

Employment Resources & Solutions

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Creative Green Card Application Options for Your Key Foreign National Population

by Mitch Wexler, Partner, Fragomen Worldwide

The standard employment-based application process for employers assisting skilled workers in obtaining green card status involves a labor market testing process known as "Labor Certification." This is both a costly and somewhat uncertain process. In addition, by law, the employer MUST pay all of the costs and fees associated with this phase of the green card application process. Often overlooked are the few "self-petitioning" green card application processes that do not require the Labor Certification. With these self-petitions, the foreign national can decide to pursue the petition on his or her own behalf, eliminating the need for an employer sponsor. The two more popular self-petitioning green card categories are the "Extraordinary Ability" (EB-1(A)) and the "National Interest Waiver" (EB-2) cases.

Extraordinary ability cases require a demonstration that the applicant is among the top few percentages of his/her field nationally or internationally. Several qualifying criteria are provided and the applicant must clearly demonstrate eligibility in at least 3. It is a relatively high standard, but it is also an underutilized tool in the immigration lawyer's toolbox. An employer may serve as the "petitioner" or the applicant can file on their own. Although it can take a few months to put together a compelling application package, USCIS can adjudicate the petition in two weeks if a premium processing filing fee in the amount of \$1,225 is paid.

National Interest Waiver (NIW) cases are misunderstood and even more underutilized in this author's opinion. There are a few key components to a successful NIW case:

1. Advanced Degree or a showing of "Exceptional Ability": The former is self-explanatory and the latter can be established by demonstrating the applicant meets at least three of the several enumerated object criteria. These criteria include evidence of things such as 10 years of experience, a license to practice in the profession, relatively high remuneration, membership in a professional

association, and achievements and significant contributions to the industry. Demonstrating an applicant has an advanced degree or is of exceptional ability is generally not terribly difficult. The second prong, i.e.; the "National Interest Waiver" is the more challenging part of the case.

2. The National Interest Waiver seeks to waive the job offer and the labor certification requirement - thereby allowing the foreign national to drive this process and pay for it on their own behalf. Basically, the requirements are that 1) the applicant seeks employment in an area of substantial intrinsic merit; 2) the benefit will be "national" in scope; and 3) the national interest would be adversely effected if Labor Certification was required.

The immigration policies of different companies vary and may include the types and numbers of green card applications they will support. We find it quite common that key foreign national employees are happy to pursue a self-petitioning option if it is determined that they have a reasonable chance at success, with or without the support of the employer. Thus, the self-petitioning option should be analyzed for each key foreign national on a visa. It may very well achieve the overall objective quicker and be much more cost effective.

Mitch Wexler

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HR Trends for 2016

Every year, the corporate picture shifts a little to accommodate new generations entering the workplace, emerging technology and rising social trends. Let's look at a couple of key HR trends predicted to be prominent in the workplace for 2016.



Data and analytics: with today's changing times and high competition for retaining quality talent, many companies are turning to data analytics as a strategic HR cost saving tool. While it is often revenue driven departments (such as marketing, sales and product development) that receive the budget for customized data and analytics, HR departments are slowly integrating market intelligence data as a preventive method in retaining top talent. This data is specifically designed to provide HR insights such as hiring trends, talent supply and demand as well as best practices.

Millennials and Gen Z in the workforce: with the majority of Millennials working in key departments, more and more companies are integrating creativity into HR functions through attractive job titles (instead of the typical "boring" standard designations) as well as an "open workspace" culture. Informal set ups are used to promote innovative ideas and open discussions among employees. Various startups are currently implementing these concepts which have a wide appeal to the new generation entering the workplace.

Flexible work programs: with the rise of tablets, video conferencing and other mobile technologies, working from home has never been easier. Studies show that in 2016, 4 out of 5 workers will have a flexible work schedule. In accordance, many employees are willing to take a pay cut and less vacation time for a work-life balance. With this in mind, companies who decide to offer this perk must properly train their workforce (more specially their management team), in properly motivating their remote team.

"Branding" your company: as the search for top talent becomes more and more competitive, (especially in areas such as IT), company "branding" has never been so crucial. More and more HR practitioners today have geared towards combining HR with a "Marketing" approach by using social media marketing and brand awareness campaigns to promote the organization. In addition, using your employees as "brand advocates" has proven to be quite successful; employee advocacy programs which encourages employees to

share updates about their company on social media has grown by 191% since 2013 and this is predicted to increase in 2016. HR Professionals must also keep in mind that with the emergence of Millennials and Gen Z in the workplace, social media presence is crucial as these candidates are most likely to take on a more "consumer" approach when choosing a job position. For

instance, websites such as LinkedIn and Glassdoor has allowed people to easily access an organization's working environment with the click of a button. Combining marketing and HR will allow a company to strategically progress in the upcoming year.

As we enter 2016, many HR trends will affect how we search, connect, hire and retain. As a result, Marquee Staffing recruiters are constantly diversifying their recruiting tactics through social media, networking, referrals and attractive job ads for our clients. By partnering with us, you can ensure that the best efforts are being put forward in providing you the strongest up and coming talent!

