

## The Globalization of American Law Firms: A Quick Guide to Attorney Immigration

By Gregory Siskind

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*Despite downsizing around the country, many firms still need to bring on foreign lawyers. The immigration rules governing the hiring of international attorneys are complex and can be tough to navigate. In this article, immigration lawyer Greg Siskind provides an overview of the work visa rules for lawyers.*

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The Great Recession has hit a wide swath of professions across the US economy and the practice of law is certainly no exception. Law firms reacted by laying off lawyers, cutting back summer associate programs and reining in compensation. Indeed, according to the National Law Journal's NLJ 250 rankings, the top law firms shed nearly 10,000 jobs between 2008 and 2011.

Law firms generally have an easy time finding lawyers these days, but there are instances where a candidate with a particular expertise is difficult to recruit and expanding a search internationally makes sense. There are also American law firms that have overseas branches and need to give their foreign lawyers exposure to the US operations. And there are foreign-based law firms representing companies and individuals seeking to invest in the United States that want to establish branches in America to service their clients.

Assuming a firm is able to identify an attractive candidate from overseas, how does it weave its way through the immigration maze?

This article focuses on non-immigrant visas (temporary visas as opposed to permanent residency visas typically known as "green cards") since they are what firms typically seek for lawyers they are recruiting.

### The H-1B visa

The H-1B is the main work visa for university-educated professionals. The 65,000 allotted H-1B visas can be claimed up to six months before each new fiscal year begins on October 1<sup>st</sup>. 20,000 extra visas are available to those receiving advanced degrees in the US (such as JD and LLM degrees) and universities and certain non-profit employers are exempt from the quotas. Applicants must be paid the prevailing wage for similarly employed professionals in the same metro area and employers must document they have the ability to pay the salary. If a lawyer is being recruited in to a position requiring a license, the license must be in hand before the application can be approved. Note that states vary significantly when it comes to foreign lawyers qualifying to take the bar exam and gain a license.

A foreign lawyer coming to the US to practice the lawyer's home country law as a foreign legal consultant would only need to demonstrate he or she is qualified to practice that nation's law.

H-1Bs can be extended for up to six years.

## **Treaty visas**

Another popular visa strategy for hiring a foreign lawyer is to apply based on a treaty between the US and the lawyer's home country.

Canadian and Mexican lawyers can apply for TN visas based on the North American Free Trade Agreement (NAFTA). There are few restrictions except that a lawyer must be licensed either in the US or in the home country and the lawyer needs an employer sponsor in the US. There is no limit on the number of TNs that can be issued in a year and an applicant can apply for issuance of the TN classification on the spot at a US port of entry (usually at an airport or a land crossing).

Australian lawyers can apply for E-3 visas. The requirements for the E-3 are essentially the same as for the H-1B visa including possessing a license or showing that all requirements for licensure have been met except for providing a visa. Nationals of Singapore and Chile are granted a special H-1B visa category of their own with an annual allocation of over 5,000 visas.

And national of more than 50 countries are eligible for E-1 and E-2 visas. E-1 treaty trader visas are available to people from a country with a commercial trade treaty with the US who are engaged in trade between the US and the treaty country. Trade in services, such as legal services, is a permitted form of trade under the E-1 category. The employer must be majority-owned by nationals of the treaty country (and green card holders or dual citizens in the US don't count). This then means that the E-1 is basically only available to foreign law firms with offices in the US or instances where a lawyer has her own practice and is contracting services out to other firms. The E-1 also requires a substantial volume of trade between the US and the treaty country. This might not be a problem for a US branch office of a foreign law firm as long as it can demonstrate that the majority of the work involves matters involving the treaty country.

E-2 treaty investor visas are based on the making of a substantial investment in a commercial enterprise in the US. Like the E-1, the majority of the ownership has to be in the hands of nationals of the treaty company. E-2 status is tied to the size of the investment. US immigration rules do not specify a dollar amount to qualify for the E-2, though if a foreign firm can demonstrate it has a business plan and can document adequate capital to run the office, this often will satisfy a consular officer.

The E-1 and E-2 are available to executives, managers and essential skills employees. This would normally include partners and attorneys with supervisory responsibilities. It would also include associates who have skill sets difficult to find in a local market.

Treaty visas generally have no limits on time.

## **Transfer cases**

Law firms transferring in attorneys from an overseas office can take advantage of the L-1 intra-company transfer visa.

L-1 visa applicants must have a year of work in the last three with the transferring employer, the US and foreign officers must be related (i.e. a branch office, subsidiary, parent or have common ownership). The attorney must be joining in an executive, managerial or specialized knowledge capacity and if the business is a start up, the employer must show adequate capitalization.

To meet the executive, managerial or specialized knowledge requirement, the firm will want to show that the attorney will be managing paralegals and, if applicable, other attorneys. Attorneys who manage a “function” can also qualify even if no personnel are being managed. Attorney with unusual specialties and skill sets can also qualify as specialized knowledge employees if the firm can show that it would be impractical to find someone in the local market with a similar expertise.

To meet the requirement for a qualifying relationship, traditional branch offices are normally fine as are typical law firm partnerships and corporate structures where each office is owned 100% by the partnership or the corporation. Problems may arise, however, if the US and the foreign office operate under the same name but have different ownership structures. Many firms have offices that operate under the same name, but are independently owned and merely part of an alliance. These types of relationships will also not qualify.

L visas can be secured for five years (for specialized knowledge employees) or seven year (for executives and managers).

## **Visitors**

Sometimes going through the complicated application process to obtain a work visa may not be necessary and an attorney can enter as a B-1 business visitor if he or she is coming over for a few days, weeks or months.

The applicant can be coming in for a variety of reasons including

1. Participating in seminars, conventions and conferences
2. Consulting with business associates or clients
3. Assisting clients negotiating contracts
4. Engaging in independent research
5. Board of directors and partnership meetings and related activities

6. Assisting investor clients scoping out investment opportunities and engaging in startup activities
7. Attending trade shows

The B-1 applicant must also be prepared to demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin. And the applicant should show a salary from abroad and adequate resources to demonstrate that there is no need to work illegally in the US.

Applicants from 27 highly developed countries that have no problems with visa overstays can qualify in the visa Waiver Program which allows applicants to enter the US for up to 90 days without obtaining a visa stamp. Extensions of stay for visa Waiver entrants are not permitted.

### **O-1 Extraordinary Ability Applicants**

Attorneys who can demonstrate that they have extraordinary ability in their field of business can potentially qualify for O-1 visas. Applicants need to show that they have reached the top of their field either in the US, internationally or in the applicant's home country.

O-1s need to show a single one time accomplishment demonstrating extraordinary ability or evidence showing a combination of at least three lesser types of evidence (such as making important contributions in one's field or being employed in a critical capacity for an organization with a distinguished reputation).

### **Conclusion**

Firms interested in bringing on foreign lawyers need to be prepared to overcome often-frustrating visa requirements. Prior to the recession, more firms were pursuing international talent than today, but the trend toward globalization will certainly march on which will not doubt drive demand to hire overseas lawyers.

*Greg Siskind is an immigration lawyer in Tennessee and the co-author of the ABA book [The Lawyer's Guide to Marketing on the Internet](#). He currently serves on the board of the American Immigration Lawyers Association and chairs the immigration section of the American Health Lawyers Association.*