

# INTEL CONTINGENT WORKER

## U.S. IMMIGRATION GUIDELINES

### **BACKGROUND**

U.S. immigration law requires foreign national workers on an employment based visa (“visa workers”) to be supervised, managed, and controlled by the employer that sponsors their visa. Accordingly, visa workers are ineligible for staff augmentation roles because Intel supervises and manages individuals working in a Staff Augmentation capacity. On the other hand, Outsourced Contingent Workers work under the Supplier’s direction and control and are not supervised or managed by Intel. Therefore, foreign nationals on a visa are generally eligible to work in Outsourced CW roles provided the supplier is the sponsor of the foreign national’s visa.

These guidelines identify which visa workers are eligible for contingent worker assignments at Intel operations in the United States (U.S.); describe the steps Intel will take to help Suppliers meet their legal obligations; and outline the process required for Suppliers to enlist Intel’s assistance.

**NOTE:** These guidelines do **NOT** apply to supplier personnel on a Business Visitor’s (e.g., B-1 Visa) visa, including supplier employees on Intel premises for equipment installation or post-sales support.

### **GUIDELINES**

#### **1. Staff Augmentation Roles**

Only U.S. Workers may fill Staff Augmentation CW roles at Intel sites in the U.S. U.S. Workers are U.S. citizens, U.S. nationals (from Samoa or the Northern Mariana Islands), Lawful Permanent Residents (i.e. “Green Card” holders), or persons granted asylum or refugee status by the U.S. government. All others are not eligible for staff augmentation positions at Intel.

## 2. Outsourced CW Roles

Foreign nationals with temporary work authorization who otherwise meet Intel’s site access requirements are eligible to serve in Outsourced CW roles at Intel U.S. sites provided they meet the following criteria:

- The Supplier is the direct employer and immigration sponsor of the individual *or* the individual has a valid Employment Authorization Document (EAD), which does not require a sponsoring employer.
- The Supplier supervises, manages, and directs the work.
- The Supplier satisfies all immigration requirements for placing the employee at Intel, including, where necessary, posting Labor Condition Application (LCA) notices for the Intel sites where its employee will work.

**NOTE:** Suppliers are not permitted to place a subcontractor’s foreign national employee on a non-immigrant visa at an Intel site where the supplier, rather than the subcontractor, is supervising and directing the individual’s work. (These situations are commonly referred to as second sources or third party placements.)

## 3. Intel Support for Visa Compliance for Outsourced CW’s

### a. Labor Condition Applications (LCA)<sup>1</sup>

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<sup>1</sup> A document approved by the U.S. Department of Labor whereby an employer of an H-1B worker discloses the work location of the H-1B visa worker and promises to pay the published salary. This information must be posted and accessible to all employees at the work location, including customer employees.

- Intel supports its Suppliers' H-1B<sup>2</sup> requirements by facilitating Supplier LCA postings on Intel's electronic posting program. Suppliers must use the process outlined below and are not otherwise permitted to post LCA notices at Intel premises.
- The Supplier must complete the [LCA Posting Request template](#), which includes information about the Supplier, the CW, the Intel sponsor, and the Intel cost center for the CW project. (If the Supplier has not previously posted LCAs at Intel, then the Supplier must also provide the location where it retains required H-1B visa public access files.)
- The Supplier must email the completed template to [intelCW@fragomen.com](mailto:intelCW@fragomen.com). Incomplete questionnaires will be returned to the Supplier for completion.
- Fragomen, Intel's immigration services provider, will post the LCA on Intel's electronic posting site.
- Upon posting, [intelCW@fragomen.com](mailto:intelCW@fragomen.com) will confirm the posting dates to the supplier representative named in the posting request.
- Cost of Compliance: It is the business unit's discretion whether to charge a supplier back or absorb the cost.

**b. Request for Client Letters<sup>3</sup> and Requests for Evidence**

- Upon request, Intel will provide a client letter for visa purposes to establish that a visa worker is authorized to work on site at Intel in an Outsourced CW role. This letter may be used only to confirm that Intel has contracted with the Supplier to perform the particular

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<sup>2</sup> H-1B is the primary work permit for foreign national knowledge workers in the U.S. The visa application requires the H-1B employer to identify the regular worksite[s] of the visa holder, even if that worksite is at a customer location.

