

**TABLE OF CONTENTS**  
**BUSINESS IMMIGRATION: LAW & PRACTICE**  
**VOLUME 1**

ABOUT THE AUTHORS .....	xxvii
PREFACE .....	xxx
ACKNOWLEDGMENTS .....	xxxii
TABLE OF DECISIONS .....	1267
TABLES OF STATUTES AND CITATIONS .....	1307
SUBJECT-MATTER INDEX .....	1393
<b>CHAPTER ONE: INTRODUCTION .....</b>	<b>1</b>
I. Purpose and Organization .....	1
II. Guide to Using the Book .....	1
<b>CHAPTER TWO: BASIC NONIMMIGRANT CONCEPTS .....</b>	<b>5</b>
I. Key Considerations .....	5
A. Employment in the United States vs. Employment Abroad .....	5
B. Appropriate Intent .....	9
C. Permanent Residence as Long-Term Employment Authorization .....	12
II. Obtaining Nonimmigrant Status and Changing Status .....	12
A. Petition Filing and Adjudication .....	12
1. Important Issues for Petition Filing .....	13
a. Delivery .....	14
b. Complete Petition Documents .....	15
(1) Forms and Supporting Documents .....	15
(2) Eligibility .....	16
(3) Denial Without RFE or NOID .....	19
c. Signatures .....	20
d. Payment .....	21
e. Form G-28 and Changing Attorney Information .....	22
f. Known Employer Pilot Program .....	26
g. Premium Processing .....	26
h. Expedites .....	30
i. Erroneous Rejection .....	33
2. Petition Adjudication .....	34
a. Standard of Review .....	35
(1) Burden of Proof .....	35
(2) Standard of Proof .....	36
(3) Evidence .....	37
b. Review by the USCIS Adjudicator .....	39
(1). RFEs and NOIDs .....	40
(a). RFEs .....	42
(b). NOIDs .....	49

(c). Deadline for Response .....	50
(d). Response to the RFE or NOID .....	52
(2). Checking the Status of a Pending Petition or Application .....	53
(3). Final Decision of the Petition .....	56
(a). Withholding Adjudication of the Petition .....	58
(b). Withdrawal .....	58
3. Duplicate Approval Notices .....	59
4. Appeals and Motions to Reopen .....	60
a. Appeals .....	61
b. Motions to Reopen and Motions to Reconsider .....	65
B. Change of Nonimmigrant Status .....	69
III. Nonimmigrant Visa Applications .....	76
A. The Visa Application Process .....	76
1. Completing the DS-160, Nonimmigrant Visa Electronic Application .....	76
2. Scheduling a Nonimmigrant Visa Application Interview .....	78
3. Paying the Nonimmigrant Visa Application Processing Fee .....	78
4. Generally Required Documents for Nonimmigrant Visa Applications .....	79
5. What to Expect After the Nonimmigrant Visa Application Interview .....	80
B. Visa Reciprocity .....	80
C. The Petition Information Management Service (PIMS) .....	81
D. Administrative Processing .....	83
E. Visa Application Denials and Refusals .....	86
F. Third Country National Visa Applications .....	87
1. TCNs Who May Apply for Visas in Mexico or Canada .....	89
2. TCNs Who May Not Apply for Visas in Mexico or Canada .....	89
3. TCN Visa Applications at U.S. Consulates in Mexico .....	90
4. TCN Visa Applications at U.S. Consulates in Canada .....	91
5. Special Considerations .....	91
a. Possibility of Visa Application Denial and Impact of Administrative Processing Delays .....	91
b. Mexican Visa Requirements .....	92
c. Canadian Visa Requirements .....	93
IV. Admission to the United States .....	95
A. Documents Necessary for Application for U.S. Admission .....	98
B. Form I-94, Arrival/Departure Record .....	101
1. Correction of an Erroneous Form I-94 or Passport Stamp at the Port of Entry .....	104
2. Return of Form I-94 upon Departure .....	106
C. Waiver of Documentary Requirements .....	108
D. Deferred Inspection .....	111
E. Inadmissibility, Expedited Removal, and Withdrawal of the Application for Admission ..	115
F. DHS Traveler Redress Inquiry Program .....	117
G. Automatic Revalidation .....	117
V. Extending Nonimmigrant Status .....	119
A. Form I-539 .....	123
B. Common Issues .....	124
1. Previous Petition Approval Does Not Guarantee Extension Approval .....	124
2. Nunc Pro Tunc Extensions .....	127
VI. Dependents .....	128
VII. Maintaining the Status .....	132
A. Unlawful Presence .....	136

B. Filing Form I-102, Application for Replacement/Initial Nonimmigrant Arrival Record	147
VIII. Western Hemisphere Travel Initiative and United States Visitor and Immigrant Status Indicator Technology Program	149
A. Western Hemisphere Travel Initiative	149
B. Entry/Exit Program	152
IX. Export Control	158

### **CHAPTER THREE: VISITORS: B VISAS AND STATUS AND THE VISA**

<b>WAIVER PROGRAM</b>	<b>163</b>
I. Executive Summary	163
A. Checklist of Requirements	163
B. Documents and Information Necessary to Prepare an Application	163
C. Checklist of Questions to Ask the Client	164
II. B Visas and Nonimmigrant Status	165
A. Introduction	165
B. Requirements and Interpretations	166
1. Permitted Activities	168
a. Business Visits	168
(1) Engaging in Commercial Transactions	172
(2) Negotiating Contracts	176
(3) Consulting with Business Associates	177
(4) Litigating	177
(5) Participating in Scientific, Educational, Professional or Business Conventions, Conferences, or Seminars	178
(6) Undertaking Independent Research	179
b. Other Permissible Types of Business Visits	180
(1) B-1 in Lieu of H-1 or H-3	180
(2) B-1 Status for Personal and Domestic Employees	185
(a) Personal and Domestic Employees of U.S. Citizens Who Reside Abroad	186
(b) Personal and Domestic Employees of U.S. Citizens on Temporary Assignment in the United States	188
(c) Personal and Domestic Employees of Foreign Nationals Who Hold Nonimmigrant Status in the United States	191
(d) Managing Client Expectations: Common Issues with B-1 Visas for Personal and Domestic Employees	194
2. Specific Situations	201
a. Building and Construction-Related Activities	201
b. Commercial and Industrial Activities	205
c. Payment of Expenses from a U.S. Source	207
d. The B Visa Applicant Is the Beneficiary of an Immigrant Visa Petition	208
e. The B Visa Applicant Has Family Members Who Are U.S. Citizens or Lawful Permanent Residents or Who Hold Other Nonimmigrant Status	210
f. Business or Tourist Trips While a Nonimmigrant Petition Is Pending	211
g. B Visa Application by an HIV-Positive Individual	211
h. Chinese Nationals and EVUS	212
C. B Status for Canadian and Mexican Nationals	213
1. Research and Design	216
2. Growth, Manufacture, and Production	216
a. Harvester Owners	216
b. Purchasing and Production Managers	217
3. Marketing	218

