Employment-based Immigration and the Vacation Ownership Industry

What's expected for 2013 and beyond?

BY GREGG RODGERS

Hiring an employee in the vacation ownership industry almost invariably involves some kind of immigration issue. Until just recently, it looked like Congress might enact comprehensive immigration reform. It seems that the time is right for a big change, but the question is how soon.

The federal government does not move at the speed of business, so it's important to plan based on current law—not on what might get through Congress this session or next. The legislative process can take months, and laws enacted will not go into effect until even later, after regulations have been drafted and vetted. It's important to understand current options and the timelines associated with them while urging Congress to fix the broken immigration system in the future.

Here are some ideas about immigration-related options the industry can expect to have available for 2013 and 2014. The letter and number designations in the sections below are the government's codes for particular employment-based classifications.

TN Status: Canadians and Mexicans in Some Professions Can Get Employment Authorization Quickly

The North American Free Trade Agreement (NAFTA) provides options for quick (often approved on-the-spot in less than an hour), inexpensive (as little as $50 in government fees), and long-lasting employment (up to three years at a time) of citizens from Canada or Mexico. The candidate must satisfy the minimally-described educational requirements for a limited group of professions, such as accountant or computer

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systems analyst. "Hotel manager" is one of the professions authorized by this process, with a bachelor's degree in hotel/restaurant management or diploma in that area along with at least three years of experience required for approval. It is also possible to get approval for management consultants, but don't call someone a consultant just because there isn't a NAFTA profession for the service needed.

For more information, see **www.uscis.gov** and search keywords "TN NAFTA."

L and EB-1 Status: Executives and Managers Can Be Transferred from Related Businesses

The government makes it relatively easy to transfer a person from one related business entity outside the United States to another inside the States. That person must have worked in an executive, managerial, or specialized knowledge capacity for that entity outside the States for at least one of the past three years, and be coming to this country to work in one of those capacities. The two businesses must be related, either in terms of corporate relationship or ownership by the same person or group of people.

This process can be used for temporary positions, approved for up to seven years or "permanent" employment, which many people call a "green card." The temporary process requires a mail-in filing for most people, taking from two weeks (if an expediting fee of $1,225 is paid) to several months for review—except for Canadians who can present them at a Canadian international airport of U.S./Canada port of entry for an on-the-spot decision. Initial filing fees total $825 and, for everyone but Canadians, a visa must be applied for and issued at a U.S. consulate outside the country.

For more information, see **www.uscis.gov** and search keywords: "L-1A Intracompany Transferee" (per "Executive and Manager" then "Specialized Knowledge") and "First Preference EB-1".

E-3 and H-1B: Occupations That Require Degree (or Equivalent) Can Be Filled—with Some Limitations

"Specialty Occupations" present another great option for U.S. employment of transferred employees or new hires. The general rule for these jobs is that the job requires a particular kind of college degree or the equivalent of that degree based on education and/or experience and that the person has that degree or equivalent. Classically, this applies to people such as accountants, engineers, and computer professionals, among others. It can be difficult to get approval for jobs that some people (and the government) don't normally associate with a particular degree, such as sales managers, market research analysts, or public relations specialists. But, it can be worth exploring.

The current challenge with the H-1B classification is that only people who already have that classification can be hired; a person who has not already been approved for employment with that classification can't get it until October 2014. Anyone hoping to be considered for one of the H-1B's to be allocated at that time should plan to submit the filing on April 1, 2014—the first day on which filings will be accepted. Only 85,000 new H-1Bs are available for each fiscal year, and they can all be allocated within as little as a few days or weeks. Fortunately, Australian citizens have a virtual equivalent to the H-1B in the form of the E-3 status, which is open for applications year-round.

Both of these classifications require multiple government filings and approvals, with government-charged filing fees starting as low as $825 for an E-3, and $1,575 for an H-1B. Visa fees add to those charges. Approval of an E-3 is for two years but is renewable indefinitely, whereas the H-1B can only be approved for as many as six years (in three-year increments).

For more information, see **www.uscis.gov** and search keywords "E-3 Certain Specialty Occupation Professionals from Australia" and "H-1B Specialty Occupations, DOD Cooperative Research".

The H-1B classification can be expected to be the subject of great debate in Congress. Many employers claim that businesses are suffering because of the lack of available, highly educated U.S. workers and the restriction on the number of new H-1B approvals. Don't be surprised to see higher government-charged fees in exchange for an increase in these H-1B numbers.

