

When the answer to a skills shortage is bringing in workers from other lands, do it legally by choosing the right visa program. Here's what you need to know.

A few years ago, the rock band U2 wrote a song called "These Are the Hands that Built America." It spoke of how, over history, our cities, railroads, industry, and social fabric were the products of a hundred different cultures from thousands of different places.

That remains true today. With globalization and a growing labor shortage in certain jobs, foreign-born labor is an increasingly prominent part of the workforce. But the by-product of this trend has been an increasing insistence among Americans that when those of other lands come here to work, it's done legally.

For that reason, it's worth reviewing the terms under which you can employ foreign nationals. We can do so, thanks to *The Hennepin Lawyer*, a publication of the Minneapolis-area Hennepin County Bar Association. A recent article, with contributing material from immigration law attorneys Loan T. Huynh and Debra A. Schneider, summarizes the types of visas foreigners need to work here, and the obligations employers take on in applying for those visas.

--**H1-B**: Probably the best known visa type is the H1-B, used to bring in workers with highly specialized occupations, often in fields such as engineering or computer programming. To receive an H1-B, the applicant must have either a bachelor's or higher degree in the field, either from a U.S. university or one in his or her own nation, or "expert experience gained through progressively responsible positions related to the specialty occupation," equivalent to a bachelor's degree.

The major downside of the H1-B, as many employers have found, is the strictly limited number available. In 2004, that number was reduced from 195,000 to just 65,000, precisely at the time need for these workers rose. Ever since, demand has swamped supply, so if you plan to bring someone in under an H1-B, apply early. Very early! "For fiscal year 2006, the cap was reached more than one month before the start date of the fiscal year on October 1, 2005," the authors write.

If you do obtain an H1-B, certain working conditions must be met. The person can receive no less than the wage paid others with the same job. His or her employment cannot negatively affect the working conditions of others. Current employees must know of the application, and there can be no strike or lockout going on. A statement attesting to all this must be filed with the U.S. Citizenship and Immigration Services, with the original maintained in a publicly accessible file. Violations carry fines of up to \$10,000 and 5 years in jail.

--**L-1**: Less well-known is the L-1 visa, which is used to transfer to the U.S. a foreign national already working overseas for the organization. Companies cannot simply hire somebody, then immediately bring them over. The person must have been continuously employed for the company or a subsidiary or joint venture for at least 1 of the past 3 years to qualify for an L-1. Also, this visa type is "only available for executives, managers, or employees with specialized knowledge."

--**TN**: Thanks to the North American Free Trade Agreement (NAFTA), it's a lot easier to bring in professionals from Canada or Mexico. There's no cap on the number nor on how long they can stay and there's no wage provision to meet, but the TN visa type is limited to certain occupations: These are listed in NAFTA and include systems analysts, engineers, management consultants, and dentists. You apply for the visa for 1 year, and it can then be renewed yearly as long as needed.

Should your foreign national worker wish to stay longer, the next step is applying for Lawful Permanent Resident or as it's often known, "green card" status, based on employment. This allows entry for 10 years. Your worker may then apply for naturalization, available after 5 years of law-abiding residence in the United States, thereby making room for the next pair of hands to build America.

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For more information, call: 888•792•4473