a. Market Researchers and Analysts .....	218
b. Trade Fair and Promotional Personnel .....	218
4. Sales .....	219
a. Sales Representatives and Agents .....	219
b. Buyers .....	220
5. Distribution .....	221
a. Transportation Operators .....	221
b. Customs Brokers .....	224
6. After-Sales Service .....	226
7. General Service .....	228
a. Professionals .....	228
b. Commercial Transactions .....	228
c. Public Relations and Advertising Personnel .....	229
d. Tourism Personnel .....	229
e. Tour Bus Operators .....	231
(1) Admission with Passengers on U.S. Tours That Begin and End in Canada or Mexico .....	232
(2) Admission with Passengers Unloaded in the United States .....	232
(3) Admission to Meet Passengers in the United States .....	233
f. Translators and Interpreters .....	233
8. Border Crossing Cards .....	234
D. Pleasure Visits .....	236
1. Common-Law Spouses, Same-Sex Partners, Extended Family Members, and Other Household Members of Foreign Nationals in Other Nonimmigrant Status .....	238
a. Cohabiting Partners .....	244
b. Extended Family Members and Other Household Members .....	246
2. Amateur Entertainers and Athletes .....	248
3. Attending School in B-2 Status .....	249
E. Additional Permissible Uses of the B Visa Category .....	252
1. Visiting University Lecturers and Honoraria Payments .....	252
2. Religious, Charitable, and Missionary Activities .....	256
3. Employment with an International Fair or Exposition Exhibitor .....	260
4. Professional Entertainers .....	261
5. Other Situations-Subsets of the B-1 and B-2 Classifications .....	262
III. Process .....	267
A. The Visa Interview .....	268
1. Foreign Residence .....	268
2. Specific and Limited Duration of the U.S. Visit .....	270
3. Sufficient Funds for the U.S. Visit .....	271
4. Appropriate Business or Pleasure Activities .....	271
B. Visa Issuance .....	271
1. Special Considerations for B Visa Applications .....	272
2. Bond for B Visas .....	273
3. Double Entry Visas .....	274
4. Visa Denial .....	274
C. Admission to the United States and Maintenance of B Status .....	276
D. Change of Status from B .....	277
IV. The Visa Waiver Program (VWP).....	279
A. Requirements and Interpretations .....	279
1. VWP Countries .....	282

2. Admission Period of 90 Days .....	284
3. Machine-Readable Electronic Passport .....	289
4. Enrollment in the Electronic System for Travel Authorization (ESTA) .....	290
5. Manner of Travel .....	298
a. Travel by Air and Sea .....	298
b. Arrival by Land .....	301
c. Reporting a Departure After the Fact .....	302
6. “Countries of Concern” .....	303
a. Visa Waiver Program Improvement and Terrorist Travel Prevention Act Overview ...	303
b. Nationals of Affected Countries .....	304
c. Travel to Countries of Concern .....	305
d. Ban on Entry .....	307
7. Threats to the Welfare, Health, Safety, or Security of the United States .....	307
8. Previous Violation of the Terms and Conditions of Previous VWP Admission .....	308
9. Waivers of Rights .....	308
B. Strategy: B Visa vs. VWP .....	310
C. Refusal of VWP Admission .....	313
<b>CHAPTER FOUR: E-1 AND E-2 VISAS AND STATUS .....</b>	<b>315</b>
I. Executive Summary .....	315
A. Checklist of Requirements .....	315
B. Documents Necessary to Prepare E-1 Petition .....	315
C. Checklist of Questions to Ask the Client .....	316
II. Requirements and Definitions .....	316
A. Treaty Between the United States and the Foreign Country .....	316
B. Nationality .....	321
C. Intent to Depart the U.S. upon Termination of Status .....	324
D. E-1 Treaty Traders .....	327
1. E-1 Trade Activities .....	328
a. Exchange of Goods, Services, or Business Activities .....	329
b. International Scope of Trade Activities .....	330
c. Qualifying Trade Activities .....	330
2. The Trade Is Substantial .....	331
3. The Trade Is Principally Between the United States and the Treaty Country .....	332
E. E-2 Treaty Investors .....	332
1. The Investment Must Be Real .....	333
a. Possession and Control of the Funds or Assets .....	336
b. Risk of Investment .....	338
c. Irrevocable Commitment of the Capital .....	339
2. The Investment Must Be Substantial .....	340
3. The U.S. Enterprise Must Be Bona Fide .....	345
4. The Foreign National Will Have Executive or Supervisory Duties in the United States... ..	346
F. Managing Client Expectations: Increased Scrutiny for Certain Situations .....	348
1. Joint Ventures .....	348
2. Employees of E-1 and E-2 Entities .....	349
a. Executive or Supervisory Duties .....	350
b. Essential Duties .....	351
3. Substantive Changes of E Status Eligibility and Employment with a Related Corporate Entity.....	357
4. E Employees Will Perform Activities Pursuant to a Contract Between a U.S. Entity and Either Foreign Corporation or an E-2 Entity .....	359

