



# Business Immigration Law: Forms and Filings

## Authors: Rodney A. Malpert and Amanda Petersen

**Shipping Now!**

---

### What is ILW.COM?

We are the leading immigration law publisher. Our free *Immigration Daily* reaches an audience of over 30,000 subscribers. Our immigration portal web site is the largest on the Internet with over 50,000 pages of information. We assist your practice via our periodicals, seminars, and Yellow Pages.

*Disclaimer: participation in this seminar does not create an attorney-client relationship with the speakers.*

---

### Book Outline

#### TABLE OF CONTENTS

#### CHAPTER 1

##### Administrative, Legislative, and Regulatory Structure

###### §1.01 Overview of Administrative Structure

- [1] Department of Homeland Security (DHS)
  - [2] Department of State (DOS)
  - [3] Department of Labor (DOL)
  - [4] Department of Health and Human Services (HHS)
- ###### §1.02 Overview of Authorities

- [1] Immigration and Nationality Act (INA)
- [2] Code of Federal Regulations (C.F.R.)
- [3] Foreign Affairs Manual (FAM)
- [4] USCIS Operating Instructions (OI)
- [5] Administrative Guidance
- [6] Precedent Appeal Decisions
- [7] Other Resources

#### CHAPTER 2

##### Strategies and Obstacles to Consider Before Filing

###### §2.01 Creating an Immigration Strategy: Long-Term versus Short-Term Goals

- [1] Strategic Issues
- ###### §2.02 Derivative Status

- [1] Eligibility for Derivative Status
  - [2] Concerns of Dependent Family Members
- ###### §2.03 Identifying Potential Obstacles

- [1] Inadmissibility and the Grounds of Inadmissibility
- [2] Security Considerations

#### CHAPTER 3

##### Obtaining the Visa Status

###### §3.01 Introduction

###### §3.02 USCIS Filings

- [1] Lawful Presence Generally
  - [2] When the Beneficiary Is Not Lawfully Present in the U.S.
  - [3] When the Beneficiary Is Lawfully Present in the U.S.
  - [4] Modifications to Lawful Beneficiary Status
  - [5] Variations on the Theme: Complex Filing Situations
  - [6] Naming Conventions
- ###### §3.03 USCIS Processing of Nonimmigrant Filings

- [1] Technical Requirements (Service Center Preferences)
  - [2] Filing the Petition or Application with the USCIS
  - [3] Processing Times
  - [4] Premium Processing
  - [5] E-Filing
  - [6] Responding to Requests for Evidence
  - [7] Approvals
  - [8] Denials
  - [9] Appeals
- ###### §3.04 Preparation of Non-Work-Authorizing Nonimmigrant Status Applications

- [1] Generally
- [2] Checklist for Applications



# Business Immigration Law: Forms and Filings

## Authors: Rodney A. Malpert and Amanda Petersen

**Shipping Now!**

- [3] Components of Derivative Filings
- [4] Form I-539 Application to Extend/Change Nonimmigrant Status and Analysis
- [5] Support Letter
- [6] Checklist and Analysis of Necessary Support Documents
- §3.05 Completion of Non-Status-Specific Forms

- [1] Form G-28 Notice of Admission of Appearance as Attorney
- [2] Form I-907 Application for Premium Processing
- [3] Form G-639 FOIA Requests
- [4] Form I-765 Application for Employment Authorization
- §3.06 Submission of Visa Applications to the Department of State

- [1] Generally
- [2] In-Person Visa Applications at U.S. Consulates and Border Posts
- [3] Nonimmigrant Visa Stamp Applications
- §3.07 Applications for Accelerated Inspection Services

- [1] Global Entry
- [2] SENTRI
- [3] NEXUS
- [4] OARS
- [5] FAST
- §3.08 Admission to the United States

- [1] Overview
- [2] Admission Documents
- [3] The Application for Admission
- [4] Security Considerations
- [5] Applying for a Social Security Account
- [6] Starting the Employment
- §3.09 Maintenance of Status
- §3.10 Departing the United States

#### **CHAPTER 4**

##### **Students and Business Visitors**

###### §4.01 Students

- [1] Overview
- [2] SEVIS
- [3] Employment Authorization
- [4] Changing to Nonimmigrant Work-Authorizing Statuses
- §4.02 Business Visitors

- [1] Overview
- [2] Free Trade Agreements
- [3] Remuneration
- [4] Eligibility for B-1 Status
- [5] Obtaining B-1 Status
- [6] Change of Status
- [7] Extension of Status

