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United States

CORPORATE IMMIGRATION

Contributor

Berry Appleman & Leiden LLP



Jeremy Fudge

CEO & Equity Partner | jfudge@bal.com

Michelle Funk

Partner | mfunk@bal.com

Ruth Clark

Partner | rclark@bal.com

Nassim Mahzoon

Partner | nmahzoon@bal.com

This country-specific Q&A provides an overview of corporate immigration laws and regulations applicable in United States.

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UNITED STATES CORPORATE IMMIGRATION



1. What are the relevant government entities relating to immigration in your jurisdiction?

The Department of Homeland Security (DHS) oversees several agencies responsible for U.S. immigration and enforcement, including U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP). USCIS is responsible for the granting of U.S. citizenship, approving all immigrant and non-immigrant petitions, authorizing permission to work in the U.S., issuing extensions of stay, and the changing or adjustment of status while in the U.S. ICE enforces immigration laws. CBP patrols U.S. borders and inspects individuals and items at U.S. ports of entry.

The Department of State (DOS) adjudicates visa applications, issues visas from more than 250 U.S. missions around the world and publishes a monthly Visa Bulletin announcing the availability of visas. The Department of Labor (DOL) ensures that employers are paying the proper wages and is responsible for adjudicating prevailing wage determinations and Labor Condition Applications for certain temporary foreign workers, as well as PERM labor certifications for certain permanent foreign workers.

2. What are the options available for sponsor-based employment in your jurisdiction and timelines involved in securing a work permit?

Employment-based visas are categorized as non-immigrant (temporary) or immigrant (permanent residency). Non-immigrant employer-sponsored visas include the following:

The H-1B visa for a specialty occupation requires highly specialized knowledge and a bachelor's degree or equivalent work experience. The government caps the number of new H-1B petitions issued per year. Petitioners must submit an online registration during a

designated registration period. USCIS conducts a randomized lottery selecting the number of petitions within the cap. The petitioner may file full H-1B petitions only for those selected. By regulation, the earliest date petitioners may file an H-1B petition is April 1 for candidates who would begin work in H-1B status on Oct. 1 of the same calendar year. USCIS processing may take several months for H-1B petitions, although they offer a premium processing service that reduces the processing time to 15 calendar days from the time of filing.

H-2A and H-2B visas are for individuals from designated countries to fill temporary or seasonal agricultural (H-2A) or non-agricultural (H-2B) jobs for which U.S. workers are not available. H-2B visas are subject to numerical caps.

The L-1 visa for intracompany transfers is available to individuals who, within the three preceding years before entry to the U.S., have been employed outside of the U.S. continuously for at least one year, and who will be employed by a branch, parent, affiliate, or subsidiary of that same employer in the U.S. in either a managerial, executive role (L-1A visa), or an employee with specialized knowledge (L-1B). Processing times vary by consulate and nationality, but for those companies who have previously registered their corporate relationship with USCIS, L-1 visas are typically issued in three to 10 days from the filing. Where the corporate relationship has not been registered, the processing time is several months, although a premium processing service is offered that reduces the processing time to 15 calendar days from the time of filing.

The O-1 visa is available to individuals with an extraordinary ability in the sciences, education, business, athletics, or the arts, or who have a demonstrated record of extraordinary achievement in the motion picture or television industry. Applicants generally, will be required to prove that they have extraordinary talent and skill, they are renowned in their field, and they must be coming to the U.S. to continue work in the area of extraordinary ability or achievement. USCIS processing may take several months for O-1 visas, although they offer a premium processing service that reduces the processing time to 15 calendar days from

the time of filing.

Certain nationals have additional visa options. Citizens of Canada or Mexico may obtain a TN visa based upon a qualifying profession listed in the US-Canada-Mexico Trade Agreement (formerly NAFTA). Specialty occupation visas are earmarked for nationals of Australia (E-3 visas) and Chile and Singapore (H-1B1 visas). Annual caps apply to E-3 and H-1B1 visas, but the caps are rarely met.

Immigrant visa categories include: EB-1 visas for persons of extraordinary ability, outstanding professors or researchers, or multinational executives or managers; EB-2 visas for professionals holding advanced degrees and persons of exceptional ability; EB-3 visas for skilled workers, professionals and unskilled workers; EB-4 visas for certain special immigrants; and EB-5 visas for investors. Processing times vary widely based on the qualifying category.

