Protocols for Recruiting & Hiring Foreign Nationals



Step 1 –

Preliminary Questions to Ask Every Applicant

While reviewing a prospective applicant's authorization to legally work in the U.S., Company needs to ensure adherence to applicable discrimination laws to avoid violating any discrimination provisions under IRCA.

Office of Special Counsel (OSC) has approved asking the following questions of prospective applicants to screen for whether a prospective applicant will require immigration sponsorship to work for Company in the U.S. (Company should ask **both** of these questions to **all** potential applicants.)

- Are you legally authorized to work in the United States for our company?
- Do you now, or will you in the future, require sponsorship for employment visa status (e.g. H-1B visa status etc.) to work legally for our company in the United States?

With the answers to the above questions, Company can determine whether the prospective applicant will require immigration sponsorship to legally work for Company in the United States.

Step 2 –

Gathering *Preliminary*Background Information
on Prospective Applicant
for Immigration Counsel

If the prospective applicant does require immigration sponsorship, the next step is for Company to gather basic preliminary background information for Immigration Counsel to review.

This is solely a request to review facts and documentation to assess immigration options for the individual to work for Company in the U.S. for the potential position.

Important: This is not a request for any specific documents to complete the I-9 process.

The following information should be collected from the prospective applicant and Company and sent to Immigration Counsel for review:

- Copy of individual's current resume
- Copy of biographic page of passport
- Overview of potential position being offered, including job title, duties, salary range and job location

Step 3 –

Review and
Recommendation by
Immigration Counsel on
U.S. Immigration Options

Immigration Counsel will review the initial information/docs to provide various immigration options for the individual, including timing and costs.

In some cases additional information may be needed, including specific information about prior immigration approvals, total time spent in the U.S. in H-1B/L-1 status, green card paperwork in process etc.

After a complete review of all the information/documentation, Immigration Counsel will provide immigration options for the individual and overall timing and cost considerations.

Step 4 -

Company HR Collaborates with Immigration Counsel on Offer Letter and Terms of Employment (Start Date)

If a decision is made to make an offer to the foreign national applicant, the next step is drafting offer letter language.

Contingent on Work Authorization

Offer letter to foreign national applicants should include verbage confirming the offer is contingent upon obtaining proper work authorization. Sample language can include:

 All offers of employment to a foreign national are contingent upon the foreign national being granted appropriate employment authorization from U.S. Citizenship and Immigration Services (USCIS), U.S. Department of State (DoS) and/or U.S. Customs and Border Protection (CBP).

Salary Offer for H-1B/E-3

Some immigration visa categories require a certain prevailing wage—e.g. H-1B and E-3.

No offer letter should be finalized for an individual who requires H-1B or E-3 status without Immigration Counsel reviewing the salary offer.

Start Date

Timing is also an important issue. Timing of pursuing an immigration employment authorziation should be discussed with Immigration Counsel before setting any start date.

Step 5 –

Preparation and Completion of Immigration Filing

If an offer is accepted, HR and Immigration Counsel should be contacted so that prep of the immigration paperwork can commence.

HR and Immigration Counsel will work with the foreign national applicant to gather all required documents and file paperwork with the appropriate immigration agency.

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