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EMPLOYMENT-BASED VISA SPONSORSHIP FOR THE HOSPITALITY INDUSTRY: WHAT YOU NEED TO KNOW

**Prepared for
South Florida Hospitality Human
Resources Association**

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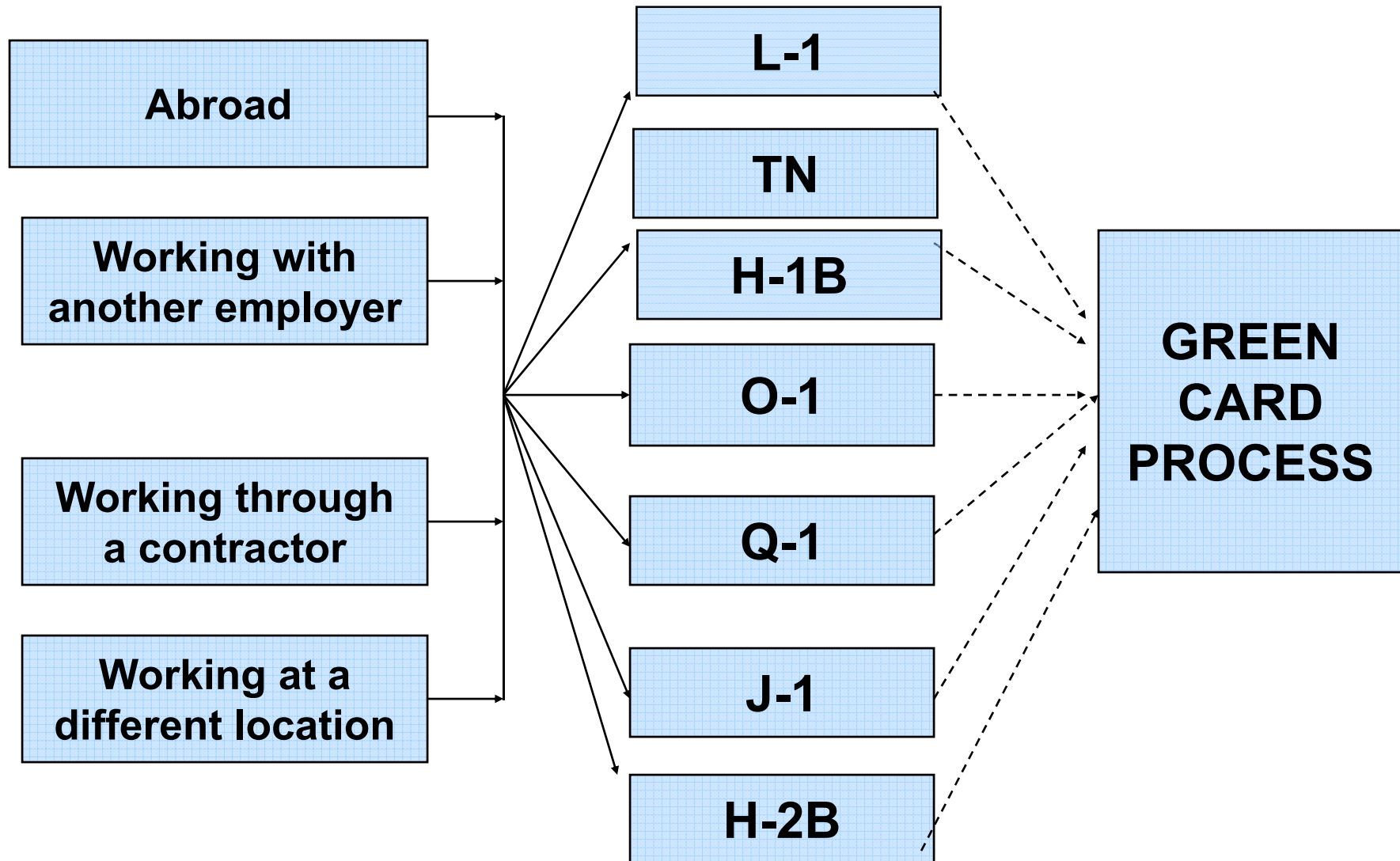


Overview

- **Immigration Framework**
- **Temporary Work Visas of Greatest Utility to the Hospitality Industry**
- **Permanent Residence (a.k.a. "Green Cards")**