5. Impact of Labor Disputes on Canadian and Mexican Transferees .....	360
III. Process .....	361
A. Preparing the E Visa Application or Petition .....	362
1. Form G-28 .....	362
2. U.S. Company Support Statement .....	362
B. E Visa Application vs. E Change of Status Petition .....	363
1. Request for Change of Status .....	365
2. Canadian and Mexican Citizens .....	366
C. E Registration and Visa Application at a U.S. Consulate .....	367
1. E Registration .....	368
2. E Visa Application .....	369
3. Form DS-156E .....	370
a. Part I .....	370
b. Part II.....	371
c. Part III .....	371
D. Admission to the United States .....	372
E. E Change of Status Petition Filed with USCIS .....	373
1. Form I-129 .....	374
2. E Supplement .....	375
3. Form I-907 .....	377
IV. Additional Follow-Up .....	377
A. EADs for E Spouses .....	377
B. E Visa Renewals .....	378
C. E Extensions .....	379
D. Change in Duties or Ownership .....	381
E. If Employment Ceases .....	381
F. Sponsoring an E Nonimmigrant for Permanent Residence .....	381
1. Impact of Owner or Majority Shareholder Pursuing Permanent Residence on Other E Employees .....	381
2. Moonlighting under EAD .....	385
<b>CHAPTER FIVE: E-3 VISAS AND STATUS .....</b>	<b>389</b>
I. Executive Summary .....	389
A. Checklist of Requirements .....	389
B. Documents Necessary to Prepare the Petition .....	389
C. Checklist of Questions to Ask the Client .....	389
II. Introduction .....	390
III. Requirements and Interpretations .....	392
A. Professional “Specialty Occupation” Assignment in the United States .....	392
B. Qualification as a Professional .....	393
1. Educational Qualifications .....	393
2. Equivalence to a University Degree Through Professional Experience .....	393
3. Evidence of Licensure .....	394
C. Australian Citizenship .....	394
D. Certified Labor Condition Application .....	394
E. Intent to Depart the United States upon Termination of Status .....	396
IV. Process .....	397
A. Preparing the E-3 Visa Application or Petition .....	397
1. U.S. Company Support Statement .....	397
2. The Labor Condition Application .....	398
B. E-3 Visa Application vs. E-3 Change of Status Petition .....	399

C. E-3 Visa Application at a U.S. Consulate .....	401
D. Admission to the United States .....	402
E. E-3 Change of Status Petition Filed with USCIS .....	403
1. Form G-28 .....	403
2. Form I-129 .....	404
V. Additional Follow-Up .....	405
A. E-3 Extensions .....	405
B. Change in Work Location .....	406
C. E-3 Change of Employer Petitions .....	407
D. If Employment Ceases .....	407
E. EADs for E-3D Spouses .....	408
<b>CHAPTER SIX: THE LABOR CONDITION APPLICATION .....</b>	<b>409</b>
I. Executive Summary .....	409
II. Required Wage Attestation .....	410
A. Prevailing Wage .....	411
1. A Working Definition .....	411
2. When to Determine the Prevailing Wage .....	411
3. How to Determine the Prevailing Wage .....	411
a. Government Determination .....	412
(1) Using Alternative Source While Awaiting Government Determination .....	413
(2) Government Determination Based on Employer-Provided Survey .....	414
(3) Contesting a PWD .....	417
b. Independent Authoritative Source .....	417
c. Other Legitimate Source .....	419
(1) OES Wages .....	420
(2) Special Case for Prevailing Wages: §212(p)(1) Entities .....	424
d. Area of Intended Employment .....	426
e. Similarly Employed .....	428
4. Stating the Wage .....	428
5. Documentation of the Prevailing Wage .....	428
B. Actual Wage .....	429
1. Changes in the Actual Wage .....	431
2. Documenting Establishment of the Actual Wage .....	431
C. Benefits .....	432
D. Documenting Payment of Wages .....	433
E. When the Required Wage Must Be Paid .....	434
F. Prohibition Against “Benching” .....	435
G. Deductions from Wages .....	438
H. Penalties for Ceasing Employment .....	442
I. Job for Which Required Wage Must Be Paid .....	444
III. Working Conditions Attestation .....	445
IV. Strike or Lockout Attestation .....	445
V. Notice Attestation .....	447
VI. Dependents and Willful Violators .....	450
A. Determining Who Is Dependent .....	451
1. Single Employer Rule .....	453
2. Documenting Dependency Status .....	453
3. Changes in Dependency Status .....	454
B. Identifying Willful Violators .....	454
C. Exempt H-1Bs .....	455

D. The Additional Attestations .....	456
1. The Non-Displacement Attestation .....	457
a. Definition of Layoff .....	457
b. Essentially Equivalent Position .....	458
c. Documenting the Non-Displacement Attestation .....	458
2. The Secondary Non-Displacement Attestation .....	458
3. Recruitment of U.S. Workers Attestation .....	461
VII. Other Issues .....	465
A. Changes in Corporate Structure .....	465
B. Short-Term Placements .....	466
C. Displacement in the Course of a Willful Violation .....	468
D. Retaliation .....	468
VIII. Process and Filing .....	469
A. Registering for and Using the iCert System .....	471
B. The Prevailing Wage Determination Request (PWDR), ETA Form 9141 .....	472
1. Parts A Through C .....	473
2. Part D .....	473
3. Part E .....	473
C. Preparing the LCA .....	475
1. Completing the ETA Form 9035 – Parts A and B .....	475
2. Completing the ETA Form 9035 – Parts C Through F .....	475
3. Completing the ETA Form 9035 – Part G .....	475
4. Completing the ETA Form 9035 – Parts H and I .....	477
5. Completing the ETA Form 9035 – Parts J Through N .....	477
D. Filing the LCA and Certification .....	478
IX. Recordkeeping Requirements .....	479
A. The Public Access File .....	479
B. Non-Public Records That Must Be Maintained .....	481
X. Enforcement .....	483
A. Complaint by Aggrieved Party .....	484
B. Random Investigations .....	485
C. Specific, Credible Information and Secretary-Certified Reasonable Cause .....	485
D. If Prevailing Wage Violations Are at Issue .....	487
E. Good Faith Compliance .....	487
F. Statute of Limitations .....	488
G. Determinations and Hearings .....	489
H. Appeals .....	490
I. Remedies .....	491
<b>CHAPTER SEVEN: H-1B VISAS AND STATUS .....</b>	<b>501</b>
I. Executive Summary .....	501
A. Checklist of Requirements .....	501
B. Documents Necessary to Prepare the Petition .....	501
C. Checklist of Questions to Ask the Client .....	501
II. Requirements and Interpretations .....	502
A. Profession and Specialty Occupation .....	505
1. Profession .....	505
2. Specialty Occupation .....	508
a. A Degree Is Normally a Minimum Requirement for the Occupation.....	511
(1) DOL Job Description .....	513
(2) Focus on Job Duties .....	515