3. What are the primary options available for unsponsored work and investment in your jurisdiction?

E-1 Treaty Trader visas are available to executives, managers, or specialists who are nationals of a country in a trade agreement with the U.S. E-2 Treaty Investor visas are for nationals of countries in a treaty with the U.S. who have invested, or are in the process of investing, a substantial amount of capital in a real and operating commercial enterprise in the U.S.

Certain immigrant visa categories do not require employer sponsorship, including EB-1A visas for persons of extraordinary ability, EB-2 National Interest Waivers (NIW), and EB-5 investor visas.

4. What are the requirements for becoming a sponsor of employment-based migrants and what are the role and reporting duties of sponsors?

Sponsoring a foreign national for an H-1B, H-1B1 or E-3 visa requires preliminary approval from the Department of Labor. The sponsoring company must file a Labor Condition Application (LCA) for Non-immigrant Workers, attesting that the employee will be paid the prevailing wage for their position, and that the employer will comply with other legal obligations.

The employer must post the LCA for at least 10 days. The LCA Public Access File (PAF), including the LCA and supporting documents, must be maintained at the H-1B

or E-3 worker's actual place of employment, or at the company's principal headquarters. The H-1B or E-3 worker must be provided with a copy of the certified LCA no later than the first day that he or she reports to work. DOL regulations also require the employer to provide a summary of benefits available to H-1B and E-3 workers in order to demonstrate that H-1B and E-3 workers are afforded access to the same benefits as similarly employed U.S. workers.

For most immigrant categories, the employer is required to go through the DOL's permanent labor certification (PERM) process, which includes recruiting test of the labor market to ensure that U.S. workers are not available for the position. If all requirements are met, the DOL will issue a PERM certification and the employer may then submit Form I-140 Immigrant Petition for Alien Worker with USCIS. Certain qualifying immigrants can petition for themselves under limited circumstances. EB-1 workers do not require Labor Certification, and EB-2 workers may request a National Interest Waiver on the basis that waiving Labor Certification is in the national interest of the U.S.

Employers should regularly conduct internal compliance checks to make sure records are up to date and employment and compensation is consistent with labor condition applications. Employers may receive random, unannounced inspections by USCIS, ICE and DOL officials to verify compliance with immigration and labor policies.

5. Are applications filed electronically, or paper base? Is a physical visa/work permit document issued or is an electronic approval issued?

Some immigration applications may be filed electronically at www.uscis.gov, such as an application for naturalization, and some forms of employment authorization. Other immigration applications must be mailed to a USCIS lockbox, a secure facility the government uses to collect applications and fees. Employees receive a physical visa or employment authorization document.

6. Is an in-person attendance/interview required as part of the visa/work permit application process? Is an individual required to enrol their biometrics (digital photo, fingerprint scan) as part of the visa/work permit process?

Visa applicants must schedule an interview at the U.S. Embassy or Consulate, generally in the country where

they live. They may interview at any U.S. Embassy or Consulate, but it may be difficult to qualify for a visa outside of their place of permanent residence. At a biometrics appointment, digital fingerprint scans and photos are taken. The applicant, spouse and any qualified unmarried children accompanying them must participate in the interview. When renewing a visa, some consulates allow processing of the visa through a "dropbox," if certain conditions are met, waiving the in-person interview requirement.

7. What persons qualify as dependants? Can dependants work based on their dependant visa status? Are there any restrictions?

Dependents include a same- or opposite-sex spouse and unmarried children under the age of 21. Some visa categories allow dependents to apply for employment authorization documents (EADs). Spouses of certain H-1B workers who have a pending permanent residency application may apply for an EAD. Spouses of L-1 and E visa holders are eligible for work authorization, while spouses of O-1 and TN visas are not authorized to work. Dependents holding EADs are not restricted, but their work authorization is tied to the principal's visa status and their continued dependent relationship.

8. What is the general time frame and processes for obtaining permanent residence and citizenship for sponsored and unsponsored business-related immigration?

