

HOSPITALITYLAWYER.COM PRESENTS

2013 THE **HOSPITALITY LAW**
CONFERENCE
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

POISED FOR RECOVERY:

Hospitality Visas in a New Economy

**Presented By
Jerry Grzeca**

Grzeca Law Group, S.C.

WHO WE ARE

■ Grzeca Law Group, S.C.

- AV-rated, full service immigration law firm
- Advises hospitality clients on all aspects of employment-related U.S. immigration law, including visa procurement, I-9 compliance, and worksite enforcement

■ Jerry Grzeca

- Founder and Managing Partner
- Has practiced immigration law for over 23 years in both Washington, D.C. and Milwaukee, Wisconsin, representing private employers, municipalities and colleges
- A seasoned speaker and author of a variety of topics relating to business immigration law, and has served on more than fifty professional panels, webinars and round-table discussions for businesses needing expertise in immigration matters.

INTRODUCTION AND TOPICS

- Which positions offer a better chance at visa success
- When is it safe to make an offer to a foreign national employee?
- The background of the individual and position level within the hotel are key.
- Alphabet Soup of Business Visas - B-1 Business Visitors, J-1 Classification, H-3 Classification, L-1 Classification, E-2 Classification, H-2B Classification, H-1B Classification, TN Classification and O-1 Classification

NON-IMMIGRANT VISAS IN GENERAL

- Non-immigrant
 - *Temporarily* enters the US for *specific* purpose such as business or pleasure , study or temporary employment
- In those categories in which employment is permitted in the US, the work conditions are tightly regulated
 - Specific employer and/or specific objectives
 - Some numerical limitations
- Permanent residence (green card) is a separate process

B-1 BUSINESS VISITORS & THE VISA WAIVER PROGRAM

- Most common temporary business visa
- NOT a work authorized visa
- Could cause problems for foreign nationals and employers later on if they abuse the status to work in the US in short increments
- Must be paid abroad



APPROPRIATE & INAPPROPRIATE BUSINESS VISITOR ACTIVITY

■ Appropriate

- Attend meetings, conferences or training
- Provide advice or consultation
- Negotiations
- After-sales service



■ Inappropriate

- Gainful employment
 - Misperception of payment abroad
- “Work”
- Performing services
- Conducting training



TRAINING FUTURE MANAGERS: THE J-1 CLASSIFICATION

- **J-1: International Exchange Visitor**
 - Used by: students, trainees, professors, scholars, non-academic specialists, foreign physicians, international visitors, teachers, au pairs, camp counselors
 - Limited duration of stay. Usually 12 months in hotel industry.
 - Summer/Work Travel for 4 months
 - Generally required to return to home country for two years following J-1 classification
 - Government Financing
 - Skills List
 - Must obtain sponsorship from umbrella organization
 - Visa application is made directly to U.S. Consulate abroad with a need to petition USCIS

TRAINING FUTURE MANAGERS: THE J-1 CLASSIFICATION

- **Management Training Programs**
 - J-1 classifications for hotel management training programs are usually only granted for a 12-month period
- **Trainees/Interns**
 - Must have one of the following to participate:
 - a degree or professional certificate from a post-secondary institution outside the U.S. and at least one year of prior related work experience in their occupational field acquired outside the U.S.; or,
 - five years of work experience outside the U.S. in their occupational field.
- **Summer Work/Travel Program**
 - Usually granted for a four-month period while the beneficiary is on break from his or her university

TRAINING FUTURE MANAGERS: THE H-3 TRAINEE CLASSIFICATION

■ H-3 Trainee Classification

- Maximum validity is up to 24 months
- Need to demonstrate why training is not available abroad
- Must submit a training plan. Cannot be designed primarily for “productive employment”
- Beneficiary cannot be placed in a position in the “normal operation of business”
- The training will need to benefit the beneficiary in pursuing a career outside of the United States

■ B-1 In Lieu of H-3 Classification

- allows employees to perform services in the U.S., particularly in on-the-job training, for up to six months

RETAINING EMPLOYEES THROUGH THE GLOBAL MOBILITY OF MANAGERIAL AND SPECIALIZED KNOWLEDGE PERSONNEL: THE L-1 CLASSIFICATION