(3) Petitioner’s Size and Industry .....	517
b. A Degree Is Normally Required in the Industry by the Employer, and/or the Job Duties Are Specialized and Complex .....	519
B. Qualifying for the Specialty Occupation .....	524
1. Positions Requiring Licensure .....	527
a. State Requirements for Licensure vis-à-vis H-1B Eligibility Requirements .....	530
b. Healthcare Occupations .....	531
2. Credentials Evaluations of Foreign Degrees and Three-Year Bachelor’s Degrees .....	535
3. Experience and Training Equivalent to a Degree .....	538
a. Professional Experience .....	541
b. Recognition in the Specialty Occupation .....	543
C. Numerical Limitation .....	544
1. Filing Procedure and Lottery System .....	547
2. Prohibition of Multiple Petitions on Behalf of a Single Beneficiary .....	551
3. Exemption for Certain Employees of Educational and Nonprofit Institutions .....	554
a. Qualifying Entities .....	554
(1) Institution of Higher Education .....	554
(2) Related to or Affiliated with Institution of Higher Education .....	555
(3) Nonprofit Research Organization .....	557
(4) Governmental Research Organization .....	558
b. “Employed at” .....	558
c. When Cap-Exempt Employment Ends .....	560
4. Previous H-1B Visa Number Issuance .....	561
D. Labor Condition Application .....	562
E. H-1B Employment Relationship, Termination of the Relationship, and Return Transportation Obligation .....	562
1. Right to Control .....	564
2. Evidence of the Employment Relationship .....	569
F. Technical Considerations .....	571
1. Agent-Petitioners .....	571
2. “Emergent Situations,” Multiple Worksites, and Multiple Employers .....	573
3. Additional Fees .....	574
a. Exemption from the ACWIA Fee for Certain Employers .....	579
b. Exemption from the ACWIA Fee in Certain Situations .....	581
G. Impact of Labor Disputes .....	582
H. Exemption from Nonimmigrant Intent Requirement .....	584
I. H-4 Dependents .....	586
III. Common Issues .....	589
A. Interrelationship Between F-1 and H-1B Status .....	589
1. Practical Training .....	591
a. “Cap-Gap” Relief .....	596
b. International Travel During OPT .....	599
c. 24-Month OPT Extension for STEM Degree Students .....	600
2. Strategies If the H-1B Petition Is Rejected or Denied .....	606
B. H-1B Portability .....	609
a. Porting While the Beneficiary Is Unemployed .....	611
b. “Bridging” Petitions .....	613
c. Portability from Cap-Exempt to Cap-Subject Employer .....	613
d. International Travel During Pendency of the H-1B Portability Petition .....	614
C. Compliance Programs .....	615

1. Fraud Detection and National Security (FDNS) .....	615
2. Petition Verification by DOS .....	621
IV. Process .....	623
A. H-1B Petition .....	623
1. Form G-28 .....	626
2. Form I-907 .....	626
3. Form I-129 .....	627
4. H Supplement .....	630
5. Data Collection and Filing Fee Exemption Supplement .....	630
6. Support Statement .....	631
B. RFEs .....	632
C. Approval Notice and Petition Validity .....	635
D. Denial, Revocation, and Appeals .....	636
E. Visa Application .....	638
1. H-1B1 Visa Applications .....	640
2. Information on Worker Rights .....	642
3. DOS Reporting of Violations to DOL .....	643
F. Admission to the United States .....	645
V. Additional Follow-Up .....	647
A. Amended Petitions .....	647
1. Corporate Reorganization .....	648
2. Change in Worksite .....	649
B. If Employment Ceases .....	651
C. H-1B Time Limitations .....	652
1. AC21 Exemptions from Time Limitations for Beneficiaries Sponsored for Permanent Residence .....	655
a. Extensions for Lengthy Adjudications .....	655
b. Extensions Due to Impact of Immigrant Quota Backlogs .....	657
c. Appeal of Labor Certification Application and Immigrant Visa Petition for AC21 Extension .....	659
2. Recapture of H-1B Time .....	660
D. Extensions .....	662
E. Sponsoring an H-1B Worker for Permanent Residence .....	667
F. H-1B Petition Withdrawals .....	667
<b>CHAPTER EIGHT: H-2B VISAS AND STATUS .....</b>	<b>669</b>
I. Executive Summary .....	669
A. Checklist of Requirements .....	669
B. Documents Necessary to Prepare the Petition .....	669
C. Checklist of Questions to Ask the Client .....	670
II. Evolution of the Current State of the Law .....	670
III. Requirements and Interpretations .....	672
A. Overview .....	672
B. Temporary Services or Labor .....	675
1. Process and Documentation to Show Temporary Need .....	679
2. The Four Types of Temporary Need .....	683
a. One-Time Occurrence .....	683
b. Seasonal Need .....	686
c. Peakload Need .....	687
d. Intermittent Need .....	688
C. Full-Time Employment with Employer .....	689

