

## Hiring foreign workers: What you need to know

Ensure a smooth hiring process by planning early and picking the right visa for your international hire.

Jorge R. Lopez

Here is the scenario: you have found the perfect candidate to lead an important new research project for your San Diego-based biotech company, and want to hire her right away. What's the catch? She is a French citizen presently working in Madrid.

This should not be a problem; you should be able to get her to the US to start on the project right away, right? Not so fast, says your director of human resources. You need to speak to an immigration attorney to instruct the company on the correct procedure for incorporating the candidate into the company's project without bringing the Immigration and Naturalization Service (INS) to your work site. The conclusion is that there are a slew of visas—H-1B, O, and L, to name a few; this confuses you, so you call the attorney.

The attorney begins to discuss the options with you. First, you are told, a determination must be made of what are the minimum requirements for the position. Obviously, it will minimally require a bachelor's degree; your candidate has a doctorate. This tells you that you are eligible to apply for an H-1B visa for your candidate as an individual in a specialty occupation in the US. This does not mean that they must have certain specialized skills; only that they be offered a position that requires as a minimum a bachelor's degree and that the candidate does indeed possess that degree.

The complications are that the visa first requires an approval from the Department of Labor, and there is currently a backlog of several weeks for this part of the process. Thus, it may take about three to five months before the employee can start, depending on the area of the country where the business is located. The initial period of approval for the H-1B is for three years with an additional extension period of another three years. This visa category is restricted to no more than 195,000 visas issued per fiscal year. This runs from October 1 to September 30th.

The second option that you discuss relates to the O visa. This option applies to individuals that have extraordinary ability in the sciences. They must have sustained national or international acclaim. They may also qualify

by documenting original scientific or scholarly work of major significance in the field: published materials, membership in organizations that require outstanding achievement, etc. Speaking engagements before professional or academic groups may also be considered.

The analysis for the O visa must consider the specific issues relevant to the project in conjunction with the candidate's credentials. In essence, this option does center on the credentials of the candidate. Once approved, the visa is valid for no more than three years with subsequent extensions authorized until the completion of the designated project. This may be somewhat limiting, as the completion date for the project may need to be designated in advance and thus create undue time constraints for the company. This limitation may not meet the needs of the project since there may be funding issues that need to be addressed in the next four years and you would prefer not to have to address the visa issues at the same time. There is no real numerical limitation on the issuance of visas for this classification.


Just as you are starting to notice that the picture may not be as clear as you thought, you are given another option: the L-1 visa. This would allow you to bring in a candidate that has been an employee of a related entity during one of the past three years. The related entity may be a subsidiary, branch, or joint venture. In fact, the candidate may still be considered as an employee even if she has been working as an independent contractor for the related entity during her tenure. The position of the candidate with the related entity must have been, and the position offered with the US company must be, in an executive, managerial, or specialized knowledge capacity. The L-1 allows an initial entry for three years with subsequent extensions not to exceed an additional four years. Although this may sound interesting, the candidate has never worked for your company or any related enterprise. This is obviously an option that must be discarded, since it does not meet your immediate need. Similar to the O visa, and unlike the H-1B, the L visa has no numerical limitation that would affect issuance.

In essence, the options that commonly arise in the visa options above all have some common parameters, such as timing, logistics, and expense. First, you must consider that the all these visas require a certain amount of preparation and time for adjudication.

Therefore, this means that you must plan with sufficient time to have the visa issued and the candidate on the payroll. If you give yourself at least three to four months of anticipated processing time, you should be able to meet most processing timelines. Second, related to the issue of timing is the actual logistics involved in the transfer of a new candidate. You will be dealing with the concerns of the visa, but the employee will be concerned about the shipment of personal goods and household pets to a new country, or the transfer of benefits packages, to name a few all of which will be affected by the visa issuance. Finally, consider the expense factor. Certain visas are more cost effective than others, and you should try to coordinate the visa processing with one group or entity—whether done in-house or outsourced. Centralizing the processing will avoid delays and will reduce the processing expenses related to the visa options discussed; i.e., multiple filings would normally allow you to bargain with outside counsel to receive a preferred rate.

### European considerations

US citizens also need to meet similar requirements when they travel to Europe. The European system has created a series of uniform visa validity for individuals traveling to Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, and Spain. Normally, no visa is required for a short-term entry of less than 90 days. There is an exception for researchers when they are to be paid for services rendered while they are in these countries. Although there may be some ease in travel to these countries, all require US citizens to obtain an authorized visa status before living and working in any of these designated countries. The United Kingdom is not a member of the uniform European system. Therefore, separate applications must be made for those individuals that would necessitate a prolonged presence in the United Kingdom, to exceed 90 days for US citizens.

Finally, you need to factor in that the logistics involved in processing the visa will take from two to three months to coordinate. The best way to initiate this procedure is to be proactive and start the process before, not after, the need arises. This means that timing is just as important when you go to the other side of the ocean, as it is when you bring employees into the United States. 

Jorge R. Lopez is a member of the law firm Sandler, Travis & Rosenberg, 5200 Blue Lagoon Drive, Suite 600, Miami, FL 33126 (jlopez@strtrade.com).