#### **CHAPTER 5**

##### **Specialty Occupation Workers**

###### §5.01 Overview of Specialty Occupation Workers

- [1] Temporary Workers
- [2] Duration of Stay
- [3] Long-Term and Short-Term Goals
- [4] Spouses and Dependent Family Members
- [5] Strikes or Lockouts
- §5.02 Minimum Requirements for the Specialty Occupation

- [1] The Nature of Specialty Occupations
- [2] The Minimum Education Requirement
- [3] The Foreign National Satisfies the Requirements for the Specialty Occupation



# Business Immigration Law: Forms and Filings

## Authors: Rodney A. Malpert and Amanda Petersen

**Shipping Now!**

### §5.03 Labor Conditions: Wages and Benefits

- [1] Overview
- [2] The Required Wage
- [3] Payment of Wages
- [4] Deductions from Wages and/or Reimbursement of Expenses
- [5] Availability of Benefits

### §5.04 Additional Labor Conditions: Working Conditions, Strikes and Lockouts, Notice

- [1] Working Conditions
- [2] Strikes and Lockouts
- [3] Notice

### §5.05 H 1B Dependent Employers and Willful Violators

- [1] The Employers
- [2] Additional Attestations for H 1B Dependent Employers and Willful Violators
- [3] Exempt Employees for Purposes of the Additional Labor Condition Attestations

### §5.06 Evidencing Compliance with Labor Conditions

- [1] The File
- [2] Retention of the Files
- [3] Balancing LCA Obligations with Employees' Concerns
- [4] Specific Documentation
- [5] Enforcement of Labor Conditions
- [6] Filing the Labor Condition Application

### §5.07 The Employment

- [1] The Job Offer
- [2] Concurrent Employment
- [3] The Petitioner
- [4] Multiple Beneficiaries
- [5] Multiple Worksites

### §5.08 The Annual Quota

- [1] H 1B Quota
- [2] H 1B1 Quota
- [3] Graduates of U.S. Master's Programs
- [4] Foreign Nationals Who Are Exempt from the Quota
- [5] Discontinuance of Exempt Employment
- [6] Concurrent Employment
- [7] Strategy Considerations

### §5.09 Analysis of Sample Occupations

- [1] Fashion Models
- [2] Physicians
- [3] Nurses

### §5.10 Comparison of H 1B Status to Other Nonimmigrant Statuses

- [1] H 1B Status versus H 1B1 Status
  - [2] Specialty Occupations versus H 2B Status
  - [3] Specialty Occupations versus E Status
  - [4] Specialty Occupations versus L Status
  - [5] Specialty Occupations versus O Status
  - [6] H 1B Status versus TN Status
- ### §5.11 Procedure for Obtaining H 1B and E 3 Visas

- [1] Process
  - [2] Filing Components for Consular H 1B1 or E 3 Visa Applications
- ### §5.12 Procedure for Obtaining the H 1B Classification

- [1] Process
- [2] Filing Components for the H 1B Petition
- [3] Filing Fees
- [4] Where to File
- [5] Limitations of Petition Approval



# Business Immigration Law: Forms and Filings

## Authors: Rodney A. Malpert and Amanda Petersen

**Shipping Now!**

§5.13 Qualifications Checklist for Specialty Occupations  
§5.14 Preparation of the H 1B Petition and Related Forms

[1] Form I 129 Petition for Nonimmigrant Worker  
[2] H Supplement to Form I 129  
[3] Form H 1B Data Collection and Filing Fee Exemption Supplement  
§5.15 Preparation of the Supporting Forms and Documents

[1] ETA 9035e Labor Condition Application  
[2] Support Letter  
§5.16 Termination of the Employment

[1] "At-Will" Employment versus the Authorized Stay  
[2] Documentation  
[3] Effect on Status  
[4] Notice of Termination  
[5] Employee Options  
[6] Employer Obligations  
[7] Cessation of Payment of the Required Wage  
[8] Penalties or Liquidated Damages for Early Termination  
[9] Eligibility for Unemployment Benefits  
[10] H-1B Dependency  
[11] Reductions in Force  
[12] Permanent Residence  
[13] Rehiring a Terminated H-1B Employee  
§5.17 Portability Petitions  
§5.18 Changes in the Employment

[1] Overview  
[2] Organization-wide Changes  
[3] Filing Procedure for Amendment Petitions  
§5.19 Extension Petitions

