: Hiring Policies
- [5] United States Citizens-Only: Policies Affecting Terms or Conditions of Employment
- [6] Treaty-Authorized Discrimination Against United States Citizens
- [7] Choosing Between Equally Qualified United States Citizens and Foreign Nationals
- [8] Choosing Between Undocumented Aliens/Nonimmigrants and Protected Individuals
- [9] Fluency in English and "English-Only" Policies
- [10] Job Assignments
- [11] Requiring a Social Security Number
- [12] National Security Clearance

§ 2.06 Enforcement

- [1] Agency Jurisdiction
- [2] Filing a Charge Under IRCA
- [3] Filing a Charge Under Title VII

§ 2.07 Recruiting Students

- [1] Student Visa Status and Employment
- [2] New Visa Status: Timing Considerations

§ 2.08 Employment Contracts

- [1] The Unintended Contract



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

[2] Sponsorship and Fees Contracts

CHAPTER 3

Short-Term Needs

§ 3.01 Introduction

§ 3.02 B-1 Visas

[1] Overview of B-1 Status

[2] Permissible Activities

[3] Obtaining B-1 Status

§ 3.03 H-2B Status

[1] The Temporary Need

[2] H-2B Quota

[3] How to Obtain H-2B Status

§ 3.04 H-3 Status

[1] The Training Program

[2] How to Obtain H-3 Status

[3] Extension of H-3 Status; Changing to Another Status

§ 3.05 J-1 Exchange Visitor Status

[1] Summary of Program Categories

[2] Obtaining J Status

[3] J-1 Status Entry

[4] Reinstatement of J Status Holders

[5] Obligation of Sponsor upon Completion of the J Program

[6] Transfer of Sponsors

[7] Employment of J Status Holders

[8] Two-Year Return Residence Requirement

[9] Sanctions for Regulatory Breaches

[10] Termination of J Program Sponsorship

§ 3.06 O-1 Status for Extraordinary Foreign Nationals

[1] Extraordinary Ability Defined

[2] Extraordinary Foreign Nationals Must Enter the United States to Work in Their Fields

[3] Peer Group Consultation

[4] O-2 Status Holders Accompanying Foreign Nationals

[5] How to Obtain O Status

CHAPTER 4

Specialty Occupation Professionals

§ 4.01 Introduction to H-1B Program

§ 4.02 General Requirements of Program

[1] Status of Petitioner

[2] Specialty Occupation Defined

[3] Foreign Worker's Qualifications

[4] Labor Condition Application as Prerequisite

[5] Filing the H-1B Petition

[6] Receipt of H-1B Status

§ 4.03 Establishment of the H-1B Category and the H-1B "Cap"



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

- [1] Statutory Provisions
- [2] Regulations
- [3] The H-1B "Cap"
- § 4.04 The Petitioner and Its Job Offer
 - [1] The "United States Employer"
 - [2] The *Bona Fide* Nonspeculative Job Offer
- § 4.05 Specialty Occupation Defined
 - [1] The Legal Standard
 - [2] Defining the Job
 - [3] Straightforward Specialty Occupations: The "Easy" Cases
 - [4] Establishing the "Specialty Occupation" in Complex Cases
 - [5] Additional Criteria
 - [6] Occupational Categories
- § 4.06 Beneficiary's Required Qualifications
 - [1] The Legal Standard
 - [2] United States or Foreign Baccalaureate Degree
 - [3] Baccalaureate Degree Subject Matter
 - [4] Education Plus Experience and Training
 - [5] Licensure
 - [6] Physicians
 - [7] Certification for Foreign Health Care Workers
- § 4.07 The Labor Condition Application (LCA)
 - [1] Background and Purpose
 - [2] Payment of "Required Wage Rate": LCA Attestation #1
 - [3] "No Adverse Effect on Working Conditions": LCA Attestation #2
 - [4] "No Strike or Lockout": LCA Attestation #3
 - [5] Notice to Employees of Filing: LCA Attestation #4
 - [6] "Non-Displacement" and Recruitment of U.S. Workers: LCA Attestations for "H-1B Dependent" and "Willful Violator" Employers
 - [7] Completing the LCA
 - [8] Filing the LCA
 - [9] The Public Access File and Retention of Records
 - [10] Payment of Required Wage and Prohibition on Nonproductive Status
 - [11] When a New LCA Is Required for a Change in Location and "Short-Term" Placement
 - [12] Enforcement and Penalties
- § 4.08 H-1B Petition Filing
 - [1] The Petition
 - [2] Preparing the Petition
 - [3] Filing the Petition
 - [4] Requests for Evidence
 - [5] The Notice of Approval
 - [6] The H-1B Visa Application and Entry into the United States
 - [7] Beginning Work
 - [8] Post-Approval Travel and Visa Processing
 - [9] Denial and Revocation of a Petition
 - [10] Special Procedures for Nationals of Chile, Singapore, and Australia



