



Episode 26: “Immigration Focus, Part 1: How to Sponsor an Employee, With Rosanna Berardi”

Speakers: Rosemary Enright, Barclay Damon, and Rosanna Berardi, Managing Partner of Berardi Immigration Law

[Ari Kwiatkowski]: Hi, everyone, this is a Barclay Damon live broadcast where we discuss all things L&E, labor and employment. I’m Ari. Let’s dig in.

[Rosemary Enright]: All right, everybody. So you’re sitting there and you’re listening and you’re thinking, you know what? That voice doesn’t sound like Ari. Or if you’re watching you’re thinking, did Ari go and get a perm and change the color of her hair? And the answer is, no, she didn’t! Where in the world is Ari? Ari is actually on her honeymoon. She got married over two years ago. And because of the pandemic, it just kept getting pushed and pushed and pushed. So she was finally able to do it. And so she reached out to Rosanna and I and I actually, I should say Berardi Immigration and said, hey, can the three of you take it from here? And we said, heck, yeah, we can take it from here. So for those of you who have listened to our podcast in the past, my name is Rosemary Enright. I’m an attorney with Barclay Damon. I’m the practice group leader for our Labor and Employment Group. So if you’re new, welcome. If you’ve listened before, welcome back. And I am thrilled to have my dear friend and partner Rosanna Berardi back with us from Berardi Immigration. Welcome, Rosanna.

[Rosanna Berardi]: Always great to be here. Thank you for having me.

[Rosemary]: Yeah. And, you know, we’re going to try to stick, Rosanna, with Ari’s format. So she always likes a fun fact. So what fun fact do you want to share with our listeners today?

[Rosanna]: I’m Rosanna Berardi, Berardi Immigration Law. And at the beginning of my very lengthy immigration career, I attended the Federal Law Enforcement Training Academy in Glynco, Georgia. Very cool experience. But glad I did it. Really cool and makes for a good fun fact.

[Rosemary]: Yeah, that’s a great fun fact. Well, thanks for sharing that with us, Rosanna. So while Rosanna and I could just sit here and shoot the breeze for the next 15 or 20 minutes, we know that you actually want to hear about how to sponsor an employee. So we’ll just dig right in. OK, we’ll jump in, Rosanna. So the first thing you know, as you know, immigration is not in my wheelhouse. I know just enough to be dangerous. And what that means is, “call Rosanna.” So the first question I have, and I suspect many of our listeners have, is what does it mean to sponsor an employee? What is that?

[Rosanna]: Yeah. So it’s interesting, especially right now, you know, we’re living in the time of the great resignation. And, you know, every employer under the sun is having a hard time finding workers. So much so that we’re seeing a huge increase in our business where employers, companies are calling us saying, hey, I can’t find any Americans. How do I get this Canadian engineer to come into the United States? So we then start talking about sponsoring that person. The US immigration system is a sponsorship-based system, meaning that if you are Joe Smith from Toronto and you want to work in the United States, you can’t just drive across the border and work. You need a

sponsor. And that sponsor can either be an immediate family member like a spouse or a parent that's a US citizen, or an employer. So for purposes of the podcast, we're going to talk about employer sponsorship. That means an employer has met you, liked you, feel that you're qualified for their job opening, and that you're going to come and work in the United States by way of sponsorship.

[Rosemary]: So, Rosanna, so am I correct in saying then that, I like the way you said it, that the employer has met you, and likes you, and wants to sponsor you, so I guess this means this would come up maybe after a conditional offer of employment has been made. Is that the way it is?

[Rosanna]: It comes up in a couple of different ways. So sometimes employers will be super proactive and call and say, I'm thinking of interviewing this gentleman from Canada or India. Can I do this? Like, how does this work? What is involved? So we'll get those proactive calls or we'll get someone that calls and says, we found this candidate....We've made a conditional offer and we now like to sponsor him or get him on our payroll. So we get a lot of calls. It's always nice to get the proactive ones, so we can kind of guide the process. But, you know, not everybody knows and particularly with Canadians, you know, we're such good neighbors and trading partners. There's just a lot of misinformation out there that, oh, you can just bring Canadians in. But newsflash: Canadians are like everyone else from outside of the United States. Yes, they do get some special benefits, but overall, they are required to be sponsored like everyone else, China, India, Pakistan, Philippines.

[Rosemary]: Right. And you can see how that would be confusing, Rosanna. I mean, we go back and forth, right? We've gone over to, you know, Niagara on the Lake or we go up to Toronto to see some of our, you know, our friends and colleagues and that, and so you just think, oh, I can just go back and forth. So why couldn't somebody, let's just say, commute from Canada and work here? And actually, that's a good question. Could somebody do that? Could they commute and go back and forth? But do they still have to be sponsored to do that?

