

Legal Corner - To B or Not to B

By: Neelofer Syed, Esq.

We talked in detail about the B-2, visitor's visa in the August issue of CityMasala. In this article our main focus will be on business visa, B-1 and we will go over the requirements, eligibility and application process.



In simple terms a B-1 visa permits a person to come to the United States temporarily to attend business meetings, trade shows, conventions or engage in other business related activities as long as they do not involve gainful employment in the United States. Just like B-2 visa, the application to obtain B-1 visa is also made directly at the Consulate along with all the supporting documentation. There is no numerical limitation on the B-1 visa and once in the United States a person admitted in B-1 status may apply for an extension of status for a good cause.

It will not be wrong to say that B-1 visa is the most used and the least understood in terms of permissible activities under B-1. The foreign affair manual sets forth many examples of permissible B-1 activities.

For the ease of readers, some of the activities that a B-1 visa holder can engage in are summarized below:

- * Attending business related conference, seminar, convention or meetings
- * Consulting and meeting with clients or other business associations
- * Setting up an E-2 enterprise but not running it
- * Installing equipment purchased from overseas pursuant to a contract, or service or repair of industrial machinery
- * Religious activities
- * Engaging in commercial transaction (buying or selling) which do not involve gainful employment in the United States
- * Negotiating contracts
- * Litigating
- * Undertaking research

Any indication of the following activities will clearly disqualify a person from getting a B-1 visa:

- Getting compensation from a U.S. source. The exception is reimbursement of expenses or getting per diem
- Performing services (even if uncompensated) which are inherently part of labor market or for which a U.S worker would have to be hired

It is extremely important that the value of activities

in which the B-1 visa holder is engaged must accrue to the foreign employer and the foreign national must be paid from abroad (not through any source in the U.S.).

B-1 visa, in certain circumstances is also a good alternate for an H-1 or H-3 visa, provided the compensation to the B-1 visa holder keeps coming from the employer abroad. Nevertheless, because of the abuse of B-1 in lieu of H-1B visas by contractors employing computer programmers from South Asia, both USCIS and Department of State were considering revision of the regulations of B-1 visa to make it more restrictive, but no changes have been made yet. It is however true that getting a B-1 in lieu of H-1 has become more difficult even though no changes in the regulations have been made so far.

B-1 visa can also be issued to a personal or domestic employee to accompany or to follow to join a U.S. employer visiting the United States temporarily. For example a U.S. citizen hired by an employer/company abroad may bring a child attendant or a cook to the U.S. to work temporarily while he completes his assignment in the U.S, even if it takes him one full year. Indeed some times the B-1 visa to domestic employees can also be extended beyond one year if good cause is shown.

Similarly personnel employees or domestic workers can also obtain B-1 visa to accompany their employer or follow to join the employer who is on E, F, H, I, J, L, M, N, O, P or Q visa holders. Again, while there is no legal hitch in this, in reality obtaining a B-1 for a domestic employee to accompany any of the above visa holders may not be that simple.

Just like the B-2 visa, B-1 visa also requires non immigrant intent, and just like the B-2 visa the Consular officers have unfettered discretion to determination the eligibility of the applicant. It is extremely important for the applicant for either B-2 or B-1 visa to satisfy the consulate about their non immigrant intent. As explained in detailed in previous article, the applicant must have sufficient documentation establishing strong ties with their home country, definitive itinerary showing return travel, detail of activities in U.S. showing temporary nature etc. To get more detailed information regarding the type of documents submitted to establish temporary intent, please read the ar-

(Continued on page 22)

Legal Corner - To B or Not to B

(Continued from page 20)

ticle printed in the August issue of CityMasala.

Due to the limited space, we will now attend to some questions from the readers.

Questions From Readers:

Q: Hi there,

My name is XXX. I am a XXXX by occupation. I was married to a United States citizen girl, in May 2007, and came to the United States in September 2008 under CR1 category. I got my temporary permanent resident card in January 2009, the card expires in September 2010, even my driving license expires in September 2010. I was told to face an interview with my wife in front of immigration officer, 90 days before my resident card expires, to remove all conditions of my green card. Now, the problem is my wife doesn't want to live with me anymore and she wants a divorce.

- 1) Please guide me about what I can do.
- 2) Can I become a permanent resident and then a citizen of the USA, if my wife is divorced from me, before the interview?
- 3) Can I face the interview without my wife?

I am very thankful to you for considering my problem. I am looking forward to hearing from you as soon as possible.

Reader

(Names are concealed for privacy)

Answer:

Dear Reader,

First of all accept my sympathy for the unfortunate situation you find yourself in. It is, however, not a dead end and you can still take care of your immigrant status, with or without your wife.

Your status is close to expiration and you are required to file for the removal of conditions within 90 day window prior to the expiration of your two year green card.

Please note that the removal of conditions is filed jointly if the couple remains happily married, but if for some reason the marriage is terminated, the Alien (you) can file for it as "waiver". In order to file as a waiver it is important that the marriage is already terminated and not "going through" termination.

When removal of condition is filed as waiver, the burden of proving that the marriage was initially entered

in good faith is higher than if you were to file jointly.

It is important that you have copies of all the joint documentation that you have accumulated while you were married, for example copies of any joint bank statement, auto insurance, health insurance, joint lease/rent, joint vehicle registration, joint tax returns for the most recent year etc. In addition, old pictures, affidavits from friends and family testifying to the bona fide relationship etc are also important. Please note the more the documentation the more the chances of getting approved.