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

§ 4.09 Special Problems and Advanced Strategies

- [1] Transfer Between Multiple Work Locations
- [2] "Bench Time"
- [3] "Recapturing" Time and Other Strategies to Extend the Six-Year Maximum
- [4] Lapse of Status
- [5] Anticipating the Annual H-1B Cap
- [6] Mergers, Acquisitions, Relocations, and Other Corporate Changes
- [7] Termination or Resignation of an H-1B Employee
- [8] Maintenance of Status and Portability

CHAPTER 5

Intra-Company Transfers

§ 5.01 Overview of L Status

- [1] Generally
- [2] Establishing New United States Operations

§ 5.02 The Qualifying Organization

- [1] Overview
- [2] Elements of the Qualifying Organization

§ 5.03 The Employment

- [1] Employment in the United States
- [2] Employment Outside the United States

§ 5.04 How to Obtain L Status

- [1] Individual Petitions
- [2] Blanket Petitions
- [3] Maintenance of L Status

§ 5.05 Extensions of Individual L Petitions

- [1] Procedure
- [2] Evidence

§ 5.06 Extensions of Blanket L Petitions

- [1] Validity Periods
- [2] Status Holders' Stays in the United States

§ 5.07 Duration of L Status

§ 5.08 Notification of Material Changes

- [1] Corporate Reorganizations
- [2] Terms and Conditions of Employment
- [3] Transfers to Other Qualifying Organizations

§ 5.09 Spouses and Dependent Children

§ 5.10 Effect of Strikes or Lockouts on L Status

CHAPTER 6

Investment and Trade: E Visas

§ 6.01 Overview

- [1] Requirements
- [2] Interaction between the Department of State and the U.S. Citizenship and Immigration Services
- [3] Duration: A Long-Term Visa Option

§ 6.02 The Treaty Requirement



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

- [1] Types of Qualifying Treaties
- [2] Treaty Limitations
- [3] Special NAFTA Requirements
- § 6.03 Nationality Requirements
 - [1] General
 - [2] Nationality of Individuals
 - [3] Nationality of Business Organizations
 - [4] Nationality Requirements for Employees of Treaty Aliens or Treaty Organizations
- § 6.04 Qualifying Functions
 - [1] The Treaty Trader or Investor
 - [2] Employees of the Treaty Alien or the Treaty Enterprise
 - [3] Defining the Position: Employment Discrimination Rules Affecting E Enterprises
- § 6.05 Treaty Trader Issues
 - [1] Overview
 - [2] The Definition of "Trade"
 - [3] The Requirement of "Substantial Trade"
 - [4] The Requirement of Trade Primarily with the Treaty Country
- § 6.06 Treaty Investor Issues
 - [1] Overview
 - [2] The Definition of "Invested" or "Process of Investing"
 - [3] Investment in a *Bona Fide* Enterprise
 - [4] Investment of a "Substantial" Amount of Capital
 - [5] Marginality
 - [6] The Ability to Develop and Direct the Enterprise
- § 6.07 Employees of Treaty Traders and Investors
 - [1] General
 - [2] Work in a Corporate Group
 - [3] Substantive Changes in Employment
 - [4] Nonsubstantive Changes in Employment
 - [5] Employment of E Treaty Dependents
- § 6.08 Procedures to Obtain E Status
 - [1] Consular Processing versus the USCIS
 - [2] Consular Processing Procedures
 - [3] USCIS Processing Procedures
- § 6.09 Duration and Extension of E Status
 - [1] Duration of E Visas
 - [2] Duration of Authorized Stay
 - [3] The Inadvertent Overstay
 - [4] Renewal of E Visas Issued at a United States Consulate
 - [5] Extension of Authorized Stay through the USCIS
- § 6.10 E Status versus Other Nonimmigrant Status
 - [1] Advantages
 - [2] Disadvantages
- § 6.11 Immigrant Visas for E Visa Holders