[Rosanna]: They do. They do. And a great example of that is here in the Buffalo area, we have a lot of medical hospitals right over the border. And a lot of those hospitals sponsor Canadian nurses, respiratory technicians. And so I have clients that are Canadians that live in Saint Catherine's, but they drive to ECMC every day for work. And given the proximity, it's a half-hour drive. You know, it's not really any different than any other commute. So we have a lot of what we call cross-border workers and travelers in the Western New York community. And, you know, it is really a great way to enhance your recruitment and hiring processes, especially right now where the well is so dry with US workers. We have a lot of lot of companies hiring foreign nationals.

[Rosemary]: Yeah. And so what is it like, what is the process? So let's say you get that proactive call. And again, I know I mean, you probably take...there are probably yearlong courses in this, but just at a high level so that people understand, what is the sponsorship process?

[Rosanna]: So sponsorship process varies depending on the visa classification. And the visa classification begins with the letter A like the alphabet and goes all the way to the letter U. And in between A through U every letter stands for a different way of coming into the United States. So letter A is for ambassadors, letter B is for business visitors. Letter C is a crewmen and it goes down the whole alphabet.

[Rosemary]: Seriously, the whole alphabet.

[Rosanna]: Seriously, up to letter U. So, you know, what is that? 20-something categories.

[Rosemary]: Wow.

[Rosanna]: Um, and each category has its own separate rules for sponsorship. So for purposes of the podcast, the most common ones we see there is a category for the letter T, the T is for TN, that's a visa classification under the NAFTA Treaty. That's for our Canadian and Mexican friends to come to the United States to work in one of the occupations listed on the NAFTA Treaty. So if you're, if you are a hospital here in Western New York and you have a registered nurse who is a Canadian applicant and you want to hire that registered nurse, as the sponsor, you need to not only give her a traditional job offer, but one that's contingent on immigration approval. And then you need to hire Berardi Immigration Law to do the actual application, which is an application that will talk about the job, the company, the registered nurse, all of her qualifications, how she meets the criteria under the law. So again, super high level view. But there are 20 something different categories, different rules, but essentially the employer is saying, registered nurse Susie, I want to hire you. I'm going to go on record with the federal government and offer you this position here at our hospital.

[Rosemary]: Got it. OK, well so let's say that, you know, the hospital gets however many months—because I assume it takes months, Rosanna, like how long does it take?

[Rosanna]: So the TN category is quick. That only takes weeks, but everything else takes months and months and months.

[Rosemary]: Months and months. OK, all right. So let's pretend then that they're going to go with the TN so it's just weeks or something like that. And at the end of the first week the hospital suddenly says, you know what, we don't want, we're not going to move forward with this, but can they just say, you know what, we're backing out. I don't know what the right word would be. But you know what I mean, end the process?

[Rosanna]: They can withdraw the application. So under the immigration rules, it's very similar to the concept of employee at will, which as you know better than anyone, New York State is an employer at will state where you don't need to have a severance package or any cause for termination. You could terminate the person. Immigration concept very similar. But for one of the 20-something categories, the immigration concept is if the person no longer fits the position or isn't a good fit, you can terminate the work permit by contacting the Immigration Service saying this person is no longer working for us, because each work permit is employer-specific. So the nurse at ECMC can't take that TN and go to Buffalo General Hospital or a hospital in Ohio to work. It's employer-specific. So yes, you can withdraw it, you can cancel it and you can terminate the employment. The only thing different, just as a fun fact for H-1B purposes, is if you terminate the person you have to give them a one-way ticket back to their home country. It's under that category...

[Rosemary]: That's kind of mean, you know, don't let the door hit you on the way out. Oh, my gosh.

[Rosanna]: One way, bye-bye. OK, yeah. So that's kind of a little quirk. But yeah, overall, you know, when we tell employers about how sponsorship works, we say, don't worry if it doesn't work out, you know, you can always switch gears here.

[Rosemary]: Yeah. So if it doesn't work out, at any point and they just then notify as you said, that this person doesn't work here. They're not a good fit or something like that. Let's say that the nurse at ECMC is doing a great job. How long does it last, Rosanna? Is it like like forever? Until you—and I know in my world I always say, don't use permanent, don't use forever—but how long does it last? Their sponsorship and their ability to work.

[Rosanna]: So again, it's dependent on the classification that we bring the person in. So for example, the TN, the government will issue it in three-year increments. Now for the TN, you can keep getting three years, three years, three years. There's no final cap. So I have some clients that have held TN

status for 15 years. They just go every three years. However, there are other categories like the H-1B or the L1 that are timed out. The H-1B six years max, the L1, seven years max. So there's no such thing as permanent. And I tell employers that call me, don't promise the moon and the stars to this applicant. Don't say we'll get you a green card. You'd stay here forever. A green card or something totally different. Very, very complex process. And I always say this is like dating; make sure you like the person, the worker categories that you're sponsoring. It's like a date... where the green card is the marriage, right? You don't want to jump to the marriage before you date. So let's just try these temporary categories first. And we can go through an analysis of how long the person can be here. And so it is, you know, it's an extra layer, it's an extra set of fees to hire a foreign national. And, you know, people that aren't familiar with this area will say, oh, well, you know, companies, they just want to hire foreign workers because it's cheaper. And I, I go crazy and say, absolutely not. It costs a small fortune. It is very cumbersome. If they can hire US citizens all day, they probably would. But there are gaps in our employment and labor market. So we turn to foreign labor and there's wonderful foreign nationals available. But it is another layer to the traditional hiring process.