D. Numerical Limitation .....	691
E. Wage Requirements for H-2B Workers and Workers in Corresponding Employment .....	693
IV. Temporary Labor Certification .....	695
A. Qualifications and Requirements .....	699
B. Employer Registration .....	699
C. Prevailing Wage .....	701
D. SWA Submission .....	705
E. DOL Filing .....	708
F. Recruitment .....	710
1. U.S. Workers .....	711
2. Advertising Requirements .....	712
3. Required Contacts and Postings .....	714
4. Additional Recruitment .....	714
5. Recruitment Report .....	715
G. Emergency Applications .....	716
H. Other Requirements and Assurances .....	717
1. Layoffs .....	720
2. Prohibitions on Fee Payments by H-2B Workers .....	721
3. Recruiters .....	724
4. Transportation Costs .....	725
5. Tools, Equipment, Etc. ....	726
6. Placement of Workers .....	727
7. Worker Protections and Notifications.....	727
8. Cessation of Employment .....	728
I. Document Retention Requirements .....	729
J. Decision of the Temporary Labor Certification Application .....	731
K. Appeals to BALCA .....	732
L. Enforcement and Sanctions .....	734
1. Post-Adjudication Audit .....	734
2. Assisted Recruitment .....	734
3. Revocation .....	735
4. Debarment .....	737
5. Enforcement of Obligations .....	741
M. Role of Attorney or Agent in the Temporary Labor Certification Process .....	747
III. H-2B Petition .....	748
A. Timing Considerations for Filing the H-2B Petition and the Temporary Labor Certification Application .....	749
B. Multiple Worksites, Multiple Employers, Foreign Employers, and Agent-Petitioners .....	750
C. Multiple and Unnamed Beneficiaries and Substitution of Beneficiaries .....	753
D. Petitioner Notification Requirements for No-Show, Termination, and Abscondment .....	755
E. Return Transportation Obligation .....	759
F. Citizens of Certain Named Countries .....	760
G. Nonimmigrant Intent .....	762
IV. Managing Client Expectations: Increased Scrutiny and Special Processing for Certain Situations .....	764
A. The H-2B Nonimmigrant Will Provide Training .....	764
B. Restrictive Requirements: Professional Certifications, Combination of Occupations, Foreign Languages, and the Business Necessity Justification .....	765
C. Temporary Labor Certification Applications Filed by Job Contractors .....	767
D. Tree Planting, Reforestation, and Logging Occupations .....	770

1. Temporary Need .....	771
2. Temporary Labor Certification Applications Filed by Farm Labor Contractors .....	772
3. Filing the Temporary Labor Certification Application .....	775
E. Professional Athletes .....	777
F. Entertainers .....	778
G. Emergency Boilermakers .....	780
H. Seafood Workers .....	781
V. Forms and Filing Packages .....	782
A. Prevailing Wage Determination .....	782
1. Parts A Through C .....	782
2. Part D .....	782
3. Part E .....	783
B. Temporary Labor Certification .....	784
1. Parts A and B .....	785
2. Part C .....	786
3. Part D .....	786
4. Part E .....	786
5. Part F .....	786
6. Part G .....	787
7. Part H .....	787
8. Part I and Appendix B .....	787
9. Preparer .....	787
C. H-2B Petition .....	787
1. Form G-28 .....	789
2. Form I-907 .....	790
3. Form I-129 .....	790
4. H Supplement .....	792
5. Support Statement .....	793
VI. Post-Approval Process .....	793
A. Visa Application .....	793
B. Admission to the United States .....	794
1. Admission of H-4 Dependents in B-2 Status .....	796
2. Canadian and Mexican Citizens .....	796
VII. Additional Follow-Up .....	797
A. Extensions, Renewals, and Change of Status .....	797
B. Interruptions to Accrual of H-2B Time .....	798
C. Sponsoring an H-2B Worker for Permanent Residence .....	799
<b>CHAPTER NINE: H-3 VISAS AND STATUS .....</b>	<b>801</b>
I. Executive Summary .....	801
A. Checklist of Requirements .....	801
B. Documents Necessary to Prepare the Petition .....	801
C. Checklist of Questions to Ask the Client .....	801
II. Introduction .....	802
III. Requirements and Interpretations .....	803
A. Nonimmigrant Intent .....	803
B. General H-3 Training Programs .....	804
1. The Training Is Unavailable in the Home Country .....	808
2. The Trainee's Role vis-à-vis Positions for U.S. Workers .....	809
3. Productive Employment May Only Be Incidental and Necessary to the Training Program .....	810

4. Benefit to Trainee in Pursuing a Career Outside the United States .....	811
5. Specific Training Program .....	812
6. Source of Remuneration and Benefit to the Petitioner .....	815
7. Other Considerations .....	816
a. Size and Nature of the Petitioner's Business .....	816
b. The Beneficiary Has Education and/or Experience in the Field or a Related Field .....	817
c. The Beneficiary Previously Received Practical Training in F-1 Status .....	818
C. Special Education Exchange Visitor Program .....	819
IV. Managing Client Expectations: Increased Scrutiny in Certain Situations .....	821
A. Training Programs for Medical Students .....	821
B. Training Programs for Nurses .....	821
C. Impact of Labor Disputes .....	821
V. Preparing the H-3 Petition .....	822
A. Form G-28 .....	823
B. Form I-907 .....	823
C. Form I-129 .....	823
D. H Supplement .....	824
E. Support Statement .....	825
F. Training Program and Index of Exhibits .....	826
VI. Process .....	827
A. The H-3 Petition .....	827
B. Visa Application .....	828
C. Admission to the United States .....	829
1. Admission of H-4 Dependents in B-2 Status .....	830
2. Canadian and Mexican Citizens .....	831
VII. Additional Follow-Up .....	831
A. Extensions, Renewals, and Change of Status .....	831
1. H-3 Extensions .....	832
2. Change of Status from H-3 .....	833
B. Sponsoring an H-3 Trainee for Permanent Residence .....	834
<b>CHAPTER TEN: J-1 TRAINEES AND INTERNS .....</b>	<b>837</b>
I. Executive Summary .....	837
A. Checklist of Requirements .....	837
B. Documents Necessary to Prepare the Application (Filed with J-1 Program Sponsor) .....	837
C. Checklist of Questions to Ask the Client .....	837
II. Introduction .....	838
III. Requirements and Interpretations .....	840
A. Internships and Training Programs .....	840
B. Special Programs for Certain Nationalities .....	844
C. Training Programs and Internships vs. Employment .....	847
D. J-1 Program Sponsors .....	849
1. Site Visits of Host Organizations .....	852
2. Issuance of Form DS-2019 .....	853
3. The SEVIS System .....	855
4. Detailed Internship or Training Program and Form DS-7002 .....	856
5. J-1 Program Evaluations .....	857
6. Use of Third-Parties by J-1 Sponsors .....	857
E. Nonimmigrant Intent .....	858
F. Sufficient Funds .....	860
IV. Process .....	861