CHAPTER 7



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

NAFTA

- § 7.01 Introduction
- § 7.02 Business Visitors (B-1)
 - [1] Permissible Activities
 - [2] Procedures
- § 7.03 Professionals (TN)
 - [1] Comparisons to H-1B
 - [2] Qualifying for TN Classification
 - [3] Requirements for Citizens of Canada and Mexico
 - [4] Special Provisions for Citizens of Canada
 - [5] Special Provisions for Citizens of Mexico
 - [6] Effect of Labor Disputes
- § 7.04 Traders and Investors (E)
- § 7.05 Intra-Company Transferees (L-1)
- § 7.06 The INSPASS and PORTPASS Programs
 - [1] Pilot Automated Inspection System (INSPASS)
 - [2] Port Passenger Accelerated Service System (PORTPASS)
- § 7.07 Temporary Entry: Other Provisions
 - [1] Protecting Domestic Labor Forces
 - [2] Temporary Entry Working Group
 - [3] Spouses of Business Persons: Right to Work
- § 7.08 Canadian Border Admissions
 - [1] Increased Border Enforcement
 - [2] Summary Exclusion and Removal Proceedings
 - [3] Unlawful Presence: Bars to Future Admissibility
- § 7.09 Expedited Removal Proceedings
 - [1] Persons Subject to Expedited Removal
 - [2] Procedures
 - [3] Judicial Review
 - [4] Consequences of Expedited Removal
- § 7.10 New Grounds for Inadmissibility
 - [1] Health Care Workers
 - [2] F-1 Students Who Violate Status
 - [3] Unlawful Presence
 - [4] Aliens Engaged in Significant Trafficking in Persons
 - [5] Aliens Engaged in Money Laundering
- § 7.11 Entry-Exit Controls and the Lookout
- § 7.12 Strategies for Easing Border Admissions
 - [1] Know Your Client
 - [2] Know the Intricacies of Immigration Requirements
 - [3] Know the Free-Trade Officers
 - [4] Know Your Plan of Action

CHAPTER 8

Employer Sanctions

- § 8.01 History and Overview of Employer Sanctions



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

- [1] Introduction
- [2] Developments from 1986 to 1996
- [3] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996
- [4] SEVIS
- [5] 2008 Presidential Order
- § 8.02 Definitions
 - [1] Person or Other Entity
 - [2] Hire
 - [3] Employment
 - [4] Employees Assigned to the Contract
 - [5] Employer
 - [6] Employment in the United States
 - [7] Recruiters and Referrers for Fees
 - [8] Federal Contractors
- § 8.03 The Prohibition against Knowing Employment of Unauthorized Aliens
 - [1] Introduction
 - [2] Unauthorized Alien
 - [3] Actual and Constructive Knowledge
 - [4] Social Security Numbers
 - [5] The Defense of Good Faith Verification
 - [6] Criminal Offenses
- § 8.04 I-9 Compliance
 - [1] Who Completes I-9 Forms
 - [2] Personnel Requiring Completion of I-9 Forms
 - [3] Personnel Not Requiring Completion of I-9 Forms
 - [4] Timing of Completion of the I-9 Form
 - [5] Completing the I-9 Form
 - [6] National Electronic Verification Programs
 - [7] Employer Defenses
 - [8] Records Retention
 - [9] Document Fraud
 - [10] Proposed Reforms
 - [11] I-9 Compliance for Federal Contractors
- § 8.05 Document Abuse
 - [1] Introduction
 - [2] Avoiding Acceptance of Additional Documents Offered by Employees
 - [3] Avoiding Unjustified Requests for More or Different Documents
 - [4] The Requirement of Intentional Discrimination
- § 8.06 Penalties
 - [1] Knowing Employment, or Contracting for Labor of, Unauthorized Aliens
 - [2] I-9 Violations
 - [3] Indemnity Bonds
 - [4] Document Fraud
 - [5] Document Abuse
 - [6] National Verification Pilot Program
 - [7] Preemption of Other Penalties