[1] Overview  
[2] Types of H 1B Extension Petitions  
[3] Filing Procedure for Extensions of Status  
§5.20 Change of Status Petitions

[1] Generally  
[2] Beneficiary Must Be in Status at Time of Filing  
[3] Eligibility for the Requested H Classification  
[4] Petitioning to Change to H 1B or H 1B1 Status

### **CHAPTER 6**

#### **L 1A / L 1B Multinational Transfers**

§6.01 Overview of L Status  
§6.02 Definitions and Analysis of Essential Terms

[1] The Employer  
[2] Qualifying Organization  
[3] Qualifying Employment  
§6.03 Comparison of L Status to Other Common Nonimmigrant Statuses

[1] L Status versus E Status  
[2] L Status versus H 1B Status  
[3] L Status versus O Status  
[4] L Status versus TN Status  
§6.04 Procedure for Obtaining L Status

[1] Generally  
[2] USCIS Adjudication  
[3] Consular Adjudication  
[4] Spouses and Dependents  
§6.05 Preparation of Individual L Petition and Support Documents



# Business Immigration Law: Forms and Filings

## Authors: Rodney A. Malpert and Amanda Petersen

**Shipping Now!**

- [1] Checklist for Individual L Filings
  - [2] Components of Individual L Filings
  - [3] Form I 129 Petition for Nonimmigrant Beneficiary and Analysis
  - [4] L Supplement to Form I 129 and Analysis
  - [5] Support Letter
  - [6] Checklist and Analysis of Necessary Support Documents
- §6.06 New Office

- [1] Generally
  - [2] Checklist for New Office Filings
  - [3] Components of New Office Filings
  - [4] Changes and/or Additions to Forms and Support Documents
  - [5] Support Letter
  - [6] Supporting Documentation
  - [7] Extensions of L Status for Beneficiaries Employed by New Offices
- §6.07 Blanket L Program Petition

- [1] Generally
  - [2] Initial Blanket L Program Petitions
  - [3] Blanket L Status Applications by Beneficiaries
  - [4] Extension of Blanket L Programs
  - [5] Amendment of Blanket L Programs
  - [6] Extensions of L Status for Beneficiaries Who Entered the United States under Blanket L Programs
- §6.08 Free Trade Agreements

- [1] NAFTA
  - [2] Free Trade Agreements with Chile and Singapore
- §6.09 Material Changes in L Status

- [1] Generally
  - [2] Mergers, Acquisitions, and other Types of Reorganization
  - [3] Changes to, or Cessation of, the U.S. Employer's Business in the United States
  - [4] Changes to, or Cessation of, the Qualifying Business Activities Outside the United States
  - [5] Changes to the Beneficiary's Employment
- §6.10 Amendment, Extension, and/or Recapture of Individual L Status

- [1] Overview of Amendment Petitions
  - [2] Overview of Extension Petitions
  - [3] Beneficiary Must Be in Status at Time of Filing
  - [4] Checklist for Amendment, Extension, and/or Recapture Filings
  - [5] Components of Amendment, Extension, and/or Recapture Filings
  - [6] Filing for Amendment, Extension, and/or Recapture of L Status
  - [7] Changes and/or Additions to Forms and Documents for Petitions of Amendment, Extension, and/or Recapture
- §6.11 Change of Status

- [1] Generally
- [2] Beneficiary Must Be in Status at Time of Filing
- [3] Eligibility for the Requested L Classification
- [4] Checklist for Change of Status Filings
- [5] Component of Elements for Change of Status Filings
- [6] Changes and/or Additions to Forms and Document for Change of Status Filings

### CHAPTER 7

#### **E-1/E-2 Treaty Traders and Treaty Investors**

- §7.01 Overview of E Status
- §7.02 Definitions and Analysis of Essential Terms
- §7.03 Visas, Admission, and Stay

- [1] Primary Applicants
  - [2] Spouses and Dependent Children
  - [3] Validity and Stay
- §7.04 Nationality

- [1] Individuals
- [2] Employment Situations



# Business Immigration Law: Forms and Filings

## Authors: Rodney A. Malpert and Amanda Petersen

**Shipping Now!**

### §7.05 The United States Activities

- [1] Direct Trade or Investment Activities
- [2] Employment Activities

### §7.06 E 1 Treaty Trader

- [1] The Trade Involves Qualifying Items or Services
- [2] The Trade Exists
- [3] The Trade Is Primarily with the Treaty Country
- [4] The Trade Is Substantial