In other words you CAN change your status from conditional resident to a permanent resident and ultimately a U.S. citizen. I will be happy to answer any additional questions that you may have.

Q: Dear Ms. Syed,

I need to know if there is anything that can be done to help my niece with her green card status. There is no blood relation between us. Her father is a very close friend.

She was born in England and came to this country when she was 4 years old, with her parents and older brother in 1987. Her uncle (mother's brother) had filed for their green card application and their interview was set for October 1993. But her mom was involved in a car accident and passed away in August 1993. Because the mom's brother filed for her, when she died the green card application was closed. My nephew got married in 2000 and was able to obtain his green card. When he became a citizen he filed for his Dad who got his green card in 1 year. But my nephew did not file for his sister (bad mistake) thinking she would get married soon. My niece was able to finish school and graduated from college in 2005 with a foreign student status. For the past 4 years she has not been able to work, and I do not see any prospects of her getting married anytime soon. She is now 26, living with her dad, with no future or job.

Is there any other way except for marriage that we can file for permanent residency for her?

Thank You

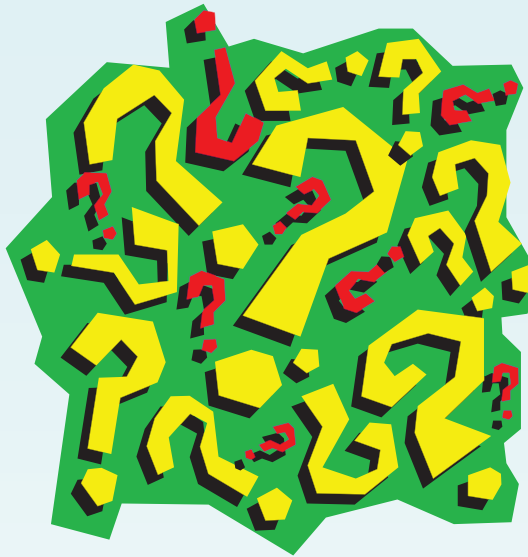
(Name concealed for privacy)

Answer:

Dear Reader:

Based on what you have mentioned, it appears that your niece may be eligible to be grandfathered under

(Continued on page 30)



Are You Assertive?

(Continued from page 14)

Results:

If your score is 25 or above, you're a born leader ready to take charge in any workplace situation. "A born leader is someone who is willing to accept decision making responsibility often on the spur of the moment. That person is also willing to accept the consequences for those decisions. The born leader is willing to take risks, and break the rules," says Robert Evans Wilson, Jr., a speaker, humorist, and author of *The Un-Comfort Zone*, a column on motivation that runs in many publications. A born leader often possesses distinct qualities. "A born leader has the qualities of vision, determination to make that vision a reality, humility, and sincerity. A born leader understands human nature," says Dr. Rebecca Staton-Reinstein, president of Advantage Leadership, Inc. in North Miami Beach, FL. "A born leader

loves people, and wants to make a better life for them."

If you've scored 24 or below you are more likely not a leader, but more of a follower in the workplace. While you may follow orders and get a pat on the back from your boss every so often, you're not the person who will step up to the plate in a crisis, or any other situation. "Someone who is not a born leader--a born follower--is someone who is risk-averse. Someone who feels comfortable following the rules, and the way things have always been done," says Wilson. In fact, someone who doesn't possess leadership qualities is "more focused on his or her immediate needs, doesn't have clear ambition, is not willing to sacrifice and work hard to achieve goals, and does not want to make life better for other people as a driving force in his or her life," says Staton-Reinstein.

Legal Corner - To B or Not to B

(Continued from page 22)

the 245(i). The fact that she was a derivative beneficiary of an I-130 petition that was filed prior to April 30, 2001, and that she was physically present in United States on December 21, 2000, makes her entitled to the protection of Life Act, commonly referred to as 245(i). People who fall under this category, even though out of status are allowed to initiate their green card process and adjust their status. Their adjusting status is not confined only to the petition which initially qualified them to be entitled to 245(i) benefit.

In other words, her option to adjust status is not limited only to getting married. If your niece is well educated/well qualified and if she gets a job offer from a U.S employer, it will be possible to initiate a green card process for her based on employment. Now whether she qualifies under EB-2, EB-3, or other worker category will depend upon her qualification as well as the kind of job she is offered.

Ms. Syed is a practicing attorney with Perez and Associates, specializing in immigration law. Please send your questions concerning immigration issues to legal@citymasala.com

Natural Glow With Home Made Beauty Products



(Continued from page 26)

are properly filed. First, you have to remove any trace of old polish on your nails. Applying a new slick of color on top of the old one will just make your nails look thicker.

- Trim your nails and file them so that they are of the same length and shape. It would be best to keep your nails short because the longer the nails, the more prone they are to chipping and breaking.
- Always apply nail polish on either side of the nail first and then towards the center to smooth out any thickness on the sides. Also, let the first coat completely dry before

applying the second and third coats. People do not have patience to wait for their polish to dry, which results in smudged nail color which looks terrible. You could also, dip your nails in ice-cold water to ensure that the polish has set well and does not smudge. If you want to have a professional-looking nail polish, make sure that you don't go overboard and apply four coats of colors.

- Nail polish removers and acetones have a very drying effect on the skin. After removing old polish, always massage a cream to keep the skin around the nails soft and smooth.
- Do not use nail products containing formaldehyde.
- Water, fresh fruits and vegetables, protein from meats and fish, and vitamins (multi and E, in particular) all stimulate nail growth. Eating gelatin helps your nails grow strong and healthy.

Remember that "Beauty is a reflection of your inner health."