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How Citizens of Third Countries Can Live in the United States and Conduct Business in Mexico

by Alice Marguerite Yardum

With the advent of the twin plant investment by American and other than American businesses in Mexico, a unique question of Mexican and American immigration laws arises. What does an alien from a country other than Mexico or the United States do to conduct business in Mexico and live in the United States? This article shall concentrate on the U.S. immigration law consequences with some reference to Mexican immigration law.

There are several possibilities to opt from, depending upon the flexibility of the foreign company in establishing a work facility not only in Mexico, but also in the United States.

Where there is little flexibility on the part of the foreign company, in that it desires the alien to work only in Mexico, there is only one option. The American visitor for pleasure visa, known as B-2, allows an alien to purely be in the United States for a specific temporary purpose as a visitor for pleasure and not to work in the United States. The B-2 is available for a maximum initial entry period of six months with the possibility of obtaining an additional six month extension. Visitor entrants may stay within the United States for a total period of one year and must make a departure and reentry after such period.

Theoretically, the above scenario would work for a period of time longer than a year where the alien travels abroad after one year and makes a new entry. There is always the risk, however, after the one year period in visitor status, that upon reentry, the alien would be denied admission if the immigration officer does not believe that the alien wishes to visit the United States for a temporary period of time. Where the work conducted in Mexico is for a temporary period of time or where the position is permanent and the alien can prove she/he is making arrangements to secure permanent housing in Mexico, then the subsequent entry should work. Therefore, an alien may be able to be a B-2 visitor for longer than a year.

There are several other options where the foreign company has some flexibility in its working structure. If the alien could work in the United States, as well as in Mexico, then the L-1, intracompany transferee, H-1 temporary worker of distinguished merit and ability, or the E-1 or E-2, treaty trader or treaty investor visas, respectively, could also apply.

The L-1 intracompany transfer category allows key executives and managers, and those with specialized knowledge (professionals and others) to transfer from abroad where they have been employed aboard, in Mexico or the third country for a minimum of one year. Educational background is not crucial. This visa category has gone through dramatically limiting interpretations over the last few years, first through appellate decisions, and most recently, through INS regulatory amendments. It was a favorite of the large and small business alike, however, the changes which have occurred negatively affect the small business.

What about the Japanese company that has a manufacturing facility in Mexico, which could have a distribution facility, for example, in the United States? If the distribution facility has more than a few employees or has a manager of a minimum of one professional staff member, and has a solid gross income, then the L-1 would work for an initial period of one year for set up. Thereafter, extension for up to five years are possible, and in situations which would create extraordinary circumstances to the U.S. company, a sixth year might be possible. The L-1 also enables the alien to work parttime so that employment in Mexico would also be possible.

The H-1 temporary worker of distinguished merit and ability generally applies to professionals (teachers, engineers, architects, and the like) or those who are preeminent, regardless of education, but who are well recognized in their fields. This is a very useful visa category for established companies, whether American or otherwise, that wish to bring to the United States such workers. Like the L-1, the H-1 alien need not work fulltime, and s/he may have more than one employer. Like the L-1 category, an American employer must also be present.

The E-1 and E-2 categories are very attractive alternatives for companies which will not have large operations or staffs, but which conduct substantial trade or investment in the United States. For the E status to be granted, the alien must be a national of a country which has a treaty of commerce and navigation with the United States and the trade or investment must derive

from the alien's country of nationality. Japan has such a treaty with the U.S., but Canada, for example does not. There is a movement, however, between the U.S. and Canadian legislative branches to make an E type visa category available in the future.

Assuming that one of the B-2, L-1, H-1, E-1 or E-2 categories is available, then how does the third country alien obtain a permit to work in Mexico? Overwhelmingly, the most common visa category for the Maquiladora industry is the FM3, or temporary work permit. It applies to a variety of jobs, except for first line positions which can be filled by Mexican workers. It does not require that the alien live in Mexico, but only that the alien provide personal services. The status is granted for an initial six month period, with three six month extensions for a maximum of two years after which time a new FM3 is applied for with little difficulty.

As you can see, it may be possible to work in Mexico and live in the U.S. An exciting, rewarding and profitable lifestyle could follow!

The above discussion is general in nature and is not meant to apply to specific facts. Do not rely on them without checking them. If you need professional assistance, consult an attorney.

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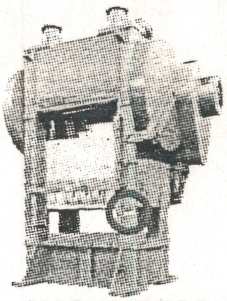

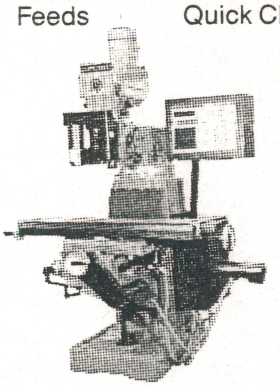

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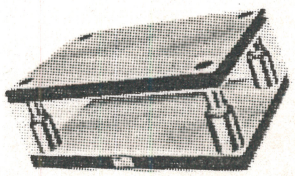

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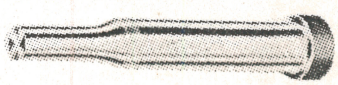

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