[Rosemary]: Yeah. And so you mentioned it costs a small fortune. So who does pay for the sponsorship? Rosanna, is it... I assume it's the employer?

[Rosanna]: In general, yes. Now, some of the categories, like some of the categories, it's silent on who can pay. The H-1B category requires the employer to pay. The message from Congress is if you want this person, you're going to pay for it. Now, on the time the regulations are silent so the employee or the employer can pay. And sometimes when I'm counseling employees, I'll say, you know, you might want to ask for this as part of your offer package that the employer covers the fees. So it's inconsistent across the board, but usually, usually, usually the employer will foot the bill.

[Rosemary]: OK, got it. All right. And so I think oh, I know. So in terms of the renewal when you say you've got that one who's been here 15 years and they just every, you know, three years, you know, they go again, so is it a whole long process? Is it as expensive and filling out all the forms again or the application? I mean, how extensive or difficult is that?

[Rosanna]: So it's a little bit easier the second go around than the initial application, but it's still the process and procedures. So I mean, we charge a little bit less for the extension applications, but in terms of the timing and the process, you've got to do the same... the case all over again because the government wants to be updated. You know, what's changed? Are there additional duties, additional responsibilities, what's the offered salary? I mean, the US immigration law, it's old. It hasn't been meaningfully updated since 1997.

[Rosemary]: Holy cow.

[Rosanna]: We hear about this all the time about "the law changes. The law changes." I'm like, nope, nope. Excuse me the law has not changed since 1997.

[Rosemary]: That's amazing.

[Rosanna]: What we talk about is policy changes. So you know when President Trump was elected they're like, "oh the law changed." I'm like, the law didn't change one iota. The policies changed and every administration will change their policies. But we have this very old, antiquated law from 1997 that is very inflexible and it is very protective of US workers. There are built into these 20-odd categories, you know, employers have to show that they're paying the foreign national a prevailing wage, meaning that the Americans sitting next to them at lunch is being the same, is being paid the same as the foreign national employee so there's no wage discrimination. The law is very protective and it's restrictive and it's complicated. Now getting back to our Canadian

friends quickly you know, there is a lot of like, well, can I just come in, I'm from Canada and conversely, the Canadian immigration law system is much more liberal and much more flexible. So Americans that go to work in Canada, it's a lot easier for them. We have one of the most restrictive immigration law in the world. And because of that, it is very complex. And I've been doing this, this is my 25th year and I have never been bored one second in my career because this is a complicated area. Policies are ever-changing. It's so emotionally charged because it's someone's livelihood and their life and it's what I love about it, but it is complex and you know, a good takeaway from the podcast is really proactive. Think ahead. This can be done, but it takes a lot of strategic planning—it might not be done in the time that you want it, but we can get most people in.

[Rosemary]: Wow. So I have to say, Rosanna, that was a perfect close, so I don't have to summarize or come up with anything. That was great. Thank you. Although I will say you did a great job of teeing up another podcast that Rosanna and I are going to be doing. Talking about foreign nationals. So, you know, tune in for that. I think, I don't know, that might be in the next couple of weeks, but I'll say, Rosanna, thank you so much for your time. And you know, I can't agree more, your world, I mean, all of our worlds, what we do, it's individuals' livelihood, it's their life. But in this, someone might be leaving their family and their home country to come here and that's on you, right? And your firm and so that's a lot.

[Rosanna]: So it's lot. I love that part of it. I love, you know, making people's American dreams come true. But it's very complicated and stressful. And if you don't...if you're not embedded in this like I am every day, you don't realize what people go through and how complicated it truly is to be here. And it's such, to me, it's such a blessing that I get to do this every day. But it is complicated. And, you know, our role here is to make it easy. We get companies that call us all the time and say, well, can I do this myself? Say, well, technically, you could, but it's like doing a complex federal income tax return. Like, why would you do that? And the risk involved is someone's life, right! So yes, you could try and then people try and they call us and it just it's ten times harder.

[Rosemary]: That's right. Because then you've got to unwind it all, which happens all the time. Yeah. So, yeah.

[Rosanna]: For sure.

[Rosemary]: All right. Well, thank you so much, Rosanna, for your time and we'll talk again soon.

[Rosanna]: You're welcome!

[Rosemary]: All right. Bye bye.

[Ari]: The Labor Employment Podcast is available on barclaydamon.com, YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Podcasts. Like, follow, share, and continue to listen. Thanks.

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