THE BIG PICTURE



Temporary Work Visas



INTRACOMPANY TRANSFEREE (L-1)

Requirements

- **Within the preceding 3 years, the foreign national has been continuously employed outside the United States for one year as an executive, manager, or individual with "specialized knowledge;"**
- **Will be transferred to the U.S. temporarily to be employed by a related parent, affiliate, subsidiary, or branch of his/her employer abroad; and**
- **The employment will be in an executive, managerial or "specialized knowledge" position**



INTRACOMPANY TRANSFEREE (L-1)

- Duration:
 - **7 years** – “executive” or “manager”
 - **5 years** - “specialized knowledge” personnel
- Procedure:
 - Petition filed with USCIS-Premium Processing available (15 calendar day turnaround)
 - When approved, foreign national obtains L-1 visa at U.S. Consulate
 - Change or extension of status available if already in U.S.
 - Canadian nationals can apply at POE and do not require a visa



Trade NAFTA (TNs)

Requirements:

- A Citizen of Mexico or Canada
- Profession on NAFTA appendix
- Job offer in the profession
- Education/Experience
- Temporary Intent



Trade NAFTA (TNs)

- Not subject to quotas
- Available anytime
- Period of admission → maximum of **3 years**
- Canadians nationals can apply at Port of Entry
- Mexican nationals are required to apply for a visa and stay is limited to **1 year**



Trade NAFTA (TNs) Professions

- **Hotel Manager**: Baccalaureate or Licenciatura Degree in **hotel/restaurant management**; **or** Post-Secondary Diploma or Post Secondary Certificate in **hotel/restaurant management** and **3 years** experience in **hotel/restaurant management**



H-1B



Specialty Occupations (H-1B)

Eligibility

- Alien has at least baccalaureate degree or equivalent
- The position requires at least baccalaureate degree
- License depending on profession



H-1B Annual Quota (“Cap”)

- Annual quota for **Bachelor’s degree** – **65,000** of which 6,800 are for nationals of Chile and Singapore
- Annual quota for **Advanced Degree Graduates from U.S. Universities** – **20,000**
- Filing period for October 1st start date opens **April 1st** of each year
- In 2015, USCIS ran out of H-1B numbers the first week of the cycle
- If cap exempt → can apply anytime



H-1B Cap Exempt Petitions

- **Petitions unaffected by the cap:**
 - **Extensions**
 - **Change in the terms of employment**
 - **Change of employers (exception may apply)**
 - **H-1B-like classification for Australians (E-3)**
 - **Qualified Organizations claiming cap exemption**



Specialty Occupations (H-1B)

Procedure

- Labor Condition Application at **DOL**
- H-1B Petition at **USCIS**
- Premium Processing available (15 calendar day turnaround)
- Consular Processing

Duration

- Total of **6 years** in **3 year increments**
- Certain exceptions beyond 6 years



The Labor Condition Requirements for H-1B Professionals



EXTRAORDINARY ABILITY O-1

- The O-1 classification applies to an individual of extraordinary ability in the **sciences, the arts, education, business or athletics**
 - The “arts” includes any field of creative activity or endeavors such as, but not limited to, **culinary arts**



EXTRAORDINARY ABILITY O-1

- Extraordinary Ability Defined:
 - In the arts-demonstrate distinction, a high level of achievement in the field, evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts
 - In science, education, business, athletics-demonstrate level of expertise indicating that person is one of small percentage who have arisen to the very top of the field
 - Duration
 - Initial 3 year period
 - Extensions in one year increments indefinitely



Q-1 VISA INTERNATIONAL CULTURAL EXCHANGE PROGRAM

- **ELIGIBILITY**

- Visa for International Cultural Exchange Program designated by USCIS
- Must provide practical training, employment and the sharing of the history, culture and traditions of the country of the person's nationality

- Beneficiary must have residence abroad/temporary intent
- Must be employed under the same wages and working conditions as U.S. workers

- **DURATION OF STAY**

- Cannot exceed **15 months**
- One 15 month extension available



What is the J-1 Exchange Visitor Program?