For more information about Marquee Staffing and our services, please visit www.marqueestaffing.com.

Ann Nguyen

Having recently relocated from Montreal, Canada, Ann joined Marquee Staffing in 2013 where she focuses on placing Medical Device professionals and top tier Accounting and Finance candidates in prominent companies. Currently, as the Assistant Branch Manager for the Orange County division, she also supports daily internal operations and all recruitment efforts. With a Business Degree in HR, Ann maintains strong client relationships by understanding company staffing needs and providing hiring managers with quality candidates who truly fit company culture and goals.




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Visit www.bit.ly/1VJ5SIX to learn more about our California Workplace Law Breakfast Seminar taking place in Anaheim on April 12, 2016.



For further information, contact:

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"It's Five O'Clock Somewhere"

by Kathi Guiney GPHR, SPHR, SCP, President of YES!HRSolution

We have a complicated relationship with Time. We waste it, kill it, save it, maximize it, run out of it, and work "over" it. Each workday, we greet Time with the best intentions, often to end the day with little accomplished. Time wounds our self-esteem, mocks our productivity and defeats our best efforts to get along with it. Since we can't separate ourselves from Time and make a clean break, we'll have to un-complicate the relationship by improving how we work together.

Take back your relationship with Time with these efficiency tips:

- ▶ **Set specific times to check email.** Check messages no more than three times a day in the morning, noon and late afternoon. Immediately compose any responses that will take only a few minutes to write. Save anything more complicated for the next check-in, giving you time to think about the proper response.
- ▶ **Take breaks.** A short walk may be what you need to get the job done. Refresh mind and body to avoid the performance decline that comes from working too long.
- ▶ **Create a to-do list.** What do you want to accomplish by day's end? Leave wiggle room for surprises, but don't end up playing "firefighter" and only responding to incoming requests. Every few hours stop and regroup. Were the last few hours productive? If not, revisit your to-do list and refocus your effort for the next hour.

- ▶ **Do not disturb.** Up against a critical deadline? Let people know. Give them a time you will get back to them tomorrow.

- ▶ **Play to your personal clock.** Are you chipper first thing in the morning, or do you get rolling after lunch? Organize your routine around your personal clock, tackling tough tasks during energy peaks and routine missions during slumps.

Voila!—a productive workday, and all Time needed was some structure. Now you can change your relationship status from "It's Complicated," to "In a Relationship" giving you time to daydream about "5 O'Clock Somewhere" and Margaritaville.

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Introducing Innovative New Plan Designs from St. Joseph Hoag Health and Cigna



New health plan designs (HMO and EPO options) featuring trusted doctors and hospitals, affordability and quality service

Together, Cigna and St. Joseph Hoag Health are offering two plan designs that are tailored to what Southern California businesses want for their companies and employees: the Select (HMO--administered and fully insured by Cigna) and Flex (EPO-Self-insured and administered by Allegiance, a Cigna company).

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By choosing St. Joseph Hoag Health Select or Flex, your employees have access to the St. Joseph Hoag Health network of care, which includes:

- CHOC Children's
- Hoag
- Mission Hospital
- St. Joseph Hospital
- St. Jude Medical Center

Plus, included in the network are quality primary care physicians and specialists to choose from.

The savings you expect

Because we work together and coordinate care, we focus on improving quality and keeping costs lower for both employers and employees. It's a team effort that includes close integration between St. Joseph Hoag Health and Cigna, with a unified purpose – putting the patient at the center to proactively engage in their health care.

The services your employees need

We're always looking for more ways to help patients get and stay healthy, including easier navigation of care, streamlined processes and important resources such as telemedicine and access to the St. Joseph Hoag Health integrated nurse advice helpline.

Your employees will also benefit from our experience in wellness and disease prevention, which may lead to better long-term health. Together, the St. Joseph Hoag Health network and Cigna are focused on you and your employees – because you and your employees deserve MORE from your health care.



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The health care professionals and facilities that participate in the Cigna network and provide services for St. Joseph Hoag Health are independent practitioners solely responsible for the information, treatment and advice provided to their patients. They are not agents of Cigna.

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About the St. Joseph Hoag Health network

The network of care, which includes St. Joseph Hoag Health and CHOC Children's, has earned:

- Many of St. Joseph Hoag Health's medical groups were voted among the top medical groups by a leading source of consumer information and achieved "elite" rankings in 2015 from the California Association of Physician Groups (CAPG) and the Integrated Healthcare Association (IHA).
- Magnet designation for our network hospitals – the highest honor bestowed to hospitals for nursing excellence (American Nurses' Credentialing Center, 2005, 2007, 2012 and 2015).
- U.S. News & World Report ranked CHOC Children's as one of the nation's best children's hospitals in the 2015 – 16 Best Children's Hospitals rankings.



9
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Counts of facilities in the St. Joseph Hoag Health network as of November 2015, subject to change.