<sup>3</sup> A client letter is correspondence from Intel addressed to a U.S. government agency in which Intel confirms its contractual relationship with a Supplier and the assignment of a specific visa worker to a contingent worker role at Intel. Under these guidelines, Intel Immigration confirms the contingent worker's role at Intel; prepares and signs the client letter; and provides the letter to the Supplier who requests it.

project (or scope of work) and the need for the CW to work at Intel premises as part of the project. No other type of immigration support letter is appropriate.

- The Supplier must complete a [Client Letter Request Questionnaire](#) and email it to [intelcw@fragomen.com](mailto:intelcw@fragomen.com).
- The Supplier must include a copy of its completed [LCA Posting Request template](#) or explain why no posting request was submitted to Intel. In the case of a Request for Evidence (RFE), the Supplier must include a copy of the RFE as it pertains to the CW's Intel assignment.
- [IntelCW@fragomen.com](mailto:IntelCW@fragomen.com) will confirm the CW assignment through Intel's CW database. No client letter will be provided until Intel confirms the assignment.
- Intel's U.S. Immigration Manager or his/her designee will sign the client letter and return the signed letter to the Supplier.
- Cost of Compliance: It is the business unit's discretion whether to charge supplier back or absorb the cost.

**c. Requests for Client Letters and H-1B CAP LCA Posting**

In circumstances where the Supplier's foreign national employee is not yet assigned to Intel because his/her work visa is contingent upon being selected for an H-1B visa in the annual lottery, the Supplier should contact [intelcw@fragomen.com](mailto:intelcw@fragomen.com) to discuss the Supplier's special H-1B CAP related process requests. CAP-related requests should be initiated no later than March 1 of each calendar year. Intel's immigration law firm will coordinate with the Intel Commodity Managers on the Supplier's request.

**d. Post-Sales Equipment Installation or Support**

On occasion, Sponsors or Commodity Managers may be asked to provide immigration invitation letters in connection with the sale, installation, or maintenance of Intel capital equipment. These workers are considered business visitors who are not covered by these Contingent Worker U.S. Immigration Guidelines. Where a Supplier requests an invitation letter for a sponsor in connection with the sale, installation, or maintenance of Intel capital equipment, Sponsors should continue to access and use the template invitation letter available on the Intel Immigration page on Circuit—

[US invitation letters](#). (**Note:** This document is only accessible to Intel Sponsors from within Intel's Intranet.)

## **GOVERNMENT SITE VISITS**

On occasion, representatives from the U.S. Citizenship and Immigration Service (USCIS) make unannounced visits to the worksites of visa workers to verify information contained in immigration petitions. These visits are random and are not cause for concern. Intel sponsors should not answer questions about the terms and conditions of any CWs employment because Intel is not the employer or immigration petitioner of the CWs. If a sponsor or other Intel manager learns of a site visit for a Contingent Worker, notify the Supplier so it may interact with USCIS regarding its employee and contact [intelCW@fragomen.com](mailto:intelCW@fragomen.com) with any questions.

## **QUESTIONS OR ESCALATIONS**

Contact [intelCW@fragomen.com](mailto:intelCW@fragomen.com) for questions or escalations about the application of this policy.

## **FOR MORE INFORMATION**

See [Questions & Answers: USCIS Issues Guidance Memorandum on Establishing the "Employee-Employer Relationship" in H-1B Petitions | USCIS](#)

**Frequently Asked Questions:**

**Q. What is a visa worker for the purposes of these guidelines?**

A. A visa worker is a foreign national who is sponsored for an employment-based visa that authorizes the individual to work in the United States. Typical employment-based visas are H-1B, L-1, TN, and O-1.

**Q. What does “second sourced” or “third-party placement” mean?**

A. These terms refer to situations where the Intel supplier is not the employer that sponsored the foreign national worker for an employment-based visa. Rather, the employer that sponsored the individual for the visa is a subcontractor of the Intel supplier or an employment agency who placed the person with the supplier.

**Q. Is it permissible to have a foreign national with an Employment Authorization Document (EAD) work in an outsourced capacity for a supplier as part of a “second sourced” or “third-party placement”?**

A. This arrangement is permissible under Intel’s CW Immigration Guidelines because the USCIS rule requiring the immigration sponsor to supervise and direct the foreign national’s work does not apply to individuals on an EAD.

**Q. What is the reason a supplier’s employee on an employment-based visa cannot work at Intel in a staff augmentation capacity?**

A. USCIS generally requires visa-sponsoring employers to supervise and direct its visa workers in order for the visa workers to remain in lawful immigration status in the United States. If Intel were to supervise and direct a supplier’s visa worker in a staff augmentation

capacity, this arrangement would violate USCIS rules and cause the visa worker to violate his or her lawful status.