To obtain employment-sponsored permanent residence, first an employer must conduct a test of the labor market. If no qualified, willing, and available U.S. workers are found for the position, then the employer may proceed to petition for Permanent Labor Certification from the DOL. The PERM certification establishes the prevailing wage and working conditions. The DOL typically approves or denies Labor Certification applications within six months of filing, however, processing times may vary. If the DOL needs more information to make a decision, it will issue an audit, and a response must be provided within 30 days. If an audit is issued, that extends the normal processing times. After the Labor Certification is approved, the employer has 180 days to file a Form I-140 Petition for Immigrant Worker with USCIS. Currently, Form I-140 processing ranges from one to 13 months, and timeframes are updated regularly on the USCIS website.

If the applicant is applying for the immigrant visa

abroad, USCIS forwards approved petitions to the National Visa Center, which holds petitions until a visa number becomes available. From there, the time frame for obtaining permanent residence is determined by the Visa Bulletin, a publication of the State Department that shows eligible visa numbers for the coming month. Availability of a visa number depends on the date an application was filed, employment classification, and country of residence of the applicant. Those factors might allow applicants to apply for a green card immediately, or require them to wait for several months, or even years, before they are eligible to apply.

If the applicant is applying for permanent residence in the U.S., when the applicant's priority date is current in the Visa Bulletin, the Form I-485 Application for Permanent Residence is filed with USCIS.

After five years as a permanent resident of the United States, an immigrant may apply for citizenship, though special circumstances can shorten this wait time. To apply for citizenship, an applicant completes Form N-400 with supporting documentation, may be required to attend a biometrics appointment, attends an interview, and takes a citizenship test. The applicant must be able to read and write English and take an oath of allegiance to the United States.

9. What productive type activities can a business visitor undertake and for how long?

Business visitors enter the U.S. on a B-1 Business Visitor visa or under the Visa Waiver Program. B-1 Business Visitor visas are for individuals intending commercial or business activities, who have no intent to abandon a residence and ties outside the U.S. Business visitors are generally prohibited from engaging in productive work activities and must remain on foreign payroll. Permissible business activities include, but are not limited to: attending business meetings; traveling for a scientific, educational, professional or business convention or conference; settling an estate; negotiating a contract; and participating in short-term training as long as they are not receiving any salary from a U.S. source or engaging in any productive employment. Individuals may be admitted to the U.S. in B-1 status for a period of up to six months, and they may apply to extend their B-1 status in the U.S. in periods of up to six months, at the discretion of U.S. immigration authorities. Individuals entering the U.S. under the Visa Waiver Program are authorized to visit the U.S. for up to 90 days and extensions in country are typically not possible.

10. Can remote work be carried out from your country?

Foreign nationals are not allowed to work remotely in the U.S. for an employer located abroad without work authorization. For H-1B beneficiaries, remote work can be carried out within the U.S., but it must comply with the Labor Condition Application or PERM Labor Certification. If a worker performs remote work from a geographic area or in a role different from what was specified in the LCA or PERM, the employer must refile those documents and may be obligated to fulfil different wage requirements.

11. Are there any productive work / revenue generating activities that can be carried out as a visitor and without the need for a work permit? If so, what activities and for how long?

Visitors who enter the United States on a Business B-1 Visa, or citizens of countries participating in the Visa Waiver Program, may conduct temporary business in the U.S. such as:

- Attending business meetings or consultations
- Attending a business convention or conference
- Negotiating contracts

Visitors who enter the U.S. on a Tourist B-2 Visa are prohibited from conducting business for pay. An individual on a visitor visa (B1/B2) is not permitted to accept employment or work in the U.S., except B-1 visitors may work as a personal or domestic employee in limited situations.

The B-1 Visa is valid for six months, with the option for renewal. Visitors entering the U.S. under the Visa Waiver Program may stay for up to 90 days.

12. Is there a remote work or nomad visa category in your jurisdiction? If not, how likely is it that this will be implemented in future?

The U.S. does not have a remote work or nomad visa category, and there are no current proposals to introduce this type of visa.

13. How easy is it to switch visa categories/jobs/employer from within

country? And/or if made redundant, can the individual regularise their stay in another capacity and what is the timeframe allowable?

A person may be able to switch jobs, employers, or visa categories depending on their visa classification. Under H-1B job “portability” rules, an H-1B employee may change jobs if the new employer files a new LCA and H-1B petition before the worker’s authorized stay expires. The employee can start work as soon as the new petition is filed and need not wait for the petition to be approved. Generally, temporary work visa holders lose their status once they are terminated. H-1B workers have a 60-day grace period to find new employment and have a new employer file a new H-1B petition on their behalf.

