

Diplomats, Transfers, Mergers and Acquisitions

Q. I am here on an A-2 visa and have recently been offered a job by a high tech company. I hold a masters degree in computer science from Trinity College. How difficult would it be for me to transfer my visa?

A. Unfortunately, on an A-2 visa your options are very limited if you want to change employers. The main visa, which would suit you perfectly, is the H-1B. However, the annual lottery just took place and all the numbers are gone for the year. Further, even if you could have applied during the application period (which takes place the first five days of April), your chances of winning an H-1B visa would have been around 50% and you could not start work for your new employer until October 1st. For those who do not know, an A-2 visa is issued by the U.S. State Department to accommodate various foreign government workers to engage solely in official activities for the foreign government. Most consulates have some A-2 workers and many trade and development offices such as IDA, Invest Northern Ireland, and Enterprise Ireland also may have workers who hold A-2 visas. They are a great visa as they are not issued by the immigration service and the person who holds them is entitled to stay in the U.S. as long as they are needed here and their spouse can apply for work authorization. They are also one of the “duration of status” visas which means when a person enters on an A-2 visa they are not given a specific date by which to leave, rather they are given “d/s” on their I-94 card and as a result are unable to accumulate any unlawful presence.

Because of the chronic H-1B problems which now involve a costly game of chance as to who will get one each year, a lot of Irish businesses rely on alternative visas such as the L-1 intracompany transfer visa and the E treaty visas. The L-1A visa is for executives and managers who have been employed with the company in Ireland and are now being transferred to manage or oversee at the U.S. office. The visa is good for one year if the U.S. company office is less than a year old and can be extended for up to seven years. If the U.S. office is established, the visa may be issued for three years and then extended in two year periods. An L-1B visa is for people with specialized knowledge of the company and/or its products and is issued for a maximum of five years. Like the A-2 visa, the E visa is also issued by the State Department but the paperwork is much more intensive as either trade or investment in the U.S. must be shown. E visas can be issued to managers, executives or people with essential skills needed at the U.S. operations. Each time the E visa holder enters the U.S. they are given a two year period of time in which to stay. The visa in the passport can be renewed as long as the business remains an Irish business and the person’s skills are still needed. While each of these visas is great at getting people over to work for the Irish company, if they later want to work for a new employer it can be next to impossible to change without having the H-1B visa available.

Bill Gates of Microsoft spoke again to Congress to let them know about the problems employers face with the lack of H-1B visas. A few weeks later, Niall O’Dowd’s new group, Irish Technology Leadership Group, gave Craig Barrett, CEO of Intel, an award at a meeting in Stanford. A few days after that all the H-1B numbers were gone for another year. Without Comprehensive Immigration Reform, everyone loses. Unfortunately,

immigration reform cannot be done in a piecemeal fashion; everyone from Niall O'Dowd to Craig Barrett to Bill Gates to you and me has to work together if we are going to accomplish anything when the next president comes in. The "I have mine, too bad about the rest of you" attitude of some who hold legal status needs to be reexamined in the context of the greater good for all, not just those at the top. To make a difference please check out www.immigrantlist.org which is accepting donations for the fight to change Congress from anti-immigrant to pro-immigrant.

Other Mergers:

I am pleased to announce that my office at 55 New Montgomery Street will be closing as of May 15, 2008 and I will be moving a few blocks away to 785 Market Street, 15th Floor where I will be Of Counsel to Christopher A. Kerosky, and his firm, Kerosky & Associates. This change will allow me to provide better service to my clients as we will have back up attorneys who can cover for me if I am unable to make an interview at immigration or any other issues which may come up when I am away from the office. My phone number will be transferring over but the fax number will change to (415) 778-8123. Chris has been an immigration lawyer since 1984 and his office also handles deportation defense as well as civil litigation matters including construction law. Chris is a graduate of U.C. Berkeley's Law School and he is a former partner of James Byrne. In fact, when I first passed the bar I worked with both Chris and Jim when we were all at 785 Market Street, Suite 820. In addition, Chris is Honorary Consul for Poland and as such is a member of San Francisco's Consular Corps. His e-mail is ckerosky@youradvocate.com. Chris and I will be co-writing future Alien File columns. Chris and his family have visited Ireland on several occasions and have marched in San Francisco with the ILIR for immigrants rights. His mother is from an Irish family in Pennsylvania. We look forward to offering improved immigration services to anyone who needs them!