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Using skilled immigrants to help fill talent gaps

As the Covid-19 pandemic recedes, companies are now faced with a changed labor market. While fears of a recession loom, unemployment remains at near all-time lows. Health care, technology services, and advanced manufacturing all face acute shortages of skilled positions. In particular, the recruitment of physicians, engineers, IT professionals, and nurses remains difficult. The US immigration system is designed to provide a method through the “skilled immigration” framework for employers to meet such needs, but employers looking to sponsor a foreign worker for the first time often find the process complex and daunting. The Indiana Lawyer discussed the challenges of hiring foreign workers with Joseph Fuschetto, an immigration partner at Bunger & Robertson.

Q: What are the programs that allow a company to sponsor a foreign worker in the United States?

Joseph Fuschetto: There is an alphabet soup of programs, such

as H-1B, L-1, EB-2, E-3, etc., with the H-1B and Labor Certification programs being the most commonly used. The number and complexity of programs makes it important to consult with an employment immigration attorney at the onset of the process as there are routinely

immigration options available that may not be readily apparent. I take satisfaction in finding lesser-used methods to obtain sponsorship.

Q: Are there any requirements the employer must meet to sponsor a foreign employee?

Joseph Fuschetto: While there can be additional requirements for some skilled labor programs, most programs require that the employer maintain a US office and be able to show they have the financial wherewithal to pay the foreign employee’s wages.

Q: What are the requirements the employee must meet to be sponsored?

Joseph Fuschetto: Again, it depends upon the program, but most programs require the employee have a bachelor’s degree or above in their field. In many circumstances, work experience can be used to substitute for this requirement.

Q: Who must pay for the immigration process, employee or employer?

Joseph Fuschetto: It depends. For certain processes, like Labor Certification, there are statutory requirements that the employer pay certain costs and fees. At the beginning of each case, I always need to have a frank discussion about what fees are required to be paid by the employer and what fees can be paid by the employee.

Q: How long does the process take?

Joseph Fuschetto: Depending upon the program, approval can take merely a few weeks from our initial meeting. But it can take years or even decades in the case of some employment-based immigration filings. This is why I take time at the onset of each case to explain relevant timelines to both employer and employee.

Q: Can skilled foreign workers be sponsored if they work remotely?

Joseph Fuschetto: Yes, although there may be additional requirements



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in these situations. This is a developing area of the law. While foreign workers can be sponsored while working remotely in the US, the complexities of the situation make it essential to consult with an experienced immigration attorney.

Q: I am a skilled engineer/physician/actor/musician/researcher/athlete, but I do not have a US employer willing to sponsor me. Do I have options?

Joseph Fuschetto: Yes! There are a number of US immigration programs that allow top talent to self-sponsor or use an agent to obtain their immigration status. Among these programs are the National Interest Waiver, EB-1, and the O-1 program. Personally, I enjoy these cases most because clients’ occupations can be fascinating and vary widely, including everything from a competitive swimmer to a gifted surgeon. As a curious person I enjoy developing an advanced understanding of their field.

Q: Do you have any other advice for employers interested in sponsoring a skilled foreign worker?

Joseph Fuschetto: My first piece of advice would be to find experienced counsel to assist you. The second piece of advice would be to let go of any stigma you hold about skilled immigration and prepare a long-term immigration strategy. In the global talent race, an environment that is welcoming to immigrants, along with our skilled immigration policy, is America’s strongest comparative advantage. From Sergey Brin to John Lennon to Albert Einstein, the US has attracted and continues to attract top global talent. As the child of an immigrant, I take immense pride in the accomplishments of my former clients. Additionally, if you look to be a market leader in your field, you must have a policy and system in place to handle foreign workers. Otherwise, you’re giving your competitors an advantage. ●

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