To learn more, call **Sasha Yamaguchi**, vice president of sales at Cigna, (855) 210-5765.

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Today's Recruiting Trends

by Lisa Pierson, President, Kimco Staffing Services

Hiring has picked up and job seekers are on the prowl for the next best opportunity. Are you ready to attract the best talent for your organization? Consider these top trends from recruiting and staffing experts to better understand the job searcher journey.



search by developing well-connected professional networks, and seeking employee referrals.

MOBILE FIRST

Job searchers look for opportunities on the go, especially if they're currently employed. In fact, Kelton Global Research revealed 86% of job seekers begin a job search on their mobile devices.

What does this mean for you?

Your job postings will have more candidates interested if they're mobile-optimized. If your site isn't responsive, candidates will most likely move onto the next opportunity—one they can more readily engage with on their smart phones.

JOB BOARDS STILL REIGN

Boards remain the initial 'go-to' for job seekers. Whether it be LinkedIn, Monster or aggregator sites like Indeed, this is the first place candidates search.

What does this mean for you?

Employers must create compelling, keyword-rich job posts. In a world of instantaneous responses, candidates have little patience to drill deeper into pages 2, 3 and 4 of search results.

SOCIAL LIVING

According to GlobalWebIndex, the average person logs 1.72 hours per day on social media, representing about 28% of online activity, so logically the career journey has evolved to include social platforms.

What does this mean for you?

Depending on your industry, consider finding talent on LinkedIn, Facebook and Twitter. According to a SHRM study, 65% of companies surveyed said they discovered new hires through social media within the past year. We expect this number to rise.

THE POWER OF REFERRALS

Serious candidates are adopting a strategic approach when it comes to the job

What does this mean for you?

Embrace employee referrals. Employees understand the culture of the company and which personalities and skills are needed to succeed. According to Jobvite, recruiters reported that 60% of their best job candidates were found via referrals.

JOB SEARCH OUTSOURCING

While job seekers cannot outsource interviewing, they can outsource search activities to find the best possible opportunities. Many turn to executive search and recruiting agencies. As a result, candidates are able to find more rewarding positions.

What does this mean for you?

Connect with recruiting and staffing agencies. They often have robust candidate profile banks. Additionally, these agencies keep in touch with potential candidates who are open to new positions, if the right opportunity arises.

Just like job searchers, who often apply multiple search tactics, HR departments and hiring managers must leverage diverse strategies to source the best talent.

Lisa Pierson

Lisa Pierson is the President of Kimco Staffing Services. Headquartered in Southern California since 1986, Kimco has the market expertise to help companies find top talent and the business acumen to help our clients navigate California's unique employment environment. Our approach to staffing focuses on individualized service, customized solutions, and a commitment to deliver "Hire Results"! You can reach Lisa at lperson@kimco.com or 949-331-1102.



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Business Owners and Key Decision Makers Watch Out for Individual Liability for California Wage and Hour Violations

by Jonathan A. Siegel, Principal, Jackson Lewis

Now, more than ever, employers should be fostering a compliance culture with respect to workplace law issues. California has expanded individual liability for some of the most common California wage and hour violations. California's new "A Fair Day's Pay Act" (SB 588), which is effective January 1, 2016, greatly expands individual and successor liability. Under SB 588, the California Labor Commissioner now has the ability to hold an employer or any "person acting on behalf of an employer" (e.g., owners, officers, directors, or managing agents) personally liable for violating any provision of the Industrial Welfare Commission Wage Orders ("IWC"). The bill also allows the Labor Commissioner to seek payment from a successor employer.

Common IWC violations which can expose business owners and persons acting on behalf of the employer, to liability could include payment of wages, overtime, rest and meal period violations and many other claims.

There are also unique provisions impacting the long term care industry. SB 588 authorizes California to deny a new license or renewal of an existing license for a long-term care facility that fails to satisfy a judgment after the time to appeal expires.

The new law also provides expanded enforcement powers. In cases before the California Division of Labor Standards Enforcement (DLSE), if an employer loses and fails to timely appeal, SB 588 allows the Labor Commissioner to levy an employer's, and/or those acting on behalf of an employer's, bank accounts,

accounts receivable, real and personal property. After a certain amount of time, if the judgment remains unpaid, the employer is prohibited from continuing to conduct business until the employer posts a bond, or be subject to a civil fine. The Labor Commissioner is authorized to issue a stop order prohibiting the use of employee labor. Failure to observe the stop order is a misdemeanor. The Labor Commissioner can create a lien on any real or personal property within the state if the bond requirement is not met.

For more information about SB 588, please contact Jonathan Siegel or the Jackson Lewis attorney with whom you regularly work with.

Jonathan A. Siegel

Jonathan A. Siegel is a Principal in the Orange County office of Jackson Lewis, an AmLaw 100 firm dedicated to representing management exclusively in workplace law. Contact Jonathan at 949.885.1362 or Siegelj@jacksonlewis.com.



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