

FLASH REPORT: Conference call with TABC, 7 January 2014

The conference call with numerous migration experts gathered by TABC was structured around a set of questions sent in advance (see below).

The experts confirmed that whereas L1 and H-1B visas are most commonly used by bigger companies, SMEs tend to use E visas. In more limited cases businessmen apply also for B visas. Main differences between entry under waiver programme or B visas and L or E visas are in a period of stay (in the first case up to 90 days) and character of activity to be performed. ESTA and B visas exclude engagement in productive work or gainful employment. Given that indeed the dividing line is not so clear, TABC will provide us with administrative guidelines on this. Further, TABC promised to put together a table with costs and processing times in case of ESTA and different types of visas.

The experts also confirmed that even if a term "visa" (in particular in case of the type for speciality occupation) is used interchangeably with "work permit", these are two different authorisations issued by different authorities. Usually it is the enterprise applying for a work permit for a foreigner, who on that basis applies individually in the consulate for a visa, which allows him the entry into the US.

As regards transparency, the experts referred to various governmental websites, however they confirmed that in most cases companies must rely on attorneys to handle the process, as the rules are complicated and further for many foreigners language is also a barrier.

When discussing US business' asks to the EU, the experts referred to the US' doubts about the EU competence vis-à-vis its MS on issues of concern. When we refuted the argument, they mentioned creation of fast track procedures for accredited employers, foreseeable timeframes of processing of applications and referred to issues raised during the meeting of 22 November, notably Schengen rules on short term stay without a visa for 90 days within 180 days causing practical problems for business visitors and intra-EU mobility: lack of transparency as regards different requirements in MS for work permits and social security requirements.

Finally the experts (in particular from IBM) referred to the ongoing Immigration Reform and the pressure they put on Congress to facilitate entry and stay of high skilled individuals. In this connection they reminded that USTR cannot engage in migration issues during trade negotiations and question of creation of new type of visa or setting out quotas lies purely in Congress' prerogative.

Set of questions:

1. What are the costs and processing times in case of ESTA and different types of visas (B-1, H1 -B, L1, E-1, E-2, J-1,0)
2. What is the relation between different types of visas and work permits? Are the work permits additional to certain types of visas?
3. We would be grateful for clarification of rules on Business Visitors entering under B-1 visa or ESTA, who to our knowledge still in some cases have to apply for E or L visa.
4. How would you assess transparency related to mode 4? Which US websites do company use to inform themselves about different categories of visa and work permit and the actual requirements and application process?
5. What are the possible asks to the EU at the US' side?