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

§ 8.07 Enforcement

- [1] I-9 and Knowing Employment Violations
- [2] Document Abuse Violations

§ 8.08 Issues Arising from Reorganizations

- [1] Introduction
- [2] I-9 Verification
- [3] Work Authorizations
- [4] Grandfathered Employees
- [5] Due Diligence

CHAPTER 9

Tax Issues

§ 9.01 Taxation of United States Citizens

- [1] Overview
- [2] Living and Working Abroad
- [3] Expatriation

§ 9.02 Taxation of Foreign Nationals

- [1] In General
- [2] Other Taxes

§ 9.03 Determination of Resident Foreign National Status

- [1] In General
- [2] Tax Treaties

§ 9.04 Permanent Residence Test

- [1] In General
- [2] Revocation of Status
- [3] Abandonment of Status

§ 9.05 Substantial Presence Test

- [1] In General
- [2] Examples
- [3] Thirty-one Day Rule
- [4] Counting Days
- [5] "United States" Defined

§ 9.06 Exceptions to Substantial Presence Test

- [1] In General
- [2] Presence for Fewer Than 183 Days per Year
- [3] Foreign Government-Related Individuals
- [4] Teachers and Trainees (J and Q Status)
- [5] Students
- [6] Professional Athletes
- [7] Medical Condition of Foreign Nationals
- [8] Commuters from Canada and Mexico
- [9] Foreign Nationals in Transit
- [10] Foreign Vessel Crew Members

§ 9.07 Resident Foreign National Election

§ 9.08 Resident Foreign National Starting and Termination Dates

- [1] In General



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

- [2] Residency Starting Date
- [3] Residency Termination Date
- [4] No Lapse Rule
- § 9.09 Taxation of Nonresident Foreign Nationals
 - [1] In General
 - [2] Source of Income Rule
- § 9.10 Net Basis Taxation
 - [1] In General
 - [2] United States Trade or Business
 - [3] Effectively Connected Income
 - [4] Allowance of Deductions
- § 9.11 Investments in Real Property in the United States
 - [1] In General
 - [2] Tax on Disposition
 - [3] United States Real Property Interest
 - [4] Withholding
- § 9.12 Gross Basis Taxation
 - [1] Withholding Tax
 - [2] Gains
 - [3] Income from Real Property
 - [4] Interest
 - [5] Reduced Rates under a Treaty
- § 9.13 Income Tax Treaties
 - [1] In General
 - [2] Model Treaty Provisions
- § 9.14 Withholding from Compensation
 - [1] In General
 - [2] Wages: Form W-4
 - [3] Pensions
 - [4] Independent Contractors
- § 9.15 Withholding from Other Income
 - [1] In General
 - [2] Partnership Income
 - [3] Scholarships and Fellowships
- § 9.16 Withholding Exempted or Reduced by a Tax Treaty
 - [1] In General
 - [2] Employees
 - [3] Independent Contractors
 - [4] Students, Teachers, and Researchers
- § 9.17 Social Security and Federal Unemployment Taxes
 - [1] In General
 - [2] Application to Nonimmigrants
 - [3] International Social Security Agreements
 - [4] Underpayment and Overpayment of FICA and FUTA Taxes