14. What common issues or concerns may arise for employers under business immigration in your jurisdiction?

A common issue is the H-1B cap and obtaining an H-1B cap-subject petition within the annual numerical limits, as demand far outstrips the allotted quotas, which are routinely exceeded. For example, for FY2024 cap season, USCIS received a record-high 780,884 H-1B registrations to fill the 85,000 quota. Employers whose petitions are not selected in the H-1B lottery need to find alternate visas or arrangements for these employees.

The increase in Requests for Evidence issued by USCIS seeking additional information after a petition is filed is an ongoing concern that often causes delays and uncertainty in the process. Administrative Processing, whereby certain petitions or applications are flagged for “security concerns,” also causes lengthy delays.

The lack of short-term work authorization options is another issue that arises for employers who need employees to rotate in and out of the U.S. on short assignments.

15. Is there a fast track process / certification that business can obtain to expedite visa / permit processing?

USCIS premium processing is available for certain types of petitions and applications, including H, L, O and E-3 petitions and certain Immigrant Worker Petitions. For an additional fee that varies based on the application or petition type, premium processing guarantees a USCIS response (such as approval, denial, RFE or other notice) within 15, 30, or 45 calendar days, depending on the

application or petition type.

USCIS has continued to expand premium processing to additional types of petitions and applications, including non-immigrant work visa petitions and associated dependent applications; additional employment-based preference categories of immigrant petitions; non-immigrant change/extension of status; and applications for employment authorization documents.

Where premium processing is not available, a petitioner may request USCIS to expedite adjudication, but they are decided on a case-by-case basis and require evidence of severe financial loss, emergency or urgent humanitarian reasons, or USCIS error, among other specific circumstances.

16. What are the recent trends, both political and social (including COVID-19 pandemic), that have impacted your jurisdiction with regard to immigration policy and law? How will this shape the immigration landscape moving forward?

The Biden administration has taken some positive steps on high-skilled immigration, including new STEM initiatives to attract skilled foreign nationals and automatic work authorization for E and L spouses. In January 2023, a proposed rule was published by USCIS which would significantly raise filing fees for most high-skilled classifications. The final fee rule is expected to be published in March 2024. USCIS could make changes to the proposed fee amounts, and it is possible the final rule could also be subject to litigation.

A trend that has developed over the years is the increased use of presidential executive action to implement immigration policy due to the lack of comprehensive legislation to address immigration system reform. This, in turn, has provoked more legal challenges and resulted in the courts determining immigration policy instead of Congress. This shapes the immigration landscape as policies and regulations are in flux from administration to administration and subject to court rulings and injunctions that may be reversed on appeal and changed again on remand, creating unpredictability for petitioners and employees.

17. How is the COVID-19 pandemic shaping the immigration landscape in your jurisdiction?

Effective May 12, 2023, the U.S. lifted COVID-19 vaccination requirements for non-U.S. travelers.

The pandemic caused consular closures and delayed processing that resulted in significant backlogs. Applicants can view wait times for a visa appointment at various consulates around the world on the [State Department's tool](#).

The increase in remote workers during the pandemic led to more compliance issues, including worksite verification, DOL notices, and amendments for location changes. However, remote work led to some improved flexibilities in the I-9 verification process. The U.S. Department of Homeland Security published a regulation, effective Aug. 1, 2023, establishing optional alternatives to in-person Form I-9 processing. Beginning Aug. 1, 2023, qualified E-Verify employers may begin using the alternative procedure called "Optional Alternative 1," provided they meet all requirements. The new remote verification option is welcome news for employers, especially because it is available in some cases to employers who must complete follow-up document review for employees hired during the pandemic.

18. Are there any anticipated changes in the immigration laws of your jurisdiction?

USCIS plans to modernize the H-1B program by revising the definition of employer-employee relationship, implementing new oversight and employer site-visit rules, providing greater flexibility on work start dates in some cases, and addressing "cap-gap" issues for F-1 students who risk falling out of status while awaiting their H-1B cap-subject petition. The agency has also continued expanding premium processing to additional categories as part of a phased approach. Effective June 17, 2023, the State Department increased nonimmigrant visa application fees. As previously mentioned, USCIS government filing fees are expected to increase substantially as well, but a final rule is not expected to be published until March 2024, which may be subject to litigation.