A. Preparing the J-1 Training Program or Internship Application .....	861
1. The Form DS-7002 .....	862
2. Sample Descriptions .....	864
3. Experience Confirmation Letters .....	865
4. Letter of Offer of Training or Internship Program .....	865
5. Declaration Regarding Compliance with Obligations .....	865
B. Visa Application .....	866
1. The SEVIS Fee .....	868
C. Admission to the United States .....	871
1. Canadian Citizens .....	873
V. Additional Follow-Up .....	873
A. Name and/or Address Changes .....	875
B. Extensions, Subsequent J-1 Programs, and Program Transfers .....	875
C. International Travel .....	877
D. Change of Status .....	878
E. EADs for J-2 Dependents .....	881
F. Two-Year Foreign Residence Requirement .....	882
1. Whether the Requirement Applies .....	883
2. Satisfying the Home Residency Requirement .....	884
3. The Skills List .....	885
4. Strategies to Avoid the Home Residence Requirement and/or Avoid a Waiver Application .....	887
a. The Field Is Not on the Skills List for the Foreign National's Home Country .....	887
b. Only a Related Field Is Stated on the Skills List .....	888
c. The Foreign National Holds Dual Citizenship or Citizenship and Permanent Residence in Two Different Countries .....	889
d. Impossibility of Fulfillment .....	890
G. Waiver of Two-Year Foreign Residence Requirement .....	891
1. Exceptional Hardship to U.S. Citizen or Permanent Resident Spouse or Child .....	897
2. Fear of Persecution Based on Race, Religion, or Political Opinion .....	906
3. Request by an Interested Government Agency (IGA) .....	907
4. No Objection Statement from the Home Country's Government .....	908
H. Sponsoring a J-1 Intern or Trainee for Permanent Residence .....	910
<b>CHAPTER ELEVEN: L-1 VISAS AND NONIMMIGRANT STATUS .....</b>	<b>913</b>
I. Executive Summary .....	913
A. Checklist of Requirements .....	913
B. Documents and Information Necessary to Prepare L-1 Petition .....	913
C. Checklist of Questions to Ask Client .....	914
II. Requirements and Definitions .....	914
A. Qualifying Relationship .....	914
1. Parent/Subsidiary .....	915
2. Branch Office .....	916
3. Affiliate .....	917
B. Qualifying Employment by the Transferee .....	918
C. Executive, Managerial, or Specialized Knowledge Capacity .....	919
1. Different Duties or Capacities in the United States and Abroad .....	919
2. L-1A Manager or Executive .....	921
3. Standards Specific to the L-1A Executive .....	926
4. Standards Specific to the L-1A Manager .....	927
a. Manager of Other Workers .....	927

b. Function Manager .....	928
5. The L-1B Specialized Knowledge .....	932
a. History .....	932
b. Current Standards .....	935
c. Demonstrating How the Standards Are Met.....	936
d. Placement at Worksite of Another Company .....	940
III. Key Issues .....	942
A. Planning Ahead for Permanent Resident Status .....	942
1. Period of Authorized Stay.....	943
2. Possible Eligibility for EB-1 Classification.....	943
3. Bypassing Labor Certification and the EB-2/EB-3 Categories.....	945
4. Changing from L-1B to L-1A.....	946
5. Filing an EB-1 While in L-1B Status.....	948
6. Dual Intent Considerations .....	948
7. International Travel While Permanent Residence Is Pursued.....	950
B. The Transferee Was a Contractor Abroad .....	951
C. The Transferee Will Be Employed in a New Office.....	952
1. Doing Business for Less Than One Year.....	952
2. Documenting a Business Plan.....	954
3. Documentation for a Manager or Executive Coming to a New Office.....	956
4. Documentation for a Specialized Knowledge Employee Coming to a New Office .....	958
5. Sufficient Physical Premises.....	958
6. Continued Existence of Foreign Company .....	959
7. Extensions of New Office Petitions.....	960
D. Petitioner Is a Small Company .....	963
E. Impact of Closure of a Foreign Entity.....	965
F. Employment That Is Other Than Full-Time Employment in L-1 Status.....	966
G. Impact of Labor Disputes on Canadian and Mexican Transferees .....	967
H. Calendar Expiration and Follow-Up.....	968
I. Finding More Time in the United States.....	969
1. Grace Periods.....	969
2. Recapture of L-1 Time.....	970
3. H-1B Change of Status for L-1B Transferees.....	971
4. Other Strategies After the Maximum Period of Authorized Stay Has Been Exhausted ...	972
5. Exceptions to the Maximum Period of Stay Rule.....	972
A. Preparing and Filing the Individual Petition .....	973
1. Form G-28 .....	973
2. Form I-907 .....	974
3. Form I-129 .....	974
4. L Supplement .....	978
5. U.S. Company Statement .....	978
6. Foreign Company Statement .....	979
7. Evidence of the Qualifying Relationship .....	979
8. Filing Fees .....	980
9. Bundling Petitions .....	980
B. Petition Approval .....	981
C. Visa Application Based on Individual Petition.....	981
D. Canadian Citizens .....	983
E. Blanket L Petition .....	986
1. Obtaining Blanket L Certification .....	986

