

# Immigration

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## 1. Generally, how do companies proceed through the U.S. immigration system to establish a new business entity in Pennsylvania?

There are usually several stages that a company's personnel proceed through in establishing a new company in the U.S. During the exploratory/information gathering phase of the process, company officials can enter the U.S. on either a Visitor Visa (B-1 visa) or through the visa waiver program if they are from a country from which the U.S. does not require a visa.

Once an overseas investor or company decides to establish a business in the U.S., it should then apply for non-immigrant work visas for their management team and skilled personnel that they will send to the U.S. These are described in more depth below. These non-immigrant visas permit your employees to work and be paid in the U.S., using work visas that range in duration from 1 to 7 years.

As a company's presence in the U.S. matures and it decides that it wants to keep its personnel in the U.S. permanently, companies apply to change their employee's immigration status from a visa basis to obtaining Legal Permanent Residency (LPR or "green card" status). The green card process is described in more detail below.

## 2. What are the most common types of visas used by foreign companies, when setting up their first United States subsidiaries?

During the planning and exploration stages, a B-1 visitor's visa (or entry under the visa waiver program for eligible countries) is ideal. The B-1 visa can be obtained at a U.S. Consulate overseas and allows entry into the U.S. for up to six months. As the project reaches the stage where you want to maintain full time personnel in the U.S. on the payroll of a U.S. based business, then it is necessary to change to one of several business work visas that permit long term employment within the U.S.

The L visa is the most common type of visa that foreign enterprises use when setting up their first U.S. subsidiary. The L-1A visa allows managers and supervisors into the country for up to 7 years. The L-1B visa allows firms to bring skilled personnel to the U.S. for up to 5 years. Both of these visas may serve as the basis for seeking permanent resident status at a later date in the event a longer stay in the U.S. is desired. Other common visa types include the H-1B visa (Temporary Professional Worker) for individuals with a four-year bachelor's degree seeking a "Specialty Occupation" position with a United States employer, and the E-2 Investor's visa. Canadian and Mexican nationals with a college degree often obtain TN visas under the NAFTA treaty.

## 3. I have decided to set up a subsidiary in Pennsylvania. As a senior manager of my company, may I come to Pennsylvania on a regular basis to set up my business and take care of initial formalities?

Yes. Executives and managers with a Business Visitor Visa (B-1) may visit the U.S. to engage in all the activities that are associated with establishing a business in Pennsylvania. Businessmen that are nationals of most Western European nations, Canada, Japan, and a number of other nations can visit the U.S. for up to 90 days without having to first obtain a visa (the visa waiver program). Businessmen that are nationals of other countries (or who would like to stay longer than 90 days) may obtain a B-1 Business Visitor's visa by applying directly to the U.S. Consulate in their country.

## 4. If I set up my business in Pennsylvania can I bring over some of my key managerial and technical personnel to operate the U.S. subsidiary for 2 or 3 years?

Yes. If a business is set up in Pennsylvania, a company can bring managers and other key technical personnel under the L or H visa programs described above.

## 5. If I come to the U.S. to direct my company's U.S. subsidiary, can my spouse and children work in the U.S. as well?

While dependent children are generally not allowed to work, spouses may be eligible to work in the U.S. depending on the type of visa they obtain. Spouses of L visa holders can work in the U.S.; however spouses of workers who have entered the country on an H-1B visa may not. Dependent children of visa holders may attend public schools in the U.S.

## 6. Can I do all the paperwork for the visa applications myself or is it better to work with a specialized immigration lawyer?

Companies that regularly conduct international business and engage in international travel are often able to obtain a B-1 Business Visitor visa without hiring an immigration lawyer. Hiring an immigration attorney is recommended, however, when applying for an L, H-1B, E, or TN visa, or when a company is unfamiliar with U.S. Consulate procedures. An immigration attorney can also help you plan the timing for when key personnel will be able to arrive.

## 7. How long does it typically take to obtain an L-1 or H-1B visa?

This processing time once a case is filed can be as little as 15 days by opting for "premium processing" from the U.S. government. Premium processing costs \$1,000 (U.S.). It is important to note that H-1 visas are subject to annual numerical quotas. Accordingly, firms should consider consulting an immigration attorney to determine how many (if any) H-1B visas remain at the time you are considering making a request for this type of visa.

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Because it is necessary to gather company and employee documentation to prepare the application packet to the U.S. Citizenship and Immigration Services (USCIS) agency, companies should begin the process 3-4 months before they want the workers in the U.S.

## 8. How much does it typically cost to obtain a visa (including both legal fees and USCIS fees)?

The application fees that are charged by the U.S. Citizenship and Immigration Services (“USCIS”) for visas generally range between \$2,000 and \$3,500, depending on whether premium processing is selected. Attorney’s fees typically range between \$4,000 and \$5,000. Attorney’s fees will likely vary, however, depending on the location and expertise of the attorney involved.

## 9. Under what circumstances may parties apply for a treaty trader/investor’s visa (E-1 or E-2)? How much funds must a firm invest in the U.S. to be eligible for these types of visas?

An E-2 Investor’s visa can be obtained by nationals of countries that have certain trade treaties with the U.S. A full list of these eligible countries can be found on the USCIS website at [www.uscis.gov](http://www.uscis.gov). Companies based in these nations that engage in trade with the U.S. may also seek E-1 Treaty Trader visas. The amount required to be invested to qualify for these visas varies, however a small operation, such as a convenience store or gas station generally requires a minimum investment of approximately \$100,000. Larger operations with multiple employees will require an investment sufficient to convince USCIS that the business is commercially viable.

## 10. What is a “green card” and should I obtain one for my employees in the U.S.?

“Green card” is a commonly used slang term for legal permanent residency in the U.S. Once a person obtains legal permanent residency status they remain in the U.S. permanently. Legal permanent residency status is also a prerequisite to obtaining U.S. citizenship.

Legal permanent residency is typically obtained either through a family relationship or by the employer “sponsoring” its employee for “green card status”. The green card process often takes a minimum of one year to obtain and in some instances may require several years to be granted, depending on the individual’s nationality and level of education/experience. Because it is a lengthy process, most companies send their overseas employees to work in the U.S. on a visa process initially. The company and the employee may then pursue legal permanent residency status while they are already working in the U.S. on a visa.

## 11. How do I find a good immigration lawyer in Pennsylvania?

A list of practicing immigration lawyers in Pennsylvania can be obtained from the American Immigration Lawyers Association (“AILA”) at [www.aila.org](http://www.aila.org). Our office also maintains lists of attorneys familiar with immigration and cross-border legal issues.

## 12. Is there a route to legal permanent residency (green card status) by direct investment in Pennsylvania?

Yes. US immigration laws provide for legal permanent residency under the EB-5 investor visa program for persons who invest in a new commercial enterprise that employs 10 US workers on a full time basis. The amount of the investment must be either \$1,000,000 (US) in a new commercial enterprise, or \$500,000 (US) if the investment is made within a designated regional center/targeted employment area. There are multiple locations throughout Pennsylvania that meet the lower \$500,000 investment threshold. Legal permanent residency is issued for a conditional two year period upon the applicant demonstrating to US immigration officials that they meet the basic criteria of the EB-5 program. That conditional status is removed and a permanent green card issued upon the investor demonstrating that it is still meeting the requirements of the program two years after the investment is made. The spouse of the primary investor and any children under 21 years of age are also eligible to receive legal permanent residency status under this program.

For more information, contact:

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