19. How do you see technology developing and evolving to support immigration process in the future?

Technology can be leveraged by government agencies and by practitioners and employers to improve the immigration process. Initiatives that include technological innovation could transform and streamline processes by syncing systems within the agency, making online filing available for all application forms, using technological tools to facilitate communications between applicants and the agency, and eliminating paper

mailings. This would make adjudications more efficient, improve timelines and increase transparency.

20. What are the Right to Work requirements in your jurisdiction?

Employers must verify each new employee's identity and that he or she is authorized to work in the U.S. Employers must properly fill out and retain Form I-9 for each employee, citizen or noncitizen, hired in the U.S. The employee must present to the employer proper identification and proof of work authorization from the list of acceptable documents on Form I-9, and the employer must examine the documents and certify on the form that they appear to be genuine, relate to the individual, and authorize the individual to work.

E-Verify is a web-based system maintained by USCIS that allows employers who are enrolled in the system to verify employee eligibility to work in the U.S. The system electronically matches information on the Form I-9 against records available to DHS and the Social Security Administration (SSA). E-Verify is not mandatory for all employers, but is mandatory for employers (a) if state law requires it; (b) if the employer holds a federal government contract or subcontract containing a provision requiring E-Verify; or (c) if the employer is seeking to employ international students under the Optional Practical Training STEM-extension program. Employers who enroll in E-Verify are still obligated to fill out Form I-9 for every new hire in the U.S.

21. What are the types of civil and criminal penalties employers may face for non-compliance with immigration rules i.e. employing an individual who does not have the Right to Work?

Committing or participating in document fraud for satisfying a requirement or benefit of the employment verification process or the Immigration and Nationality Act (INA), knowingly hiring unauthorized workers, committing document abuse, and unlawful discrimination against an employment-authorized individual in hiring, firing, or recruitment, or referral for a fee can give rise to fines and even criminal liability. Employers face civil and/or criminal penalties for Form I-9 violations. Civil fines include monetary penalties for paperwork violations ranging from \$234 to \$2,332 per individual per violation.

22. Are there any quota and / or labour

market testing requirements in your jurisdiction and if so, what do they involve?

H-1B visas are capped at 65,000 per year plus 20,000 for advanced degree holders. H-1B petitions do not require labor market testing, but employers must attest to wage obligations and that the hiring will not adversely affect U.S. workers. Employers sponsoring workers for employment-based permanent residency must conduct labor market testing via the PERM-based labor certification process. Recruitment requires job ads placed with the applicable State Workforce Agency's website for 30 days and two print ads in Sunday papers of general circulation covering the geographical region of employment. For professional positions, the employer must place three additional ads chosen from a list of acceptable recruitment methods. During recruitment, the employer must review all resumes and keep records of candidates considered and reasons for rejections. The PERM application submitted to the DOL will require information about the employer's recruitment procedures.

23. Are there quota requirements, restrictions or a cap on the numbers of foreign nationals hired per company in your jurisdiction?

No, but there are rules for employers deemed to be "H-1B dependent." An employer is considered H-1B-dependent if it has:

- 25 or fewer full-time equivalent employees and at least eight H-1B nonimmigrant workers; or
- 26 - 50 full-time equivalent employees and at least 13 H-1B nonimmigrant workers; or
- 51 or more full-time equivalent employees of whom 15% or more are H-1B nonimmigrant workers.

Employers that employ 50 or more employees in the United States, with more than 50% of these employees in H-1B, L-1A or L-1B nonimmigrant status, must submit additional fees when filing a new H-1B or L-1 petition.

24. Are there any exit procedures in your jurisdiction, if an individual is departing permanently?

The obligations of employers when terminating the employment of workers on temporary work visas will vary depending on the type of visa.

If an H or O employee's employment is cut short before the end of their authorized stay, the employer should notify USCIS of the early termination. If an H or O employee's employment ended for reasons other than the employee's voluntary resignation, such as layoff or termination, the employer must offer to pay the employee's reasonable cost of airfare to his or her home country.

For most temporary work visas, the employee may be eligible for one "grace period" per authorized validity period after the termination of their employment. The grace period may be for up to 60 consecutive days from the end of employment or until the end of the foreign national's authorized validity period, whichever is shorter.

During this time, the foreign national remains in their immigration status but is generally not authorized for employment. The foreign national may be eligible to file a new nonimmigrant visa petition based on sponsorship through another employer, change their status to another nonimmigrant status, or depart the United States.

