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SOLVING THE H1-B VISA PROBLEM FOR US TECH COMPANIES; A CANADIAN SOLUTION

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There has been much discussion about the recent U.S. Travel Ban and the response of American technology companies. Some have wondered what the near future holds for the many highly skilled foreign nationals currently working for technology companies in the United States on H-1B visas. Many are speculating the current administration intends to cut or significantly curtail the H-1B visa program.

The response from the Canadian tech community, particularly in British Columbia, has included many calls to welcome this pool of tech talent into the Canadian ecosystem. Yet, we haven't seen a great deal of discussion about the options available to a U.S. company wanting to set up satellite operations in Canada and relocate their affected employees north of the border.

Establishing a Canadian subsidiary is quite straight forward and is routinely done when a company wishes to establish permanent operations in Canada or employ Canadians in Canada. The only added wrinkle required to solve the H-1B is to secure status to allow the highly skilled foreign nationals (assuming they aren't Canadian) to work in Canada. In most cases this could likely be achieved through a combination of Labour Market Impact Assessments and LMIA-exempt work permit strategies, including NAFTA and intra-company transfers.

For those companies considering these options, essentially the process would look like this: The U.S. company would incorporate a Canadian subsidiary in British Columbia; typically a B.C. limited liability company suffices but occasionally, if tax considerations necessitate, an unlimited liability company is another option (note an unlimited liability company is typically used to achieve flow-through tax treatment similar to that achieved by a U.S. S-Corp). There is no residency requirement for directors of British Columbia companies so both options are relatively straightforward, once the structure is determined, and can be done in a matter of days. Through coordination with a company's U.S. counsel, tax advisors, and a network of other professionals, in most cases the entity can be created and all required banking, payroll, and related tax accounts established without any need for executives to travel to Canada.

Once the subsidiary is created, the work permit strategies referred to above can be pursued to relocate the





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H-1B visa workers to Canada and employ them through the Canadian entity. These immigration matters will require individual assessment of each individual's circumstances but in many situations may result in desired work permits being secured in a number of months.

So, to add to the welcoming pleas from the Canadian tech industry: U.S. based tech companies, concerned about the prospect of continuing to employ foreign talent in the U.S., should come to Canada. The Canadian tech industry will welcome you and the highly skilled foreign workers you employ.

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