CHAPTER 10



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

The Interaction Between Immigrant and Nonimmigrant Statuses

§ 10.01 History of Immigrant Preference Categories

§ 10.02 Applying for Employment-Based Permanent Resident Status

§ 10.03 First Preference Category

[1] Extraordinary Foreign Nationals

[2] Outstanding Researchers and Professors

[3] Multinational Managers or Executives

§ 10.04 Second Preference Category

[1] Exceptional Ability

[2] Schedule A Non-Labor Certification Occupations

[3] Advanced-Degreed Professionals

[4] National Interest Waivers

§ 10.05 Third Preference Category

§ 10.06 Labor Certification

§ 10.07 Immigrant Petition

§ 10.08 Adjustment of Status or Consular Processing of Immigrant Visas

§ 10.09 U.S. Business Structure Effect on Nonimmigrant and Immigrant Categories, Choices, and Interaction

[1] Maximum Stay and EB-1 Petition Process

[2] Consistency Between Filings

EDITORS

[Rodney A. Malpert](#) is a partner at Fragomen, Del Rey, Bernsen & Loewy, LLP in Phoenix, AZ and for many years taught Immigration Law at Southern Methodist University Law School. Mr. Malpert has been on the Board of Directors of the American Council on International Personnel. He has also been an active lobbyist for business immigration reform and is frequently sought by media for commentary, being interviewed for television news and publications such as CNN Money Magazine, Business Week, ILW Immigration Daily, IT News, Computer World, Workforce Management, Information Week and various newspapers. Mr. Malpert is a frequent speaker at conferences throughout the world. He has also made presentations at a number of consulates on behalf of clients in China, Vietnam, and India. He is a 1986 graduate of Cornell University Law School and has an M.A. in Government from Cornell.

Amanda Thompson supervises all inbound and outbound immigration for Fermilab, a national science laboratory in Batavia, Illinois, managed by the Fermi Research Alliance for the Department of Energy's Office. She is a frequent writer and speaker on a variety of immigration topics, and is a member of the American Immigration Lawyers Association. She was born in Edinburgh, Scotland, and grew up in Edmonton, Alberta, Canada. She has a Bachelor of Arts degree from the University of Alberta, Canada and a Law Degree from the University of British Columbia, Canada. Previously, she was Counsel with the law firm of Mandel, Lipton & Stevenson Ltd. in Chicago.

CONTRIBUTORS

[Roger Wolf](#) was the first lawyer in Tucson to concentrate his practice in immigration and nationality law. He was the first chairman of the American Immigration Lawyers Association (AILA), Arizona Chapter, in 1980, and was twice re-elected. He is listed in The Best Lawyers in America, and has the highest rating in the Martindale-Hubbell directory. He is a graduate of Dartmouth College and the University of Michigan Law School. Mr. Wolf learned Spanish as a Peace Corps volunteer in Bolivia, and has taught law at Pima College and the University of Arizona. He first practiced in legal aid, then



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

**Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.**

Shipping Now!

general practice, including criminal, personal injury and domestic relations law.

Tarik H. Sultan has concentrated his practice exclusively in immigration law, both in private practice and as an attorney in the U.S. Department of Justice with the U.S. Immigration Court. He is listed in The Best Lawyers in America for immigration law and Superlawyers.com as one of the top 5% in immigration law, and has the highest "AV" rating in the Martindale-Hubbell legal directory. Prior to forming Wolf & Sultan P.C., Mr. Sultan practiced in the corporate immigration practice group of a 600+ lawyer international law firm. His practice is focused in all areas and aspects of immigration law, with a particular emphasis in employment-based visas and employer sanctions defense. He is a former Director on the National Board of Governors for AILA, and has served on numerous national liaison committees with the Departments of Labor and Justice. Mr. Sultan has also testified as an expert in several litigation matters involving immigration and nationality issues. He is a graduate of the University of Arizona College of Law, where he served as Managing Editor of the Arizona Journal of International and Comparative Law.