- **The J nonimmigrant visa is for educational and cultural exchange programs designated by the Department of State, Bureau of Consular Affairs**
- **Implemented to foster international exchange pursuant to Fulbright-Hayes Act (Mutual Educational and Cultural Exchange Act)**
- **Since 2003, Tracking of International Exchange Visitors through Internet based SEVIS system**



EXCHANGE VISITORS J-1

- Interns:

- Currently enrolled in a degree- or professional certificate-granting post-secondary (above high school) academic institution outside the USA
- OR
- Have graduated from such an institution no more than 12 months before program start date

- Trainees:

- A degree or professional certificate from a foreign postsecondary academic institution and at least 1 year of related professional experience acquired outside the US
- OR
- 5 years of related professional experience acquired outside the USA



EXCHANGE VISITORS J-1

- Duration
 - J-1 programs in the “Hospitality and Tourism” category are limited to 12 months for both interns and trainees
 - Trainees may be approved for a J-1 program that is up to **18 months in length** if the subject area for training is not hospitality and tourism



H-2B VISA

- **ELIGIBILITY**
 - Visa for temporary workers to perform nonagricultural labor or services if unemployed U.S. workers are not available
 - Participation is limited to designated countries



H-2B VISA

- **DURATION OF STAY**
 - Admitted for time on labor certification, **but not more than 1 year**; extensions based upon new labor certification in 12 month increments for **maximum of 3 years**



H-2B VISA

- **PROCEDURE**
 - **Must show one time occurrence, a seasonal need, peak load need, or intermittent need**
 - **Requires labor certification from DOL and petition with DHS; if alien abroad, also consular processing**
 - **Limited to 66,000 a year-Certain H-2B workers are exempt from Cap**

H-2B VISA

2016 Developments for H-2B Visas

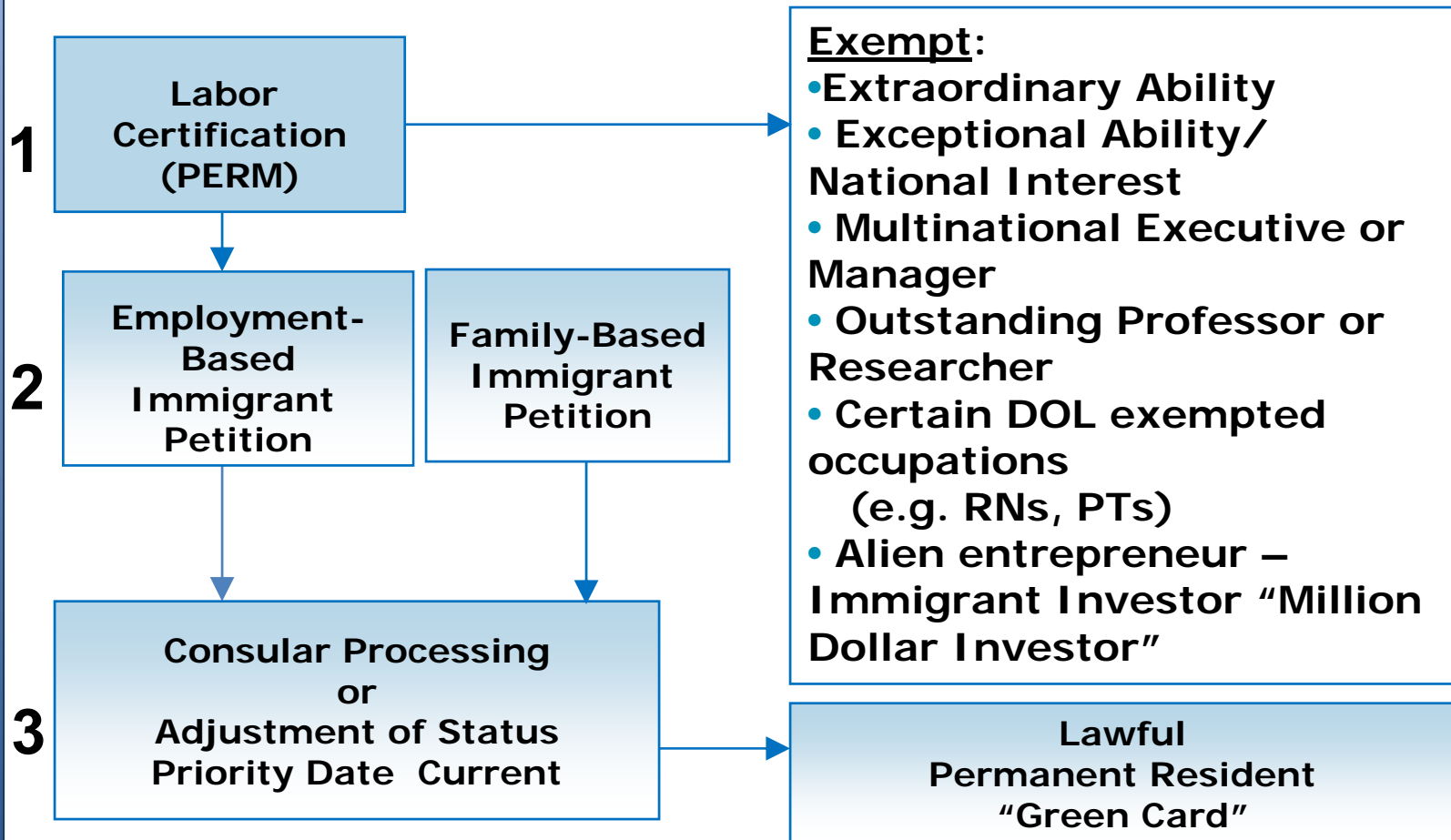
- **Returning Worker Exemption for FY 2016**
- **Definition of “Temporary Need”**
- **New DOL Provisions**



