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 ATTORNEYS AND  
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FOR BUSINESS AND INDUSTRY

**Run the World:  
Recruiting Foreign  
Nationals to Address  
Staffing Challenges**

Presented by: Michael W. Bowling and Jaycee Booth




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**Michael W. Bowling**



- Director in the firm's Oklahoma City office
- Labor & Employment Practice Group member
- \*Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Michael W. Bowling, or another licensed attorney.



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**Jaycee Booth**



- Attorney in the firm's Oklahoma City office
- Member of the Labor & Employment and Litigation & Trial Practice Groups
- \*Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Jaycee Booth, or another licensed attorney.



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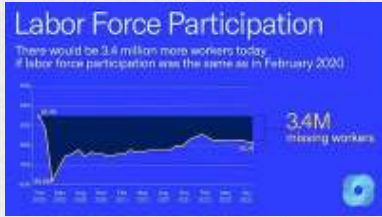
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## Current Labor Shortages

- In 2021, employers added 3.8M new jobs, but the labor participation rate has significantly declined from pre-pandemic rates.



U.S. Chamber of Commerce

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## Shortage of Available Talent Across Many Industries

- Accommodations & Food Services
- Retail Trade
- Healthcare
- Social Assistance
- Arts, Entertainment & Recreation
- Manufacturing
- Education

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## Shortage of Available Talent Across Certain Industries: Healthcare

- U.S. will need 2.3M **new** healthcare workers by 2025 (Mercer)
- 50.9% of RNs are over age 50; estimated 200,000 new RNs needed each year to fill new positions and replace retiring nurses (Am. Ass'n of College of Nursing)
- 44% of physicians are over age 55; anticipated shortage of 122,000 physicians by 2032 (Am. Ass'n Med. Colleges)
- Shortages across all other healthcare jobs as well

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## Recruitment Headwinds

- Workers are also experiencing . . .
  - Staff burnout and compassion fatigue
  - Wage inflation
  - Desire for remote work
  - Rural depopulation

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Perhaps a solution can be found farther afield . . .

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## Recruit Qualified Canadian/Mexican Workers

- Under NAFTA, individuals in certain professions can be granted ongoing work visas for full-time or part-time employment. With some exceptions, these professions require a bachelor's degree as an entry-level requirement.
- No numerical limit on number of Canadian who can hold TN visas; limit of 5,500 Mexicans who can seek visas each year
- Granted for initial 3-year period; can be renewed annually indefinitely thereafter
- Low visa fees
- Cannot lead to permanent residency

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## H-1B Visas (I)

- For "specialty occupations" (i.e., positions that require bachelor's degree or higher)
- E.g., social sciences, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, information technology
- Foreign worker must be **qualified** for role; can be granted for up to three (3) years
- Subject to visa cap and visa lottery **except** some not-for-profits/public trusts will be exempt from cap (in other words, can qualify for visa at any time and without regard to numerical limitations)

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## H-1B Visas (II)

- How can organization be "cap exempt"?
  - Be "non-profit": 501(c)(3) **or** public trust
  - Be related to or affiliated with institution of higher education (through affiliation agreement, for example)
- H-1B has an annual visa cap of 65,000 new statuses/ visas each fiscal year. An additional 20,000 petitions filed on behalf of beneficiaries with a master's degree or higher from a U.S. institution that is exempt from the cap.

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### H-1B Visas (III)

Pros	Cons
Visa is tied to employer (though employee may "port" to other sponsoring employer)	Visa fees; employer <u>must</u> bear all visa-related costs
Six years of eligibility	
Transition to permanent residency possible	
Fast processing time (15 days) available with election of premium processing	Four-eight weeks processing time (without premium processing)
For exempt employers, available year-round without limit	Must go through lottery process for non-exempt employers. There is no guarantee you will win the lottery.

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### PERM Process for Difficult-to-Recruit Workers

- Employers can sponsor **qualified** foreign workers (from unskilled to those with extraordinary abilities) for permanent residency
- Two step-process
  - Must prove (through specialized recruitment process) that US workers not available for position in question)
  - If successful, submit Immigrant Petition for Alien Worker (but premium processing available)



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### Prevailing Wage

- When making an offer of employment to a foreign national, the individual must be offered equal to or greater than the Department of Labor's Prevailing Wage Determination.
- This number is based on the job requirements and the location of employment. A prevailing wage is determined prior to the recruitment period and the filing of the PERM application.

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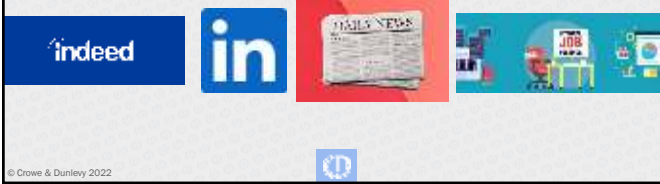
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## Recruitment Methods

- Employers must use their normal recruiting methods as well as recruitment methods outlined in the relevant regulations to determine if there are any ready, willing and available qualified workers for the position offered



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## Final Steps of PERM

- Once the recruitment period ends, the PERM application can be filed.
- Processing times will vary and can take up to a year.
- Foreign National will receive an approved I-140 or a Denial
- If approved, the Foreign National will file for an Adjustment of Status to that of a legal permanent resident

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## Direct to Permanent Residency

Pros	Cons
One-time process to move worker into permanent resident status	Once permanent resident, worker not tied to employer*
Attractive to foreign applicants	
Premium processing available (processed within 15 days of filing)	Long processing times (9-14 months) if premium processing not elected
Process can typically be completed during employment authorization period of student on F-1 visa	
Worker can be made responsible for fees and costs related to I-140*	Employer responsible for costs related to PERM process (recruitment and Form 9089)

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## Post-Degree F-1 Visa Holders

- Foreign students frequently seek employment following graduation
- Such students (on F-1 visas) are eligible for 6-24 months of employment authorization
- No sponsorship required during this period
- **Prime candidates for sponsorship to permanent residency**

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## Why Consider Foreign Workers?

Because there are not enough U.S. workers to fill U.S. employer needs.

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### Contact

Jaycee Booth  
405.234.3254  
jaycee.booth@crowedunlevy.com  
crowedunlevy.com

### Contact

Michael Bowling  
405.239.6697  
michael.bowling@crowedunlevy.com  
crowedunlevy.com

### Oklahoma City

Braniff Building  
324 North Robinson Ave.  
405.235.7700

### Tulsa

222 N. Detroit Ave.  
Suite 600  
918.592.9800

### Dallas

2525 McKinnon Street  
Suite 425  
214.420.2163

### Houston

3663 N. Sam Houston  
Parkway East, Suite 628

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