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# nonprofit organizations: uniquely positioned to take advantage of immigration benefits

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*MSK Client Alert*

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Nonprofit organizations are uniquely positioned to take advantage of immigration benefits which are not available to for-profit organizations. These benefits not only provide for the employment of temporary foreign workers which would otherwise be restricted; but also provide for a reduction in the filing fees paid to the U.S. Citizenship and Immigration Services, the branch of the Department of Homeland Security which adjudicates nonimmigrant work visa petitions.

Nonprofit organizations for purposes of U.S. immigration law are those which are: (I) defined as tax-exempt under the Internal Revenue Code section 501(c)(3), (c)(4), or (c)(6), and (II) have been approved as tax-exempt organizations for research or educational purposes by the Internal Revenue Service. When an organization is considered nonprofit for purposes of U.S. immigration law, one of the areas it has a significant advantage over for-profit organizations is in the employment of H-1B workers - temporary professional workers in specialty occupations. This would include curators, researchers, scientists, archivists, and management and financial positions as well as numerous other positions. H-1B visas, probably the most common nonimmigrant visa, are subject to an annual numerical cap. On October 1, 1990, the total number of aliens permitted to become classified as H-1B visa holders during the fiscal year was capped at 65,000. This year on the *first day* of immigration's fiscal year, the annual numerical quota for H-1B visas was filled. Accordingly, no additional H-1B visas are available until immigration's next fiscal year *unless an organization is considered a nonprofit for purposes of U.S. immigration law*. As a result of this exception to the H-1B visa regulations, qualified nonprofit organizations may hire foreign professional workers throughout the year without restriction by numerical quotas. In addition to being able to hire additional foreign workers who may otherwise be unable to be employed in the United States, qualifying nonprofits also enjoy a significant reduction in U.S. Citizenship and Immigration

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Services filing fees. Generally, H-1B visa filing fees for an initial petition with regular processing (not expedited) are \$2320 per application. For qualified nonprofits, the filing fee is \$820 per application. In these ways, qualifying nonprofit organizations enjoy immigration benefits which are not available to for-profit organizations.

There are circumstances where the foreign national does not have the requisite education or is not employed in a specialty occupation. These make the H-1B visa not the appropriate visa category. In these situations, the J-1 exchange visitor category should be considered as an alternative to the H-1B visa category. The J-1 exchange visitor visa is a training visa. Unlike other visa categories, organizations themselves can apply for designation to become J-1 sponsoring organizations or they may apply for J-1 visas on behalf of their foreign nationals using a designated third-party sponsoring organization. In addition, the J-1 exchange visitor visa also has a number of subcategories which are well designed for nonprofit organizations, including research scholars, short-term scholars, trainees, and interns.

Research scholars are individuals primarily conducting research, observing, or consulting in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. Research scholars may teach or even lecture. They are permitted to remain in the United States for a period up to five (5) years.

Short-term scholars are professors, research scholars, or people with similar education or accomplishments who come to the United States for a short-term visit for the purpose of lecturing, observing, consulting, training, and participating in seminars, workshops, conferences, and meetings. They also may demonstrate special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. These visas carry a maximum duration of six (6) months.

J-1 trainees and interns are foreign nationals who are looking to come to the United States to receive training. In order to be qualified as a trainee, the foreign national must have either: (1) A degree or professional certificate from a post-secondary academic institution outside the U.S. and at least one year of prior related work experience in his or her occupational field; or (2) Five years of work experience outside the U.S. in his or her occupational field. Training programs will have a maximum duration of 18 months. Trainees may return to the U.S. for another 18-month period of training if s/he has been absent from the U.S. for at least two years after completing the initial training program.

Similar to the trainee category is the intern category. Foreign nationals may qualify for admission as interns if: (1) They are currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States; or (2) They graduated from such an institution no more than 12 months prior to their exchange visitor program start date to participate in an internship program. Interns may remain in the U.S. as a participant in a designated internship program for a maximum of 12 months. Interns may participate in additional internship programs as long as they maintain student status or begin a new internship program within 12 months of graduation.

Nonprofits have these unique opportunities to take advantage of immigration benefits which are not available to for-profit organizations. While here we have addressed only the H-1B and J-1 visa categories, there are a number



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of other visa categories which are beneficial to nonprofit organizations. We welcome you to contact us to discuss these opportunities further.