25. Are there any requirements for medical certificates or vaccinations for your jurisdiction?

An in-person medical exam by an approved doctor is required for green card applicants to ensure that they do not have a condition rendering them inadmissible. The current list of required vaccinations include: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, Haemophilus influenza type B, influenza, hepatitis (A and B), COVID-19, and any others recommended by the advisory committee for immunization practices.

26. Are there any language requirements for your jurisdiction?

To obtain United States citizenship, an applicant must demonstrate English language proficiency, which is determined by the applicant's ability to read, write, speak and understand English and pass an English and Civics Test.

27. What are the government costs associated with a typical employment based visa?

The government filing fee for a Petition for

Nonimmigrant Worker is \$460. If requesting premium processing, there is a fee of \$2,500 for most nonimmigrant classifications. Additional fees may apply to certain employers. For example, employers with more than 25 employees sponsoring an H-1B worker must pay a \$1,500 American Competitiveness and Workforce Improvement Act (ACWIA) fee. Employers with fewer than 25 employees must pay a \$750 ACWIA fee. H-1B and L-1 employers must also pay a \$500 Fraud Prevention and Detection Fee.

Employers with 50 or more employees in the United States, with more than 50 percent of these employees in H-1B, L-1A or L-1B nonimmigrant status, must pay a \$4,000 (H-1B) or \$4,500 (L-1) fee for each petition. H-2B employers pay a \$150 fee.

28. Is a local contract of employment required in order to obtain a work based visa or work permit? Are there salary or other thresholds to be met?

The salary requirements and whether the employee is on local or foreign payroll depends on the visa category. Employers of H-1B and E-3 employees must meet complex wage threshold requirements and certify the proffered wages with the DOL. H-1B and E-3 employers must pay the worker the U.S. prevailing wage or actual wage, whichever is higher.

29. What are the maximum periods of stay for individuals on an employment based visa / work permit?

Each visa category has its own maximum period of stay. The maximum period for H-1B visas is six years (the initial three years plus a three-year extension). However, H-1B visa holders with an approved immigrant petition, and those who are awaiting a visa to become available, can continue to extend their status. It is not unusual for foreign nationals in heavily backlogged categories and countries to extend successively for a decade or more.

L-1A Intracompany Managers are allowed a maximum stay of seven years; L-1B Intracompany Specialized Knowledge employees are allowed a maximum stay of five years.

30. Does your jurisdiction allow dual nationality?

Yes. Although United States law does not mention dual nationality or require a person to choose one nationality

or another, the U.S. Department of State references dual nationality. U.S. Green Card holders should check the immigration rules in their home country prior to commencing with the U.S. naturalization process. While certain countries prohibit obtaining another nationality, others allow it for a specific timeframe. U.S. citizens may naturalize in a foreign state without risking his or her U.S. citizenship. However, individuals who acquire a foreign nationality after age 18 by applying for it may relinquish their U.S. nationality if they wish to do so, so long as they applied for foreign nationality voluntarily and with the intention to relinquish U.S. nationality.

Dual nationals must use their U.S. passport to enter and leave the United States.

31. What are the most positive aspects of your immigration system compared to the rest of the world?

Employers do not need to go through lengthy labor

market testing procedures for H-1B employees. Other types of high-skilled categories, such as L-1, O-1, TN, E-1, and E-2 are not subject to numerical limits and also do not require labor market testing. H-1B and L-1 visas are “dual intent” visas, so, although they are in the category of temporary work visas, an H-1B applicant may also intend to become a permanent resident and apply concurrently for permanent residency. Non-immigrants in the U.S. are generally able to convert status or apply for permanent residency without having to leave the country and re-enter.

Foreign students in non-immigrant F-1 status may apply for employment authorization if employed in Curricular Practical Training (CPT), Optional Practical Training (OPT) or an extended OPT program in a STEM-related field.

In most visa categories, family members have derivative status. In some categories, including L, E, and some H, spouses are eligible for work authorization and open access to the labor market without needing an employer to sponsor them.

Contributors

Jeremy Fudge
CEO & Equity Partner

jfudge@bal.com



Michelle Funk
Partner

mfunk@bal.com



Ruth Clark
Partner

rclark@bal.com



Nassim Mahzoon
Partner

nmahzoon@bal.com