### §7.07 E 2 Treaty Investor

- [1] The Enterprise Is Bona Fide
- [2] The Investor Is the Source of the Funds
- [3] The Investment Must Be at Risk
- [4] The Investment Must Be Committed
- [5] The Investment Must Be Substantial
- [6] The Investor Will Direct or Develop the Enterprise

### §7.08 The Use of Treaty Investment Status for Consulting Businesses

### §7.09 Comparison of E 1 Status to Other Nonimmigrant Statuses

- [1] E Status versus H 1B Status
- [2] E Status versus L Status
- [3] E Status versus O Status
- [4] E Status versus TN Status
- [5] E Status versus E 3 Status

### §7.10 Components, Checklist, and Filing Procedure

- [1] Components
- [2] Checklist

### §7.11 Completion of Forms and Support Documents

- [1] E 1 Treaty Trader (Filed with USCIS)
- [2] E 2 Treaty Investor Application (Filed with Consulate)
- [3] Checklist and Analysis of Necessary Support Documents

### §7.12 Extensions and/or Amendments

- [1] Overview
- [2] Procedure for Amending or Extending E Status

### §7.13 E Status under Free Trade Agreements

## **CHAPTER 8**

### **NAFTA TN Professionals**

#### §8.01 Overview of TN Status

- [1] Generally
- [2] Terminology
- [3] Spouses and Dependents
- [4] The Nature of the Employment
- [5] Authorized Stay
- [6] Strikes or Lockouts

#### §8.02 Comparison of TN Status to Other Nonimmigrant Statuses

- [1] TN versus H-1B Status
- [2] TN versus L-1 Status
- [3] TN versus E Status
- [4] TN versus O Status

#### §8.03 Procedure for Obtaining TN Status

- [1] Generally
- [2] Consular Adjudication of Mexican TN Visa Applications
- [3] Admission into the U.S. by Canadians and Mexicans in TN Status
- [4] Denials and Appeals

#### §8.04 Obtaining Initial Grants of TN Status



# Business Immigration Law: Forms and Filings

## Authors: Rodney A. Malpert and Amanda Petersen

**Shipping Now!**

- [1] Checklist
- [2] Components
- [3] Procedure
- §8.05 Preparing Forms DS-156 and DS-157 Nonimmigrant Visa Stamp Applications for Mexican TN Applicants

- [1] Preparation of Form DS-156
- [2] Preparation of Form DS-157
- §8.06 Completion of Support Documents

- [1] Support Letter from Employer and Analysis
- [2] Checklist and Analysis of Support Documents
- §8.07 Extending or Changing to TN Status

- [1] Generally
- [2] Overview of Extending or Changing to TN Status
- [3] Checklist for Extending or Changing to TN Status
- [4] Procedure for Extending or Changing to TN Status
- [5] Form I-129 Petition for Nonimmigrant Worker and Analysis
- [6] Completion of the Free Trade Supplement
- [7] Support Letter
- [8] Support Documents for Amending or Renewing TN Status
- §8.08 Amending TN Status

### **CHAPTER 9**

#### **O-1 Foreign Nationals with Extraordinary Abilities**

##### §9.01 Overview

- [1] Generally
- [2] Spouses and Dependents
- [3] Authorized Stay
- [4] Nature of Employment
- §9.02 Definitions and Analysis of Essential Terms

- [1] Alien
- [2] Arts
- [3] Beneficiary
- [4] Distinguished Reputation
- [5] Event
- [6] Extraordinary Ability
- [7] The Field
- [8] Peer Group
- [9] Petitioner
- §9.03 Evidencing Extraordinary Ability

- [1] Overview
- [2] "Extraordinary" in the Context of the Occupation
- [3] Sustained Records of Achievement
- [4] The Evidence
- §9.04 Comparison of O Status to Other Nonimmigrant Statuses

- [1] O Status versus H-1B Status
- [2] O Status versus L Status
- [3] O Status versus E Status
- [4] O Status versus TN Status
- [5] O Status versus P-1 Status
- §9.05 Procedure for Obtaining O Status

- [1] Filing the Petition
- [2] USCIS Adjudication
- [3] Consular Adjudication
- §9.06 Qualifications Checklist and Filing Components

- [1] Qualifications Checklist
- [2] Filing Components
- §9.07 Preparation of Forms and Support Documents



