



## Episode 28: “Immigration Focus, Part 3: Tips for Hiring Foreign Nationals, 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. Hello, everybody. So this is my third podcast, as everyone knows Ari is on her much deserved and long-awaited honeymoon. They are over...I’m pretty sure they’re in Italy, but I guess this is what we’d call my swan song. So, you know, sad to go. And I’m thrilled that the person that is joining me for my final podcast is my dear friend Rosanna Berardi from Berardi Immigration. Rosanna, welcome.

**[Rosanna Berardi]:** Thank you. Always a pleasure to be here. I love talking about immigration and I love chatting with you. So it’s perfect.

**[Rosemary]:** That’s right. It’s a perfect combo. So, you know, again, you know the drill. We like to start with a fun fact. So I don’t know how you top the last one you shared with us, but go for it.

**[Rosanna]:** So this fun fact is I absolutely love sending gifts to people.

**[Rosemary]:** That is true. I’ve been the recipient.

**[Rosanna]:** It’s just my little thing. And if you let me send gifts to people all day long, I would be so happy and beside myself. I love talking to people and like picking up a little tidbit of something they like and then surprising them with the gift. I love sending cards, which that is a lost art. People don’t write cards anymore. So I feel like I’m getting like a little bit old school. But like in between our podcast episodes, I just wrote down two people that I need to send gifts to today. I just love it. And it’s not just for birthdays. It’s just like a “just because” kind of thing.

**[Rosemary]:** That’s right. Because you’re thinking about them. And and I just have to say to everybody out there in the ether, so I have been the recipient of at least two of the cards. I’ve ...well, multiple cards, but there are two that stand out in particular from Rosanna. So they’re if you haven’t ever seen these, you have to get them. Are they called pop art? Is that what it is, Rosanna?

**[Rosanna]:** It’s called Love Pop is the company I use. Yeah. Love Pop. Yeah. And they’re 3D cards that they were actually discovered on Shark Tank. And they have all these really cool 3D, you know, like one for the Beatles, the band, they’ve got hearts and flowers, you know, Mother’s Day, but they’re gorgeous cards.

**[Rosemary]:** Gorgeous they are gorgeous. The first time I got one from Rosanna, I opened it and it was a floral, as she said, it’s 3D, a floral arrangement and it’s in a basket. And so you open the card and it pops up and there’s these gorgeous flowers. And I mean, it’s just beautiful. They’ve got great, great cards. That’s right. Love Pop. So it just brings such a smile to your face when you get them. So that’s a great fun fact and just a wonderful thing about you in general, Rosanna.

**[Rosanna]:** Yeah. Thank you.

**[Rosemary]:** All right, gang. So what are we talking about today? All right. Well, so when Rosanna and I last spoke, we spoke about how do you sponsor an employee So, again, remember, Rosanna is Berardi Immigration. And so throughout that podcast, you may have heard Rosanna make references to “foreign nationals.” And so Rosanna and I were chatting and we thought, you know what, we should do a quick little podcast on foreign nationals. So everybody knows what the heck that, you know, what that means. So that’s what we’re going to talk about today. So Rosanna, I’ll admit, I do not know what a foreign national is. I know that sounds terrible, but you know me. I’m a straight shooter, so I’m just going to say, I don’t know. There are probably some of our listeners don’t know. So who or what is a foreign national?

**[Rosanna]:** So a foreign national basically is a non-US citizen. So anyone that was born outside of the United States is deemed a foreign national under the US immigration law. Now, here’s a fun fact and not a very good one: way back when, when the immigration law was first codified back in 1952, non-US citizens were referred to as “aliens.”

**[Rosemary]:** Oh, really? Is that where that term comes.

**[Rosanna]:** Alien. Yes. So, you know someone from another world, basically.

**[Rosemary]:** Yeah.

**[Rosanna]:** And in the beginning of my career, I’ve been doing this for 25 years. In the beginning of my career, it was commonplace to say, to call your client an alien. The alien is from India. The alien is from Pakistan.

**[Rosemary]:** That’s awful.

**[Rosanna]:** Right. And then, thank God, a movement occurred amongst immigration lawyers to change the term from “alien” to “foreign national.” Because a foreign national. That’s fine. It says that you are a native of somewhere foreign outside of the United States, perfect. But under the law, if you’re a nerd like me, you’ll look back at the law and you will find the term alien.

**[Rosemary]:** Wow. OK. And so how does a foreign national...like thinking back to the conversation we had in our last podcast, Rosanna, like, so how does a foreign national fit in? Or do they even with, like, the sponsorship of employees? So I’m not even sure how to ask the question.

