Top Ten Things to Know When Job Hunting as a Foreign National

Q1. I am in the United States on a B-1/B-2 Visitor (or Visa Waiver). Can I seek employment?

A1. Seeking employment is a permissible activity under the B-1/B-2 and the Visa Waiver category. However, engaging in "productive employment" while in B-1/B-2 or Visa Waiver status is NOT permitted. This includes salaried work and work as an independent contractor.

Q2. I am in the United States as a B-1/B-2 Visitor (or Visa Waiver) and I have just been offered a job. Do I have to return to my home country before I begin employment?

A2. Your new employer will need to file a visa petition with the United States Citizenship & Immigration Service (USCIS) to obtain work authorization for you. While the USCIS may change an individual's status from B-1/B-2 to a work authorized status in certain circumstances, it is typically not advisable due to visa intent issues. You should consult with an immigration counsel as to the filing strategy for your particular case.

If you entered using the Visa Waiver, you will likely have to return to your home country and re-enter the United States in the work authorized status as the USCIS will NOT change an individual's Visa Waiver status to a work authorized visa status.

Q3. I am on a work visa and my company just terminated my employment. How long can I remain in the United States?

A3. Most work visas do not specify a "grace" period that determines how long one can remain in the United States after a termination in employment. The exception is the H1B where the regulations specify a period of 10 days in which a terminated employee may remain in the United States. For most visa types, unlawful presence technically begins to accrue immediately after the termination date. You should consult with immigration counsel as to your options for remaining in the country. Such options could include filing a "change of status" petition with the USCIS, or having a new employer file a work visa petition on your behalf with USCIS. You should note that any USCIS filings should take place as soon as possible after the termination date so as to minimize the unlawful presence issues.

Q4. My prior employer had begun the green card process for me. Can I take this process with me to a new employer?

A4. It depends on what stage of the green card process you are in at the time of your job change. Typically, three conditions must exist for you to be able to take the green card process with you to a new employer: (1) I-140 petition must be approved; (2) I-485 is pending for at least 180 days; and (3) your new job is same/similar to the job listed in the underlying green card application.

It is advisable to have immigration counsel review these issues with you prior to the job change as a premature departure from your current job could result in you losing the green card process altogether and having to begin again with your new employer.

Q5. I have found a new employer who says they will sponsor me for a work visa and a green card process, but they require that I pay for all immigration related expenses. Is this a problem?

A5. It is possible for an employee to pay for an employer's immigration related expenses but there are two major exceptions where employees absolutely cannot cover costs. First, an H1B employee cannot pay the $1500 Education and Training Fee that is required for H1B petition filings. The regulations require this fee be paid by the H1B employer. Second, employees cannot pay for any costs associated with the labor certification which is typically the first stage of the green card process. This includes payment for legal fees and recruitment costs---the regulations specify these costs must be borne by the sponsoring employer.

Q6. Is my current work visa transferable to my new employer?

A6. Work visas are petitioner specific. As such, if you change employers, your new employer will have to file a work visa petition on your behalf. In most instances, the work visa petition will have to be approved PRIOR to your joining the new employer. An exception may be the H1B where you may be allowed to "port" your H1B work authorization to the new employer after the petition filing and prior to approval of the petition. You should consult with immigration counsel on these issues to determine your eligibility for certain work visa types and/or your ability to port H1B work authorization to the new employer. In some circumstances, if USCIS processing takes a few months, your employer may want to request a USCIS expedite so that you can commence employment in a more immediate fashion.

Q7. My fiancé is a United States citizen. If we get married, does this provide me with any work visa options?

A7. Getting married solely for immigration benefits is considered immigration fraud. However, if you enter into a valid marriage to a U.S. citizen, it is possible for the U.S. citizen spouse to sponsor an immigrant visa on your behalf which would allow you to immediately file a green card application. With the green card application, you may apply for a work authorization document which would facilitate open-market employment for you. This work authorization document can be renewed as long as your green card application is pending. If your U.S. citizen spouse will be sponsoring a green card for you, you both should seek the assistance of immigration counsel as there are certain obligations associated with such sponsorship and conditions of permanent residence that may be imposed at the time of green card approval.

Q8. My spouse is not a citizen or permanent resident of the United States and they will be accompanying me to the United States when I enter on my work visa. What visa categories would allow him/her to work in the United States as well?

A8. It will depend on the work visa category of the primary beneficiary (you). Some dependent work visa statuses (ie: L-2, E-2, J-2) allow accompanying spouses to apply for a separate work authorization document. Most dependent statuses, however, do not allow for an application of work authorization. For spouses who cannot file for a dependant work authorization document, it is possible for a United States employer to sponsor them for their own work authorized visa.

Q9. Are there work visa types designated only for certain nationalities?

A9. Yes. These include the following:

- **TN:** Designated for Canadian and Mexican citizens coming to the United States for employment in a particular TN specified professional occupation listed under the North American Free Trade Agreement (NAFTA).
- **E-3:** Designated for Australian nationals who will be engaged in a specialty occupation for a temporary duration.
- **H1B-1:** Designated for Chilean and Singaporean nationals coming to the United States for employment in a specialty occupation. As the intent issues and application method for the H1B-1 differs from the standard H1B visa category, immigration counsel should be consulted as to eligibility and application requirements.
- **E-1/E-2:** Designated for nationals of countries with whom the US has signed a 'treaty of commerce and navigation' and whose employees bear the required nationality.

Q10. Why should I seek the assistance of immigration counsel?

A10. While it may be possible to obtain instructions and general guidance from government websites, internet chat rooms, and other similar forums, an experienced immigration attorney will be able to thoroughly guide you through the nuances of various immigration issues after assessing the facts of your situation. An immigration attorney will be able to explain your options to you and the benefits or consequences of those options so that you can make informed decisions about your career and immigration path. An experienced immigration attorney who regularly files petitions with USCIS is also more likely to stay abreast of current immigration trends and interpretations of the law so that the manner in which he or she files a case is up-to-date and meets government standards for successful results.

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