2. L-1 Visa Applications Under the Blanket L Petition .....	987
3. Filing Fees .....	989
4. Admission to the United States with L-1 Visa Issued Under a Blanket L Petition .....	990
F. EADs for L-2 Spouses .....	992
G. Extensions .....	993
VI. Practice Pointers .....	995
<b>CHAPTER TWELVE: O VISAS AND STATUS .....</b>	<b>997</b>
I. Executive Summary .....	997
A. Checklist of Requirements .....	997
B. Documents Necessary to Prepare the Petition .....	997
C. Checklist of Questions to Ask the Client .....	997
II. Introduction .....	998
III. Requirements and Interpretations .....	1000
A. The O-1 Assignment .....	1000
1. Field of Endeavor .....	1001
2. Event .....	1001
B. O-1 Petitioners; Agents .....	1006
C. Industry-Specific Requirements .....	1010
1. Extraordinary Ability in Science, Education, Business, or Athletics (O-1A) .....	1013
2. Extraordinary Ability in the Arts (O-1B) .....	1014
3. Extraordinary Ability in Motion Picture or Television Production (O-1B) .....	1016
D. Criteria to Establish Extraordinary Ability .....	1018
1. Awards and Prizes (O-1A and B) .....	1025
2. Membership in a Prestigious Industry Association (O-1A) .....	1031
3. Published Materials Describing the Beneficiary's Achievements (O-1A) .....	1032
4. Beneficiary's Role as a Judge of the Work of Others (O-1A) .....	1035
5. Original and Significant Contributions to the Field (O-1A) .....	1038
6. Authorship of Published Scholarly Articles in the Field (O-1A) .....	1043
7. Employment in a Critical or Essential Capacity for Organizations with Distinguished Reputations (O-1A) .....	1045
8. High Salary or Remuneration (O-1A and O-1B) .....	1050
9. Performance in a Lead, Starring, or Critical Role in Productions or Events for Entities with Distinguished Reputations (O-1B) .....	1052
10. National or International Recognition as Evidenced by Critical Reviews or Publications (O-1B) .....	1055
11. Record of Major Commercial or Critical Acclaimed Successes (O-1B) .....	1056
12. Significant Recognition for Achievements from Government Organizations or Experts in the Field (O-1B) .....	1057
13. Comparable Evidence .....	1057
E. O-2 Petitions .....	1059
F. Supporting Evidence for O-1 and O-2 Petitions .....	1062
1. Testimonials from Industry Experts .....	1064
2. Advisory Opinion from a Peer Group, Labor Organization, or Management Organization .....	1067
3. Exceptions to, and Waivers of, the Advisory Opinion Requirement .....	1074
4. Employment Contracts and Summaries of Terms of the Oral Agreement Under Which the Beneficiary Will Be Employed .....	1076
5. Explanation of Services and Itinerary .....	1077
G. Nonimmigrant Intent .....	1078
IV. Managing Client Expectations: Increased Scrutiny in Certain Situations .....	1080



A. Coaches, Trainers, and Instructors of Athletic Competitors .....	1080
C. Impact of Labor Disputes .....	1084
D. Return Transportation Obligation .....	1085
V. Preparing the O-1 or O-2 Petition .....	1085
A. Form G-28 .....	1086
B. Form I-907 .....	1086
C. Form I-129 .....	1086
D. O and P Supplement .....	1088
E. Support Statement .....	1088
F. Index of Exhibits .....	1089
VI. Process .....	1090
A. The O Petition .....	1090
B. RFEs .....	1091
C. Visa Application .....	1091
D. Admission to the United States .....	1093
1. Generally .....	1093
2. Canadian and Mexican Citizens .....	1094
VII. Additional Follow-Up .....	1095
A. Extensions .....	1095
B. Amended and Change of Employer Petitions .....	1097
C. If Employment Ceases .....	1098
D. Sponsoring an O-1 Beneficiary for Permanent Residence .....	1099
<b>CHAPTER THIRTEEN: P VISAS AND STATUS .....</b>	<b>1101</b>
I. Executive Summary .....	1101
A. Checklist of Requirements .....	1101
B. Documents Necessary to Prepare the Petition .....	1101
C. Checklist of Questions to Ask the Client .....	1102
II. Introduction .....	1102
III. Requirements and Definitions .....	1104
A. Competition, Performance, or Event of the P Assignment .....	1104
B. P Petitioners .....	1106
1. Agent-Petitioners .....	1107
C. P-1 Petitions .....	1111
1. P-1 Athletes .....	1111
a. Evidence for P-1 Athlete Petitions .....	1115
(1) Significant Participation in a Prior Season with a Major U.S. Sports League .....	1116
(2) Participation in International Competition with a National Team .....	1117
(3) Significant Participation in a Prior Season for a U.S. College or University in Intercollegiate Competition .....	1117
(4) Statement of the International Recognition of the Beneficiary or Team by Governing Body or Official of the Sport .....	1118
(5) Statement of International Recognition from Sports Media or Recognized Expert .....	1118
(6) International Ranking .....	1119
(7) Significant Honor or Award .....	1119
b. No P-1 Visas to Beneficiaries Who Are Nationals of Countries That Are State Sponsors of International Terrorism .....	1120
2. P-1 Arts and Entertainment Groups .....	1120
a. Standards for Entertainment Groups .....	1121
b. Evidence for Artist and Entertainer P-1 Petitions .....	1126

