The Night Before Christmas: Santa's Jolly Immigration Journey

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'Twas the night before Christmas, when all through the house
Not a creature was stirring, not even a mouse;
The stockings were hung by the chimney with care,
In hopes that St. Nicholas soon would be there….

But will he soon be there? After all, Santa Claus is not a U.S. citizen or lawful permanent resident (green card holder). To plan ahead for his visit, Santa will need to secure a U.S. visa. In the current U.S. immigration climate, how can Santa ensure his Christmas Eve travel plans do not go awry?

Santa Claus Is Comin' to Town

Santa's journey must start well before Christmas Eve by identifying the best visa and scheduling a visit at the nearest U.S. Consulate for a passport visa stamp. A recent policy change requires applicants to apply for visas in their home countries, but the North Pole does not have a U.S. Consulate. Santa will need to find a location that accepts him as a third-country national – a daunting task that will surely require some Christmas magic!

Santa could possibly get by with a B-1 business visitor visa. The B-1 category is for entry to the U.S. temporarily for business activities – but not employment! Santa's activities may fit into the B-1 business visitor visa category if his delivery of toys to all the girls and boys on Christmas Eve is incidental to work that will principally be performed outside of the U.S. Specifically, Santa's elves work year-round at the North Pole to make all of the toys. Santa is just delivering them with his reindeer, which could be considered an incidental activity. Santa must also demonstrate his ties to his home country, which should not be difficult given his importance to the local economy and his family connections with Mrs. Claus. As such, Santa's B-1 visa would likely be approved for 10 years with individual visits up to 180 days.

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Up on the Housetop

On the other hand, Santa is putting in some serious work on Christmas Eve. He's not just coming down through the chimney with lots of toys; he's filling the stockings of little Nell and little Bill. This may require authorization to work beyond the B-1 visa. Work visas are few and far between of late, but luckily there is one that fits like Santa's mitten: the O-1A visa for individuals with extraordinary ability.

There's no doubt Ole Saint Nick is extraordinary, but could he reach the high threshold for an O-1 work visa? The O-1 visa would allow Santa to work in the U.S. on Christmas Eve, so long as he can demonstrate he has won a major international award or, in the alternative, prove at least three of eight possible criteria demonstrating his extraordinary ability. Since the Nobel Foundation has failed to recognize Santa's accomplishments in spreading Christmas joy with a Nobel Prize (put them on the naughty list!), Santa will have to follow the same path as many O-1 visa applicants by establishing at least three factors that prove his extraordinary ability.

As long as Santa's case does not land on the desk of Officer Ebenezer Scrooge from U.S. Citizenship and Immigration Services (USCIS), Santa should easily prove several of the eight O-1 visa criteria. First, the Hallmark Channel's Countdown to Christmas event alone will make it clear he is the subject of published material in major media. Second, serving as a judge of work of others is obvious – all year long he is compiling his naughty and nice lists. Third, Santa has made original contributions of major significance by breeding flying reindeer, including one with a nose so bright it went down in history, and engineering novel sleigh technology. Fourth, Santa clearly commands high remuneration for his services. With almost 71 million children estimated to live in the U.S., and the average Christmas cookie valued at 25¢, if Santa receives just one cookie per child on Christmas Eve, he will have earned over $17 million worth of cookies!

Santa can't just apply himself, as self-petitions for O-1 visas are prohibited. He will need either a traditional employer or an agent to

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file the O-1 visa petition for him. Since Santa is self-employed, any U.S. person or company can serve as Santa's agent – even his immigration attorney. (Frost Brown Todd can neither confirm nor deny it represents Santa at the time of this writing.) Santa's agent will have to submit a Christmas Eve itinerary with the petition. Luckily, the government considers these petitions confidential, so Santa's secret Christmas schedule will be safe. If approved, Santa's O-1 visa would be valid for three years.

Here Comes Santa Claus

On Christmas Eve, with either a B-1 or O-1 visa in hand, Santa is ready for his journey. But what will U.S. Customs and Border Protection (CBP) do when a little old driver who's lively and quick arrives with a miniature sleigh and eight tiny reindeer, requesting to enter the country?

Even with the threat of coal in their stockings, CBP has the discretion to deny entry to any traveler at any time. The CBP agent will review Santa's passport and visa and inquire about the purpose of his trip. With a B-1 visa, Santa's proposed activities could be highly scrutinized. CBP could play "the Grinch" and deny Santa entry and ruin Christmas. With an O-1 visa, though, the children nestled all snug in their beds would be assured of a joyous Christmas morning!

He spoke not a word, but went straight to his work,
And filled all the stockings; then turned with a jerk,
And laying his finger aside of his nose,
And giving a nod, up the chimney he rose;
He sprang to his sleigh, to his team gave a whistle,
And away they all flew like the down of a thistle.

Happy Holidays from the FBT Immigration Team!

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