# Business Immigration Law: Forms and Filings

## Authors: Rodney A. Malpert and Amanda Petersen

**Shipping Now!**

- [1] Form I-129 for Nonimmigrant Worker
  - [2] O and P Classifications Supplement to Form I 129
  - [3] Support Letter
  - [4] Peer Group Consultation
  - [5] Checklist and Analysis of Supporting Documentation
- §9.08 Amendment and Extension Petitions

- [1] Extension Petitions
  - [2] Amendment Petitions
  - [3] Procedure for Amendment and Extension Petitions
  - [4] Changes and/or Additions to Forms and Documents for Petitions of Amendment and Extension
- §9.09 Change of Status

- [1] Generally
- [2] Beneficiary Must Be in Status at Time of Filing
- [3] Components of Elements for Change of Status Filings
- [4] Changes and/or Additions to Forms and Documents for Change of Status Filings

### **CHAPTER 10**

#### **Temporary Non-Agricultural Workers**

##### §10.01 Overview

- [1] Background
  - [2] Duration of Stay
  - [3] Long- and Short-Term Goals
  - [4] Spouses and Dependent Family Members
  - [5] Strikes or Lockouts
  - [6] The Agencies That Process H 2B Visas
- §10.02 The Employment

- [1] Why Details Are Important
  - [2] The Employer
  - [3] The Job Offer
  - [4] The Beneficiary(ies)
- §10.03 Labor Certification

- [1] Labor Certification Defined
  - [2] The State Workforce Agency
  - [3] The National Processing Center
- §10.04 The Annual Quota

- [1] H 2B Quota
  - [2] Returning Workers
  - [3] Timing the Filings: Strategy Considerations
- §10.05 Comparison to Other Nonimmigrant Statuses

- [1] H 2B Status versus H 1B and H 1B1 Status
  - [2] H 2B Status versus E Status
  - [3] H 2B Status versus L Status
  - [4] H 2B Status versus O Status
  - [5] H 2B Status versus TN Status
- §10.06 Procedure for Obtaining the H 2B Classification

- [1] Qualifications Checklist
  - [2] Overview of the Process
  - [3] Labor Certification
  - [4] USCIS Filing
- §10.07 Preparation of the H 2B Labor Certification

- [1] Form ETA 750 Application for Alien Employment Certification
  - [2] Draft Advertisement
  - [3] Support Letter
  - [4] Supporting Documentation
  - [5] Final Recruitment Report
- §10.08 Preparation of the H 2B Petition and Related Forms



# Business Immigration Law: Forms and Filings

## Authors: Rodney A. Malpert and Amanda Petersen

**Shipping Now!**

[1] Form I 129 Petition for Nonimmigrant Worker  
[2] Supplement A to the Form I 129 Petition  
[3] H Supplement to Form I 129  
§10.09 Preparation of the Supporting Forms and Documents for the USCIS Filing

[1] Support Letter  
[2] Petition Approval or Denial  
[3] Admission upon Approval  
§10.10 Termination of the Employment

[1] Documentation  
[2] Effect on H 2B Status  
[3] Reporting Requirement  
[4] Cessation of Payment of the Required Wage  
[5] Return Transportation  
§10.11 Changes in the Employment  
§10.12 Extension Petition

[1] Overview  
[2] Beneficiary Works in the U.S. Fewer Than 183 Days per Year  
[3] Petitioning to Change to H 2B Status

### ABOUT THE EDITOR

[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 Petersen](#) 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.



# Business Immigration Law: Forms and Filings

## Authors: Rodney A. Malpert and Amanda Petersen

**Shipping Now!**

*Disclaimer: Purchase of this book does not create an attorney-client relationship with the authors.*

### 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 Law Journal Press to cancel this program. We reserve the right to change prices without notice. Promotion cannot be combined with any other offer.

---

**Buy Now: Business Immigration Law: Forms and Filings \$259**  
***Free Shipping and Handling (Taxes also included)***

---

**Return/Shipping Policy:** Orders once placed cannot be cancelled. Business Immigration Law: Forms and Filings \$259

**Name:** \_\_\_\_\_ **E-mail (required):** \_\_\_\_\_ **Phone:** \_\_\_\_\_

### Buy Now

**Name** (as it appears on credit card): \_\_\_\_\_

**Credit Card:** V/M/A/D \_\_\_\_\_ **Expiry** (Month/Year): \_\_\_\_\_

**Credit Card Billing Address:** \_\_\_\_\_

**Shipping Address:** \_\_\_\_\_

**Or Mail CHECK payable to ILW.COM with this form to the address below. You can also fax this form with copy of the check.**

---