

**THE FUTURE OF ENERGY  
ACROSS THE AMERICAS:  
HELPING LAWYERS  
PREDICT AND ADAPT**

**Immigration and the Energy Sector:  
Strategies to Fill the Talent Gap  
and  
Create a Diverse and Dynamic Workforce  
Nonimmigrant Visa Issues and Opportunities**

**James D. Prappas, *Houston***

**Kane Russell Coleman Logan PC**

## Immigration and the Energy Sector: Strategies to Fill the Talent Gap and Create a Diverse and Dynamic Workforce - Nonimmigrant Visa Issues and Opportunities

### Overview

- What is a visa and what is status?
- B-1 visitor for business and pre-employment considerations
- Nonimmigrant work visa options
- Strategic planning for short-term and long-term goals
- Develop and execute a plan to retain workers short-term and long-term employment

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### What is a visa?

- A visa is a permit to apply for admission to enter the U.S. for a specific period of time and for a particular purpose.

### What is status and how is this different from a visa?

- A person's legal status determines how long he/she can remain lawfully in the U.S. and for what purpose. See <https://i94.cbp.dhs.gov/I94/#/home>

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### B-1 visitor for business and visa waiver program

- What are the permissible activities a foreign national can undertake in the U.S. without a work visa?
- A B-1 visitor for business visa does not allow *productive employment*. If it looks like a duck, quacks like a duck, it's a duck. Same for "work."



- A B-1 visa permits various activities including attending business meetings.

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**Post sale installation of equipment** . See <https://fam.state.gov/FAM/09FAM/09FAM040202.html>

- **9 FAM 402.2-5(E)(1) (U) Commercial or Industrial Workers**

a. **(U)** An applicant coming to the United States to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the United States or to train U.S. workers to perform such services. However, in such cases, the contract of sale must specifically require the seller to provide such services or training and the visa applicant must possess unique knowledge that is essential to the seller's contractual obligation to perform the services or training and must receive no remuneration from a U.S. source.

b. **(U)** These provisions do not apply to an applicant seeking to perform building or construction work, whether on-site or in-plant. The exception is for an applicant who is applying for a B-1 visa for supervising or training other workers engaged in building or construction work, but not actually performing any such building or construction work.

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### Nonimmigrant Visa Options include the following:

- E-1 Treaty Trader
- E-2 Treaty Investor
- L-1 Intracompany transferee - L-1A manager or executive or L-1B specialized knowledge
- TN visa under USMCA for Mexican and Canadian citizens
- E-3 for Australians
- O-1 extraordinary ability

Also consider spouse issues and remember passport validity.



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### E-1 Treaty Trader – Basic Requirements:

- There is a treaty between the U.S. and the foreign country;
- Nationality for the U.S. entity and the employee;
- Existing trade; and
- The employee must serve as an executive, managerial or essential skill position.

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### E-2 Treaty Investor - Basic Requirements:

- There is a treaty between the U.S. and the foreign country;
- Nationality for the U.S. entity and the employee;
- Substantial Investment;
- The employee must serve as an executive, managerial or essential skill position; and
- Marginality – not solely for the purpose of employment of the foreign national.



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### L-1 Intracompany Transferee - Basic Requirements:

- Qualifying relationship between the U.S. and foreign entity, i.e. parent, branch, subsidiary or affiliate;
- The employee has worked 1 year out of last 3 years for the foreign parent, affiliate, subsidiary as a manager, executive or specialized knowledge employee; and
- The employee will work in the U.S. as a manager, executive or specialized knowledge employee.

Note, the L-1 blanket visa option for large companies can save time, money and add flexibility.

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### Other possible NIV options include:

- TN visa for Mexican and Canadian citizens
- E-3 visa for Australian citizens
- O-1 extraordinary ability visa
- H-1B specialty occupation visa
- H-1B1 visa for Chilean and Singaporean citizens

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### Keys to company success and employee retention

- Develop a plan including strategies for M&A and corporate changes.
- Identify company and employee short-term and long-term goals.
- Align company and employee expectations.
- Consider the U.S. immigration impact on the employee's family and ages of the employee's children.
- Develop company policies concerning short-term employment and long-term/permanent employment, aka "green card."

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A person in a dark blue suit and white shirt is holding a white rectangular sign with both hands. The sign has the word "Questions?" written in a large, bold, red font. The background is a soft, out-of-focus gradient of purple, blue, and yellow.

Questions?

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# Thank you!

James Prappas

**Kane Russell Coleman Logan**

5151 San Felipe Street, Suite 800

Houston, TX 77056

Office (713) 425-7431

Cell (713) 504- 9018



[jprappas@krcl.com](mailto:jprappas@krcl.com)

[www.krcl.com](http://www.krcl.com)