E-2: Foreign-owned Businesses Might Have Another Option

It might be possible to open an additional employment-based immigration option if the business operating in the United States happens to have significant (50% or more) foreign ownership or investment. The States has treaties with many countries that make it possible to hire citizens of the foreign country—whether they are still in that country or already in the States—to provide executive, managerial, or "essential" services.

The E-2 process may involve a filing at a U.S. consulate overseas and/or a mail-in petition in the United States. Government-charged filing fees at consulates start at $270, with the possibility of additional fees associated with the particular country; U.S. mail-in filings have a $325 filing fee. Mail-in filings can take one month or more for review, and visas can take that long or longer, depending on the availability of appointments.

The starting point for determining whether such a treaty exists for a specific country is the Department of State's Visa Reciprocity page (see **www.travel.state.gov/visa/reciprocity/index**).

F-1 and J-1: Foreign Students & Exchange Visitors Can Help in a Pinch

Remember those days when you were an intern during college, working during summer vacation, or in that first job after graduation? Options may exist for a vacation ownership business to employ foreign students in almost any kind of job, but be very careful to follow the rules.

Employment of F-1 students during the school year is limited, but many students approved for "curricular practical training" or "optional practical training" can be available for up to a full year of full-time service. J-1 "exchange visitors" have come under more challenging protocols, but if one gets authorization to work—at a seasonal resort, for instance—it can be an excellent option for students interested in summer work/travel.

For more information, see **www.uscis.gov** and search keywords "students and employment" and "exchange visitors."

Everyone's Talking about EB-5 & "Regional Centers"

Throughout the hospitality world, many have identified a source of significant funds through the EB-5 program, which includes Regional Centers as one variant.

Investors can get a "green card" for themselves and qualifying family members if their investment of at least either $500,000 or $1 million results in the employment of at least 10 U.S. workers. The investor *must* be engaged in the management of the U.S. business, either through the exercise of day-to-day managerial control or through policy formulation.

For more information, see **www.uscis.gov** and search keywords "EB-5 immigrant investor".

Don't Forget—I-9 Form Is for Everyone (Not Just "Foreign" Employees)

Everything noted above relates to "employment," which means that a Form I-9 must be completed for all of them, just like for every single employee in the workforce. Government audits are becoming more common, but less widely publicized, and fines for "paperwork" violations can be surprisingly large.

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Many vacation ownership businesses are registered in the E-Verify® program. It would not be surprising if E-Verify® (or some version of it) becomes a requirement for all employers as a part of comprehensive immigration reform. But until then, it is optional for most employers, except certain federal contractors and their subcontractors. State and local legislation—for instance, in Arizona—have imposed E-Verify® registration, too, so be sure to understand the requirements established by the federal *and* state or local governments in whose jurisdiction the facility operates.

To learn more, see the I-9 Central section of **www.uscis.gov**.

B-1 Status: Business Visitors from Outside the States

Trips to the United States for business meetings, site visits, and issues related to the foreign employer, which do not involve gainful employment by the U.S. entity, qualify for B-1 status. The foreign visitor must be sure to apply for a visa or register for the Electronic System for Travel Authorization (ESTA), where appropriate.

For more information, see **www.uscis.gov** and search keywords "B-1 Temporary Business Visitor".

Same-sex Marriages

A recent decision by the U.S. Supreme Court means that the nation now recognizes same-sex marriages for immigration purposes. Until that decision, recognition of status as a spouse was not available to legally married same-sex couples.

Same-sex spouses of individuals who are eligible for U.S. employment are now treated the same as has been the case for opposite-sex spouses, which sometimes includes employment authorization. This will expand the pool of those available for U.S. employment.

Transfers from States to Provide Services Elsewhere or Providing Management Services to Entities outside the Country

It certainly makes sense to "export" a business's knowledge base to improve the bottom line of a foreign entity, whether corporately related or simply as a matter of selling expertise. But a word of caution is due—especially for work to be done in countries like Canada and the United Kingdom where it's easy to get into the country for months at a time without a visa.

Don't forget—these are different countries with different laws regarding immigration, employment, and tax parameters. The fact that it's easy to talk on the phone or work together on-line does not mean that the navigation of time-consuming procedures and government approvals in advance of entering the other country is not required.

Conclusion

Business moves quickly—government bureaucracy does not. Don't expect much change to actually take place this coming year. But be prepared to let your congressional representatives know what you need in terms of changes to our immigration laws.

Other than that, the best things that you can do are to plan well in advance and to understand the current rules, timelines, and costs required to meet your needs for 2013 and beyond. ■

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