

Corporate Immigration Policies: A Survey

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Many companies hire Foreign National (“FN”) employees, especially in the Science, Technology, Engineering and Mathematics disciplines. Many of these FNs have been sponsored by their employers to work pursuant to nonimmigrant (temporary) work visas. Such visas often limit the amount of time the FN may remain in the U.S. and impose other restrictions on them (i.e., limitations on the ability to change jobs and /or change employers, prohibiting spouses on dependent visas from securing work authorization, etc.). Although the American Competitiveness in the 21st Century Act (“AC21”) has mitigated some of these hardships for FNs sponsored under the H-1B category, significant challenges remain.

FN employees on nonimmigrant work visas are therefore often anxious to start the employment-based green card process. Their options to obtain green cards through other avenues are limited under current immigration laws. The timing for initiating the green card process is also vital, as it would enable extensions of the H-1B work visa beyond the maximum six-year limit under AC21. Given that the usually required PERM labor certification process can take two years to complete if an audit is required, waiting significantly more than a year can lead to serious complications in completing the green card process.

Earlier this year, the Alliance of Business Immigration Lawyers (www.abil.com) surveyed its members on the topic of Corporate Immigration Policies. The survey requested information from ABIL member firms regarding their corporate clients’ policies on such topics as: (1) how long a FN employee would have to work for the company before sponsorship would be started; (2) whether that timing has changed since the height of the financial crisis; and (3) whether there are contingencies on initiating/continuing the green card sponsorship process.

ABIL members concluded that the survey results would interest companies that hire FN employees, including those who have a policy in place as well as those that do not. In that regard, this summary has been prepared to highlight the key findings of the survey.

1. The majority of ABIL members that responded to the survey (66%) reported that their client companies wait one year before starting the green card process. The next highest percentage responded that their clients wait more than 1 year; the third highest reported a wait of six months.
2. When asked whether this time frame changed since the height of the financial crisis, an equal percentage of respondents reported that the wait time had shortened as those responding that there was no change to the wait time.

3. When asked about contingencies on starting (or continuing) the process, over 80% of respondents stated that the employee's manager must "sign off" to have the process initiated. One-half of respondents stated that an employee on a performance plan or under some other "disciplinary action" would cause the process to be delayed or stopped.

One member reported that some client companies have "nomination periods" when managers can nominate certain employees deserving of green card sponsorship.

4. When asked about the payment of green card sponsorship, most members (over 80%) reported that the employer pays all fees and expenses in connection with sponsorship. The next highest percentage reported that the employer pays all fees for the employee but requires the FN employee to pay costs related to family members. The smallest percentage reported a policy whereby the employer would pay up to a certain amount towards the process and the employee would cover the balance.
5. When asked about the source of immigration-related costs, the largest percentage (over 90%) reported that the Business Unit hiring the employee pays for the process. A few respondents reported situations where the Legal or HR Department would pay.
6. Responses were varied when asked about reimbursement policy. An equal number of ABIL members reported that their corporate clients had no reimbursement policy as those who reported that their clients had such a policy (where the employee agrees to repay a portion of the costs of sponsorship if the employee leaves the company within a certain time frame after receiving the green card).

It should be noted that, pursuant to federal regulation, the employer is responsible for all fees and costs associated with the PERM labor certification process - the first step in the majority of employment-based green card cases – and such fees may not be reimbursed by the employee.

More and more companies are finding that a corporate immigration policy is a useful tool, and that having no policy or a restrictive policy can lead to inconsistencies that can present significant challenges. From the threat of key employees resigning to take up employment with more "FN-friendly" employers to the risk of litigation, prudent employers should consider reviewing their existing policy or adopting a new one.

For companies that determine a corporate immigration policy is beneficial, the results of the ABIL survey will shed light on how many employers approach the topic.