**Permanent Residence
(a.k.a. "Green Cards")**



The Green Card Process



Visa Bulletin for February 2016

APPLICATION FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01MAR12	01AUG08	C	C
3rd	01OCT15	01OCT12	15JUN04	01OCT15	08JAN08
Other Workers	01OCT15	22DEC06	15JUN04	01OCT15	08JAN08
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Non-Regional Center (C5 and T5)	C	15JAN14	C	C	C
5th Regional Center (I5 and R5)	C	15JAN14	C	C	C

DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01JAN13	01JUL09	C	C
3rd	01JAN16	01OCT13	01JUL05	01JAN16	01JAN10
Other Workers	01JAN16	01JAN07	01JUL05	01JAN16	01JAN10
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Non-Regional Center (C5 and T5)	C	01MAY15	C	C	C
5th Regional Center (I5 and R5)	C	01MAY15	C	C	C



Summary





GUNSTER

FLORIDA'S LAW FIRM FOR BUSINESS

JAY CARMICHAEL, Esq. is an Of Counsel Shareholder and member of the Immigration and Corporate Practice Group of Gunster, Yoakley & Stewart, P.A., where he advises employers on compliance with immigration laws and maintaining a legal workforce, assists companies with their business immigration needs and provides corporate strategic counseling regarding matters under the cognizance of the agencies in the Department of Homeland Security, especially those under the cognizance of the U.S. Coast Guard. Prior to joining the firm, Rear Admiral Carmichael served in successive positions of increasing operational and legal responsibility during his 34-year career with the U.S. Coast Guard. As a Rear Admiral, he served as the Coast Guard's Chief Counsel, as District Commander in Miami, and as senior military assistant to the Secretary, Department of Homeland Security (DHS) when the Department was created. As a federal law enforcement official while on active duty, he served in both operational and law specialist assignments and worked with the federal agencies involved in immigration inspection, investigation and services. Mr. Carmichael received an LL.M. in environmental law from George Washington University in 1993, a J.D. from the University of Miami, magna cum laude, in 1977, and a B.S. degree from the U.S. Coast Guard Academy, in 1970. During his career in the Coast Guard he was honored with numerous decorations including the Cutterman's Insignia, Distinguished Service Medal and Legion of Merit Medals among others. He has been an avid participant in Civic and Community Service activities as the Governor's appointee to the Miami River Commission, the Mayor's former appointee to the Coral Gables Emergency Management Board, and as a former At-Large Member of the Executive Committee of the Greater Miami Chamber of Commerce. Additionally, he formerly served on the Governor's Advisory Council on Base Realignment and Closure.

This document provides general information. It is not a substitute for advice in a particular case.

