Memorandum

**TO:** EMPLOYEE   
HR Representative

**FROM:** Deborah Swett

**DATE:** December 1, 2016

**RE:** Overview of Permanent Residence Processing

The purpose of this Memorandum is to provide an overview of the procedures necessary to obtain the permanent (immigrant) visa (also called a “green-card”) as an “International Manager” based on your managerial/executive position with your company and your managerial/executive employment with a foreign affiliate of your company for at least one year prior to entering the United States.

**GENERAL OVERVIEW**

There are three basic steps in obtaining permanent resident status:

* Obtaining certification from the state and Federal Departments of Labor that your employment will not adversely affect U.S. workers (the "labor certification" process), or obtaining an exemption from labor certification on the basis of prior managerial employment with a foreign affiliate of Fidelity;
* Filing and obtaining approval of a Preference Petition with immigration authorities; and
* Applying for and receiving the actual immigrant visa through either Adjustment of Status processing in the United States or through consular processing of the immigrant visa at a U.S. Embassy or Consulate overseas.

**EXEMPTION FROM LABOR CERTIFICATION PROCESS**

The filing of the Labor Certification Application is the first and potentially most troublesome step in obtaining permanent residence. Fortunately, there is an exemption from the labor certification process that is available to persons who have been employed with a foreign affiliate of your company for at least one year prior to entering the United States

where such foreign employment was in a capacity involving managerial or executive functions; in addition, the job responsibility in the United States must also be of managerial or executive character. Based on our review of the materials in our files, it appears that this exemption may be available to you because you worked for at least one year with your international company as a managerial employee prior to entering the United States and, further, you will be employed in a managerial or executive capacity for your current company, as such terms are defined by USCIS. [USCIS defines the terms "executive" and "manager" to include persons who manage other employees or who exercise ultimate decision-making responsibility over discrete company functions (such as pricing, product line, marketing, etc.).]

**I-140 PREFERENCE PETITION FILING**

The first step in permanent residence processing is to file a Preference Petition with the USCIS. The purpose of the Preference Petition is to establish that the job offer qualifies as a basis for the immigrant visa and that you meet the minimum requirements to perform the job duties as set forth in the offer. The employment category for which you are eligible as set forth in §203(b)(1)(C) of the Immigration Act of 1990 is that of “EB1” available to international managers and executives as above described.

**ADJUSTMENT OF STATUS/CONSULAR PROCESSING   
General**

The second and final step in obtaining permanent resident status is to actually apply for permanent residence status. This step may be taken only when visa numbers are available for persons in your preference category. Visa availability is determined on a monthly basis by the Department of State. There are two ways to take this final step: (1) the filing of an Adjustment of Status Application in the United States OR (2) processing of the immigrant visa through the U.S. consulate in your foreign country of last residence, a process referred to as “Consular Processing”. In either event, a green card visa number must be available for persons in your employment category in order to take either the Adjustment of Status or Consular Processing steps.

**Differences Between Adjustment of Status Processing and Consular Processing**

We understand that you wish to pursue adjustment of status for the third and final step in the green card process. We will contact you via e-mail as your filing eligibility date approaches to advise you regarding the steps you will need to take in connection with the Adjustment of Status. The balance of this e-mail provides an overview of both the Adjustment of Status and Consular processes.

**Overview of Adjustment of Status**

The current processing time for the Adjustment of Status Applications with the USCIS is approximately 8 months. Once visa numbers are available to you, you will be permitted

to file an Adjustment of Status Application with the USCIS. International travel during the processing of the Adjustment Application is possible so long as you also have a valid nonimmigrant L-1A visa with which to reenter the United States.

As a part of the Adjustment Application, we will also apply for an international travel document (called "Advance Parole"); the multiple entry Advance Parole travel document may take up to four months to process, but once it is issued you will no longer need a nonimmigrant visa in order to reenter the United States after international travel. We also will include a request for an Employment Authorization Document ("EAD") that, once issued, will authorize employment in the United States for you. The Advance Parole and the EAD provide travel and work authorization that are independent of the underlying nonimmigrant visa and must be renewed prior to their expiration date.

Even if you elect Adjustment of Status processing, we advise that your current L-1A nonimmigrant visa status be maintained -- and extended as necessary -- to provide you with a fall-back status in the event that the Adjustment application is denied.