(1) Performance as a Starring or Leading Entertainment Group in Productions or Events Which Have a Distinguished Reputation .....	1127
(2) International Recognition and Acclaim for Outstanding Achievement .....	1127
(3) Performance as a Starring or Leading Group for Organizations and Establishments That Have a Distinguished Reputation .....	1127
(4) Record of Major Commercial or Critically Acclaimed Success .....	1127
(5) Significant Recognition from Organizations, Critics, Government Agencies, or Other Recognized Experts .....	1128
(6) High Salary or Remuneration .....	1128
3. Exceptions .....	1128
D. P-2 Artists and Entertainers in Reciprocal Exchange Programs .....	1129
E. Culturally Unique P-3 Artists and Entertainers .....	1131
F. Supporting Evidence for P Petitions .....	1137
1. Testimonials from Industry Experts .....	1138
2. Advisory Opinion from a Labor Organization .....	1139
3. Exceptions to the Advisory Opinion Requirement .....	1144
4. Employment Contracts and Summaries of Terms of the Oral Agreement Under Which the Beneficiary Will Be Employed .....	1146
5. Explanation of Services and Itinerary .....	1146
G. Nonimmigrant Intent .....	1147
IV. Managing Client Expectations: Common Issues .....	1149
A. Substitution of Beneficiaries .....	1149
B. Essential Support Personnel .....	1149
C. Impact of Labor Disputes .....	1154
D. Return Transportation Obligation .....	1155
V. Preparing the P Petition .....	1156
A. Form G-28 .....	1156
B. Form I-907 .....	1157
C. Form I-129 .....	1157
D. P Supplement .....	1158
E. Support Statement .....	1159
F. Index of Exhibits .....	1160
VI. Process .....	1160
A. The P Petition .....	1160
B. Visa Application .....	1162
C. Admission to the United States .....	1164
1. Canadian and Mexican Citizens .....	1165
VII. Additional Follow-Up .....	1165
A. Extensions .....	1166
B. Amended and Change of Employer Petitions .....	1169
C. Sponsoring a P Nonimmigrant for Permanent Residence .....	1170
<b>CHAPTER FOURTEEN: TN VISAS AND STATUS .....</b>	<b>1173</b>
I. Executive Summary .....	1173
A. Checklist of Requirements .....	1173
B. Documents and Information Necessary to Prepare TN Request .....	1173
C. Checklist of Questions to Ask Client .....	1174
II. Requirements and Definitions .....	1174
A. Professional Assignment in the United States .....	1175
B. Qualification as a Professional .....	1183
C. Qualification as a Business Person .....	1187

D. Canadian or Mexican Citizenship .....	1187
E. Temporary Entry .....	1188
III. Managing Client Expectations: Increased Scrutiny in Certain Situations .....	1189
A. Management Consultants .....	1189
B. Scientific Technicians and Technologists .....	1191
C. Medical and Health Care Professions .....	1197
1. Registered Nurses .....	1201
2. Medical Laboratory Technologists and Medical Technologists .....	1203
3. Occupational Therapists .....	1204
4. Physiotherapists and Physical Therapists .....	1205
5. Physicians .....	1206
D. Disaster Relief Insurance Claims Adjusters .....	1207
E. Hotel Managers .....	1208
F. Sylviculturists, Foresters, and Range Managers .....	1208
G. Computer Systems Analysts .....	1210
H. Engineers and Software Engineers .....	1210
I. Animal and Plant Breeders .....	1211
J. Actuaries .....	1212
K. Training .....	1213
L. Impact of Labor Disputes on Canadian and Mexican Transferees .....	1214
M. Self-Employment Prohibited .....	1215
N. The Foreign National Is a Beneficiary of an Immigrant Visa Petition .....	1218
IV. Process .....	1221
A. Canadian Citizens .....	1225
1. Application for U.S. Admission .....	1225
2. Admission to the United States .....	1227
3. Denial of TN Petition and U.S. Admission .....	1228
4. Dependents of Canadian Citizens .....	1229
B. Mexican Citizens .....	1230
1. Application for a TN Visa .....	1230
2. Admission to the United States .....	1231
V. Preparing the TN Petition .....	1233
A. Form I-129 .....	1233
B. Support Statement .....	1234
C. Form G-28 .....	1236
VI. Strategy: TN vs. H-1B .....	1236
A. Numerical and Time Limitations .....	1237
B. Professional Occupations .....	1238
C. Timing and Cost Issues .....	1238
D. State Licensure .....	1239
E. Employment Relationships and Employer Responsibilities .....	1240
F. Change in Duties or Work Location .....	1240
G. Dual Intent .....	1241
VII. Additional Follow-Up .....	1241
A. Extensions .....	1241
1. TN Extensions Filed with USCIS .....	1241
a. Form G-28 .....	1243
b. Form I-907 .....	1243
c. Form I-129 .....	1243
d. Trade Agreement Supplement .....	1245

e. TN Extension Support Statement .....	1245
2. Filing a New TN Petition at a Port of Entry or U.S. Consulate .....	1245
3. TN Extension Filed with USCIS vs. New TN Petition Filed with Port of Entry or U.S. Consulate .....	1246
a. Extension of Employment Authorization .....	1246
b. Travel to the Port of Entry or U.S. Consulate .....	1247
c. Processing Times .....	1248
d. Premium Processing .....	1248
e. Review of Denials .....	1248
B. If Employment Ceases .....	1249
C. Sponsoring a TN Professional for Permanent Residence .....	1250
C. H-1B Change of Status Petitions .....	1252

## **VOLUME 1: APPENDIX**

<b>INTERNATIONAL ENTREPRENEUR RULE .....</b>	<b>1255</b>
I. Introduction and Background .....	1255
II. Requirements for an Initial Grant of Parole .....	1255
III. Application Process for an Initial Grant of Parole .....	1258
IV. Adjudication of Initial Parole Application .....	1259
V. Requirements for Re-Parole .....	1260
VI. Spouses and Minor Children .....	1261
VII. Obligations and Limitations on Parole for Entrepreneurs .....	1261
VIII. Miscellaneous .....	1263

## **VOLUME 1: TABLES**

Table of Decisions .....	1267
Tables of INA Citations .....	1307
Tables of USC Citations .....	1317
Tables of CFR Citations.....	1319
Tables of FAM Citations .....	1358
Tables of USCIS Policy Manual Citations.....	1367
Tables of AFM Citations .....	1368
Tables of IFM Citations .....	1373
Tables of Fed. Reg. Citations.....	1374
Tables of Immigration-Related Acts.....	1380
Tables of Agency Communications.....	1383
Subject Matter Index.....	1393