Rebecca S. Whitehouse began her practice in 1992 with the Houston office of Baker and Botts, LLP. In 1999, she transferred to the firm's Austin office, where she practiced labor/employment law and business immigration law. Ms. Whitehouse has represented employers in a wide range of employment matters, such as discipline and discharge issues, employee testing, defending discrimination and retaliation charges, and drafting and enforcing employment policies. She also assists employers with hiring and transferring foreign national employees, I-9 compliance, and obtaining and maintaining employment authorization. Ms. Whitehouse has given seminar presentations on topics such as alternative dispute resolution, the Texas Unemployment Compensation System, emerging employment law issues, employee discipline and discharge, and compliance with immigration laws.

George Lester has over ten years experience practicing exclusively in the field of U.S. immigration and nationality law, advising diverse U.S. and multinational companies seeking to hire foreign professionals, scientists, business persons and artists and representing them in all procedures to obtain temporary or permanent immigration status before relevant U.S. government agencies. In addition to providing immigration representation and account management services to corporate clients, George has extensive experience advising companies on immigration-related compliance, including representing clients in government investigations, and in assisting clients in Congressional advocacy for H-1B and H-2B visa programs.

Kevin J. Fitzgerald serves as head of Foley Hoag's Immigration Practice Group. He has more than 25 years of experience in the field of immigration law, and concentrates on business immigration issues. Kevin represents employers on immigration matters in a wide range of industries, ranging from advanced technology (information technology, telecommunications, biotechnology) to services and professions (management consulting, education, hospitality) to traditional manufacturing. His immigration law counsel for employers includes both facilitating the temporary employment of skilled foreign nationals in the U.S., and securing employment-based permanent residence status. Kevin also handles family-related visa filings. In these and other immigration matters he is fully experienced in all aspects of the necessary filings and compliance steps. In addition to his immigration counsel, Kevin also has extensive experience advising employers on all aspects of employment law.

Charles H. Kuck is the Managing Partner of Kuck Immigration Partners LLC-The Immigration Law Firm, and oversees its nationwide immigration practice. His practice focuses on U.S. Immigration and Nationality Law and international migration matters. Mr. Kuck assists employers and employees with business and professional visas, labor certifications, immigrant visas, consular representation, and citizenship matters. Mr. Kuck also maintains an active Federal Court practice focusing on immigration issues. He has represented asylum seekers in more than 400 trials before the Immigration Courts. Mr. Kuck also advises employers on compliance procedures in verifying the work eligibility of all new employees as required under the I-9 employer sanctions provisions of the Federal Law and is a leader in training and



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

**Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.**

Shipping Now!

compliance with programs on the E-Verify and IMAGE. His clients include technology firms, manufacturers, multinational corporations, individual investors and entrepreneurs, as well as families, individual immigrants and asylum seekers.

Rinku Ray focuses on the practice of immigration and nationality law. With over thirteen years of experience, she counsels companies and individuals regarding strategies for securing temporary and permanent employment authorization and other legalization for foreign nationals. Ms. Ray represents companies of all sizes -- from start-ups to established multi-national corporations -- in a wide range of industries regarding their immigration needs. Present and past clients include high tech companies, healthcare providers and colleges and universities.

Robert O'Keefe is the member of the Immigration Practice Group (the "Group") of the law firm Foley, Hoag & Elliot LLP. He received his B.A. from American University in 1996.

Laura Lasdow-Dussourd is a member of the Foley, Hoag & Elliot, LLP. received her B.A. from Norwich University in 1989 and her Paralegal Certificate from Northeastern University in 1989.

Richard A. Gump Jr. concentrates his practice in the human resource area of international law, with particular emphasis on immigration and authorized employment. He has significant experience in strategic planning for business and personal visas for international personnel and immigration related compliance and risk assessment. Client work includes non-immigrant and immigrant visas related to investors, professionals, and technical personnel, and immigration due diligence in mergers and acquisitions. He was selected by fellow attorneys across the state as a Texas Super Lawyer in the area of immigration, as featured in Texas Monthly Magazine for the past six years and is recognized in the International Who's Who of Business and Corporate Immigration Lawyers and Chambers America's Leading Lawyers for Business. He has also been selected by his peers for inclusion in the 2010 edition of The Best Lawyers in America in the specialty of Immigration Law and is one of a distinguished group of attorneys who have now been listed in Best Lawyers for ten years. Mr. Gump is also listed in the Texas Lawyer's Go- to- Guide for top-notch lawyers.