**[Rosanna]:** So a good example of that is, you know, let’s look at foreign students or international students that are here in the United States. There’s hundreds of thousands of them. Those students come from all over the world. They enter the United States on a student visa. That visa allows them to attend school for the duration of their program. You know, they’re getting their bachelor’s, maybe an MBA. Some people get their PhD, what have you. They’re in the United States already. So let’s say we have John from India. He’s been at the University of Chicago for four years as a student. He interviews with Google. And Google says this is the most brilliant software developer we’ve ever met. We want to hire John to work at Google. Well, Google will have to undergo the US immigration sponsorship program, in which they say “Government, hi, we’re Google. We would like to sponsor John. We’d like to give him a job offer. John’s a foreign national. He’s not from the United States. He’s been here for a few years. Because he’s a student. We now like to sponsor him so he can remain here after his studies.” So that’s how foreign national and sponsorship fit together. The foreign national has to be sponsored in order to work in the United States.

**[Rosemary]:** So our foreign nationals again, maybe a dumb question, Rosanna, but so are foreign nationals typically students? Is that is that how...I mean.

**[Rosanna]:** Well, they can be, yeah.

**[Rosemary]:** Would there be another example of a foreign national?

**[Rosanna]:** Oh, yeah, absolutely. So every single one of my clients at my firm, which we have hundreds of clients, are foreign nationals because they're not American citizens and they're seeking some type of lawful immigration status in the United States. This morning, I just did a consultation with a foreign national, born in Brazil, Canadian citizen. Has a business in Canada where she puts together really high-end wellness retreats for hotels. A fan favorite of mine as well.

**[Rosemary]:** We'll talk later, Rosanna, I'm interested in that too.

**[Rosanna]:** Now, she's had some success in Canada and she called and said, Hey, all the places that I want to sell my retreats to are in the United States, like California and Arizona. How can I come to the United States to do this? So I had a consultation with her and I talked to her through how she can enter the United States. Now, she's a foreign national. She's "just a Canadian," as we say, you know, that lives in Mississauga, but she still needs to undergo the formal immigration process to establish her US portion of her business.

**[Rosemary]:** OK, got it. OK, and would someone, so for example, my brother married a woman from Brazil. And they're living here in New York. Would she be considered a foreign national then?

**[Rosanna]:** Yes, absolutely. And your brother, I'm assuming, is a US citizen.

**[Rosemary]:** Yeah.

**[Rosanna]:** So he can sponsor her as his spouse for a green card, which is permanent ability to remain in the United States.

**[Rosemary]:** Right. And so then if she wanted to get a job, she would then have to have her. So I assume my brother would sponsor her for a green card, but if she wanted to work here, the employer would have to...an employer would have to sponsor her.

**[Rosanna]:** Well, depends, because that's the answer to every question that you ask a lawyer is depends.

**[Rosemary]:** Yeah.

**[Rosanna]:** In general, the marriage-based sponsorship in that situation would result in an open work permit so she wouldn't have to bug an employer. There are some small exceptions where she would, but in general, that's part and parcel of the marriage sponsorship.

**[Rosemary]:** Got it. OK, because I just know, you know, I have clients calling a lot because we work with, you know, a lot of US employers and these types of situations come up. And again, my first thing is let me call Rosanna. So because I don't know, but I bet I just but they'll say, well, that, you know, that the individual said they're married, so they're here and they're then allowed to work here. And I don't know the answer to that. So what you're saying is, you know, there's that open. So OK, got it. So basically is this fair to say then? So a US employer, Rosanna, would go about hiring a foreign national like just as they do like the sponsor? It's a sponsorship, right?

**[Rosanna]:** Yes, that's correct. Yep.

**[Rosemary]:** And then we talked about this before and does that mean it works the same way where an employer could withdraw it or cancel the application at any point? And it's all the same. It's just this firm has a different label.

**[Rosanna]:** Yeah, it's all the same. You know, there's nothing forever in immigration. So if you sponsor a foreign national to work for your company and it's not a good fit—and that happens with all kinds of employees—you're not stuck with that person forever or until the end of their work permit. You can terminate them. You know, it depends. Obviously, the state that you're in, if you're in a, you know, an at-will state like New York, you terminate them, you cancel their work permit. They go back to their home country. So, you know, there are tons and tons of foreign nationals in the United States. And it's a very broad term when you think about the diversity of our population in the US not everybody is born here. And, you know, especially with our proximity to Canada and Mexico, we do have a very diverse melting pot, if you will, of nationalities. So for employers, you know, I'd love employers to leave this podcast taking away the idea that don't be close-minded and say, I can only hire US workers. You're really, really short selling yourself from an amazing, amazing population of people that are hungry to work and want to come here and oftentimes are educated in the United States. I mean, the University of Buffalo, 10% of their population is foreign nationals.

