

HIRING FOREIGN WORKERS

Hiring foreign workers requires a great deal of planning. If the potential employee is in the United States, the first and most important determination to make involves a detailed assessment of both the individual's complete immigration history as well as current immigration status. Is the person in valid status, and if so when will that status will expire? Is the person eligible to change status? Has the person ever violated his or her status? If so, will that violation affect his or her ability to change status? Will the violation affect his or her ability to eventually adjust his or her status to that of permanent resident? Can the person begin working without first obtaining a visa outside of the U.S.? If the person needs to obtain a visa outside the U.S., can that person go to Canada or Mexico, or does he or she need to go to his or her home country?

The reason that these questions are more important than ever is because the law is harsh on those who overstay their status. Since April 1, 1997, there has been a three-year and ten-year bar to admissibility, which is triggered by remaining in the United States in unlawful status for 180 days or one year, respectively. Any overstay of status starts the clock for time spent in the United States in "unlawful presence." This frightening new provision and its disastrous consequences reinforces the urgency for employers to maintain scrupulous records for all employees, and to check with an immigration attorney prior to taking a trip outside of the U.S.

As the above illustrates, the process of obtaining a visa to hire a foreign worker is more complicated than ever. However, there are many steps employers can take to assist the attorney and make the case proceed more quickly and smoothly:

Provide a thorough job description, listing the job duties as descriptively and in depth as possible. There is often a great deal of difficulty and delay in trying to determine how to classify the job for immigration purposes. The foreign national should have all of his or her past immigration documents (visas, copies of previous applications and approval notices, Forms I-20 or DS-2019). As mentioned above, each case requires a thorough examination of every foreign national's complete immigration history.

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