Nancy Morowitz is Of Counsel in the firm's Professional Practices Group. The Professional Practices Group monitors and analyzes federal, state and international immigration law developments, provides guidance on complex legal issues, and acts as liaison with government agencies and Congress on complex cases and policy matters. Nancy also directs the firm's legal training program and is executive editor of the Fragomen Global Business Immigration Handbook, an analysis of the immigration laws and procedures of the world's major business destinations.

Leslie Thiele partner, joined Whiteman Osterman & Hanna in 1992 as one of the founders of the International Trade and Business Practice Group. She leads the Firm's Immigration Practice Group. Her practice is concentrated in the areas of international business transactions, international trade, and business-related immigration matters. She also spent four years as an executive with an international trade and development consulting company in Philadelphia, advising domestic and foreign businesses on international investment and personnel transfer issues.

Ellen G. Yost joined Fragomen as a Partner in 2001 when the law firm she previously co-founded was merged with Fragomen's practice. She began her legal career serving as a corporate lawyer for seven years and headed the Canadian Practice Group for a Buffalo, New York firm of more than 100 lawyers. Thereafter, she co-founded a law firm in Buffalo that primarily advised Canadians doing business in the United States in connection with corporate, tax and business immigration law matters.

Vicki L. Martin-Odette is Chair of the Business Planning, Taxation and Benefits Section of the firm. She has represented U.S. and foreign individuals and entities with regard to the legal and tax issues related to their businesses and investment activities. She has also represented investment funds and private and publicly held entities with regard to



Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Thompson

Co-Authors: Roger Wolf, Tarik Sultan, Rebecca Whitehouse,
George Lester, Kevin Fitzgerald, Charles Kuck, Rinku Ray, Robert
O'Keefe, Laura Lasdow-Dussourd, Richard Gump, Nancy Morowitz,
Leslie Thiele, Ellen Yost, Vicki Martin, and Edward M. Griffith Jr.

Shipping Now!

business planning and taxation matters including formations, capital raising and placement, mergers and acquisitions, dispositions and restructurings.

Edward M. Griffith Jr. practices federal state taxation with an emphasis on taxation of banks and tax litigation for banks and other corporations. He is listed in *Best Lawyers in America*, and has written and lectured extensively on federal and state tax matters. He is a member of the faculty and advisory board of the Graduate Certificate Program of the State University of New York at Buffalo Law School. Mr. Griffith graduated from Georgetown Law Center.

Buy Now: Business Immigration Law: Strategies For Employing Foreign Nationals

Editors: Rodney A. Malpert and Amanda Petersen

Print, Online And One Year Subscription \$540

Free Shipping And Handling (taxes included)

Special Note from Law Journal Press:

Book purchase price includes the cost of all previous updates and any updates that may be issued within 3 months of order. Future updates and related services, such as connecting volumes, will be sent for a 30-day free examination directly from Publisher Law Journal Press®. By purchasing this book, book purchaser enrolls in an automatic supplement program administered by Law Journal Press®. Please notify [T Law Journal Press](http://www.lawjournalpress.com) to cancel this program. We reserve the right to change prices without notice. Promotion cannot be combined with any other offer.

Disclaimer: Buying this book does not create an attorney-client relationship. Returns based on damaged books will be replaced and reshipped at no extra charge. Orders once placed cannot be cancelled.

Name (as it appears on credit card): _____

E-mail (required): _____ Phone: _____

Credit Card: V/M/A/D _____ Expiry (Month/Year): _____

Credit Card Billing Address: _____

Shipping Address: _____

Or MAIL ORDER and include check payable to ILW.COM or FAX ORDER.