**[Rosemary]:** Wow. I didn't know it was that high. That's great.

**[Rosanna]:** Yeah. Yeah, many of them are here for many years and, you know, acclimated. And there's just something really special about the immigrant work ethic. And I know that sounds like a cliché, but I see it each and every day. And people that I represent are thrilled to be here. And whether they're from Toronto or Bangladesh, they're thrilled to be here and tend to go the extra mile. So for employers, you know, keep that open mind it is another layer. It is sponsorship. There are rules and regulations, but it's like every federal process. You can do it with the right partner.

**[Rosemary]:** Right. And of course, you know, a lot of times, you know, I'll say barriers or obstacles for employers may be, you know, they look at and they think, oh, there's all this cost involved. But look, if you get someone like John, the person that you know, the name that you used before, John comes in he starts working at Google and he works there for 15 years. And he's an amazing employee; it's worth the investment. Right.

**[Rosanna]:** Absolutely.

**[Rosemary]:** So you invest, you're investing in your organization. And this person, you know, is, as you had said in the last podcast, Rosanna, you know, you're dating. Do you like think of it as dating, do you like the person you know and then, you know, as it progresses and maybe it's a green card and so forth that they will say, yeah, yeah. So well, so that's interesting. Yeah. So I'm trying to think if there's anything else that pops into my head right now. Are there, are there other considering that employers should be thinking about relative to foreign nationals, Rosanna?

**[Rosanna]:** Yeah, definitely. You don't want to promise the moon in the stars initially, and it's really good if you have, if you have an inkling or an idea like, you know, we're going to extend our Indeed post. If you're sitting in Buffalo and you want to send it a hundred miles around Buffalo, you're going to hit Canada. And if that's what you're planning to do, that's great. But it's really, really a great idea to pick up the phone and talk to an immigration lawyer to kind of walk you through how this all works. Are you ready to do this? Here's the process. Here's kind of the timing, the cost, just so you know, we hate for employers and employees...sometimes they go down this road of interviews and then they call us at the end and we can't do anything. The position you know, doesn't work

for immigration purposes. The salary is not high enough. I always tell both the employer and the employee, call us first before you go through the pain of three or four interviews and reference checks and an office visit, call us first, because it's very disappointing to go through all of that and then have poor me have to tell you, I'm sorry we can't do anything on this case and that it's just a waste of everyone's time. So for employers to be proactive, consider that workforce. You will definitely...you're definitely going to be happy with what you get yeah.

**[Rosemary]:** So and actually, that reminds me, we'll wrap it up in a minute or two here, Rosanna. But when you know, when we were talking about the sponsorship, you know, we talked about the what did you call it, the TN? Is that not the TN? And you said that that sponsorship program took, you know, several weeks, whereas some of the others, you know, the other letters A through U teeny, it could take months and months and months. So is sponsoring a foreign national is it any does it go any faster?

**[Rosanna]:** No, no, unfortunately not. It's the same process. And most things in immigration can move pretty slowly and especially with the pandemic, you know, all the embassies worldwide shut down. And now there's all these backlogs. And there's one type of green card case we do and there's apparently 500,000 of them sitting on a desk waiting to be looked at in Montreal, Canada, like it's terrible.

**[Rosemary]:** Wow.

**[Rosanna]:** The processing times right now are horrible. So it's always good to get a leg up you know, that the TN and for Canadians and Mexicans, if a Canadian or Mexican call the office or an employer saying we're hiring a Canadian or a Mexican, first thing, we're going to look at is the TN category because we can get you those in a couple of weeks. Everything else will take months and months. And it is very strategic because if you have an immediate hiring need, you don't want to go down the road of sponsoring a foreign national under a visa category that's going to take a year to obtain. It's not going to help your immediate need.

**[Rosemary]:** Right.

**[Rosanna]:** So it's best to make that phone call. It'll save you a lot of time, a lot of money, a lot of energy. Just so you know what you're looking at when you're interviewing people.

**[Rosemary]:** Yeah. All right. Well, great. Well, that was all great stuff. And again, it just shows me how much...I knew there was a lot to immigration, but my heavens, to keep that all straight, Rosanna! We so appreciate you joining us again. We know how busy you are, but this has been terrific and so have a great day

**[Rosanna]:** Thank you.

**[Rosemary]:** And we'll talk again soon. Sounds great. Thank you. Bye-bye.

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

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