**Overview of Consular Processing**

There are several steps involved in completing consular processing. These steps do not commence until the Preference Petition has been approved and visa numbers are available to you. Once the petition is approved, the following communication with the National Visa Center ("NVC") and with the U.S. Consulate in your home jurisdiction occurs:

We will receive a bar-coded Immigrant Processing Fee bill from the NVC, usually within 60 days following the approval of the Preference Petition, and we arrange for payment of the bill as soon as we receive it.

Approximately one month after payment has been received by the NVC, the NVC will send us the so-called Packet 3.

You will need to collect the following required original documentation -- as applicable to you -- birth certificates; any deportation papers; court/prison records; military records; marriage certificates; divorce certificates; and any related translations of those documents if they are not in English. Further, you will be required to obtain a police certificate from each country in which you have lived for more than six months since you reached the age of sixteen. The process of obtaining the police certificates can be a lengthy one. Note that you are not required to obtain a police record for the United States. Since police certificates are generally only valid for six months, we recommend that you do not begin the process of obtaining the required police certificates at this time; we will notify you when it is appropriate to begin gathering the certificates.

Once that process is complete, we will receive notification of the interview date along with detailed instructions for obtaining the necessary medical examinations, at which time you will need to make arrangements to travel to your home jurisdiction to complete the medical examinations and appear for your scheduled interview.

It should be noted that Consular Processing does not affect the ability to travel to and from the United States so long as there is a valid temporary visa to use to enter the United States. Consular processing takes approximately 9-12 months (depending on the workload of the particular consular post). Unfortunately, there often is little advance notice of the personal interview date.

**Adjustment of Status Offers Significant Benefits**

There are several very important benefits available with the Adjustment of Status option that are not available under Consular Processing. The first benefit is the so-called “adjustment portability.” Current law allows an individual who has filed for Adjustment of Status and whose Adjustment of Status application has been pending for 180 days or more to change jobs if the new job is in the same or similar occupational classification as the job for which the petition was filed, without affecting the validity of the Preference Petition. A second benefit is the right to file an appeal should the USCIS deny the Adjustment of Status application. Applications filed via Consular Processing are not appealable. Thus, should the consular officer deny the application, there is no right to appeal the process. Thirdly, the I-485 applicant may obtain the EAD and AP benefits as described above. Finally, an I-485 applicant may benefit from certain provisions of the Child Status Protection Act, which protects dependent children nearing the age of 21. We generally advise our clients to pursue the Adjustment of Status option because it does preserve the important benefits discussed above.

**GREEN CARD FOR DEPENDENT FAMILY MEMBERS**

During the final step in green card processing, your spouse (and any unmarried children who are deemed to be under 21 years of age based on the USCIS rules that apply1) will be eligible to obtain green card status as well.

**TIMING ISSUES**

One important point to recall in applying for permanent resident status is that you need to maintain valid nonimmigrant visa status during the pendency of permanent visa processing; the mere filing of permanent residency papers does not permit you to remain in the United States absent an independent, valid nonimmigrant visa (until such time as the Adjustment Application can be filed on your behalf). For this reason, it is desirable to initiate permanent visa processing at a point in time during which you still have sufficient time remaining in nonimmigrant visa status.

1 USCIS rules calculate the age of the child for purposes of determining whether the child is under 21 as follows: Actual age of the child on the date that both (i) the preference petition (Form I-140) is approved AND (ii) a visa number is available, LESS the number of months during which the preference petition was pending with USCIS, ASSUMING that within one year from date of approval of the preference petition steps were taken to apply for green card status (via the filing of an adjustment of status application with USCIS or via consular processing).

Under current law, the maximum permissible period of stay in the United States in the L-1A visa category that applies to you is seven years (including any time that you spent in H or L visa status for employers other than Fidelity). Based on the information in our files, it appears that you obtained your L-1A visa in INSERT DATE. You thus have until INSERT 7 YEAR DATE to remain in L-1A visa status (by which time you must either (i) have filed the Adjustment of Status Application; (ii) have obtained green card status through consular processing; or (iii) depart from the United States to await completion of consular processing). Please note that your current time of stay in L-1A status expires on INSERT DATE OF EXPIRATION. We have docketed our computer calendar to advise your company of the need to file for an extension of your L-1A visa status in INSERT MONTH/YEAR to ensure that there is no lapse in your L-1A visa status.