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SARAH LEA TOBOCMAN, Esq. is an Equity Shareholder and Chair of the Immigration Practice Group at Gunster, Yoakley and Stewart, P.A. She is a primary member of the Immigration Practice Group and a member of the Corporate and International Practice Group. She has been practicing in the area of business immigration since 1983, and she has led Gunster's Immigration Practice Group since joining the Firm in 1999. Ms. Tobocman has a longstanding interest in assisting healthcare systems with their immigration needs with an emphasis on compliance issues. She also regularly assists human resource departments and in the process of recruiting and retaining foreign workers through the preparation of customized recruitment materials and the creation of systems which assist employers in managing the sponsorship of foreign workers. In addition, she has handled the full array of U.S. employment-based nonimmigrant and immigrant visas petitions and consular applications for over 28 years. She is actively involved in representing employers in I-9 employment eligibility verification requirements, drafting worksite enforcement compliance policies, and in training employers on best practices for compliance with U.S. immigration laws. She frequently lectures, trains and writes articles for business groups on immigration laws and compliance. Please see <http://www.gunster.com/attorney/sarah-lea-tobocman/> for a detailed list of articles, seminars and presentations. Ms. Tobocman received her B.A. degree with Honors from the University of California at Berkeley in 1976 and her J.D. Degree from the University of San Francisco School of Law in 1979. While an undergraduate, she also attended the Centro de Estudios Colombo-Americanos in Association with the Universidad de los Andes in Bogotá, Colombia. Ms. Tobocman was admitted to the Florida Bar in 1980 and commenced practicing in the area of business immigration in 1983. After practicing at a boutique business immigration law firm for five years, first as an Associate and then as a Partner, she founded her own business immigration boutique which she managed for twelve years. She was recruited by Gunster and joined the Firm in 1999 as an Of Counsel Shareholder, and was named Equity Shareholder in 2004. She has served or currently serves in the following professional leadership positions: President, South Florida Chapter, American Immigration Lawyers Association, 1-year term; Board of Governors, American Immigration Lawyers Association, 1-year term; Co-chair, Immigration Committee, International Law Section of The Florida Bar, 3-year term; Executive Council, International Law Section of The Florida Bar, 6-year term; Continuing Legal Education Committee, The Florida Bar, 1-year term; Co-chair, Greater Miami Chamber of Commerce Immigration Task Force, 1-year term; Miami-Dade County Beacon Council's International Advisory Task Force (current). She is the recipient of the following honors: Chambers USA "Leaders in their Field" (2008-2014); AV rated as independently determined by Martindale-Hubbell, since 1998; "Best Lawyers in America," Immigration Law, 2009-15; South Florida Legal Guide, "Top Lawyer," 2006-13; "Florida Super Lawyers" 2006-13; South Florida Business Journal, "Best of the Bar", 2003. She has appeared on CNN en Español and Univision as a commentator on immigration issues. Ms. Tobocman is fluent in Spanish.

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Beatriz Osorio, Esq. is an associate in Gunster's Immigration practice group. As an integral part of the firm's Immigration team, Ms. Osorio assists health care systems, multinationals, financial management and banking organizations, technology companies, hotels/resorts, professionals and individual investors fulfill their immigration needs. She is involved in the preparation of employment based nonimmigrant and immigrant visa petitions, such as Investor Visa Applications, Professional/Specialty Occupation Petitions, Intra-company Transferee Petitions, Extraordinary Ability Petitions, Labor Certification Applications, and Consular Visa Applications. She also participates in counseling employers regarding their compliance with U.S. immigration laws. Beatriz has exclusively dedicated her career to practicing immigration law. In addition to business immigration matters, she also has experience handling family based petitions and removal matters. Ms. Osorio received her Bachelor of Arts Degree from Nova Southeastern University in 2006 and her J.D. Degree from Nova Southeastern University, Shepard Broad Law Center, cum laude, in 2011. While at Shepard Broad Law Center, Ms. Osorio was awarded Book Awards in International Sales & Arbitration, Constitutional Law I, and Civil Pre-Trial. She was a Board Member and Competitor of the Moot Court Honor Society. She was admitted to the Florida Bar in 2011 and is a member of the Cuban American Bar Association. As a Colombian native, Ms. Osorio is proficient in Spanish. Her multi-cultural background enhances her understanding of the experiences of foreign nationals in the U.S. immigration processes.

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