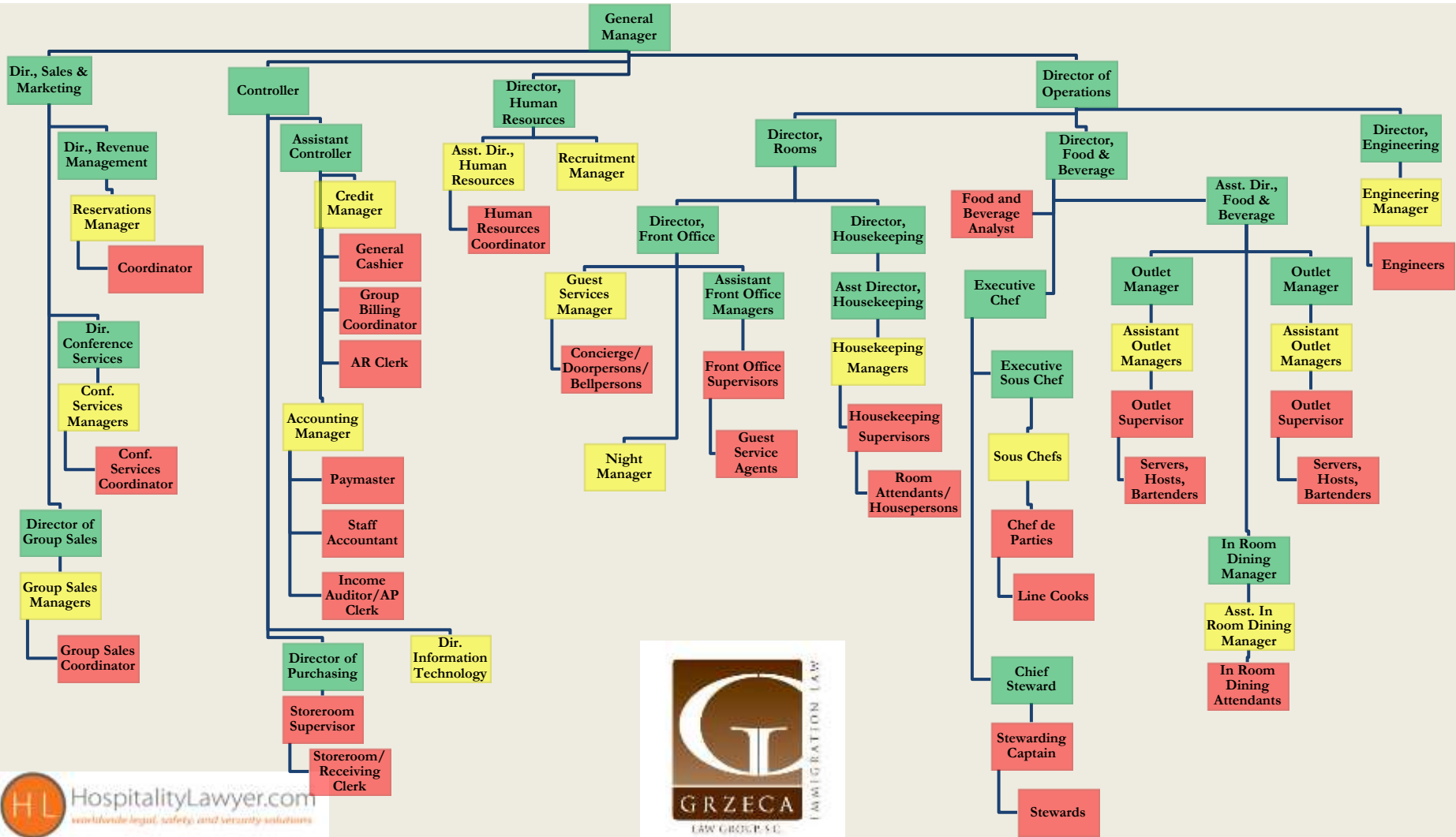
■ L-1 Classification

- Allows company to transfer employees who have worked for one year abroad for the company, its affiliate, subsidiary or parent in an executive, managerial, or specialized knowledge capacity
- L-1A Classification = executive or managerial positions
- L-1B Classification = specialized knowledge positions
- Initially granted for a three-year period, with ability to request two-year extensions until maximum period of time is reached
- L-1A = 7 years total
- L-1B = 5 years total
- Should start Green Card process 2 years before expiration

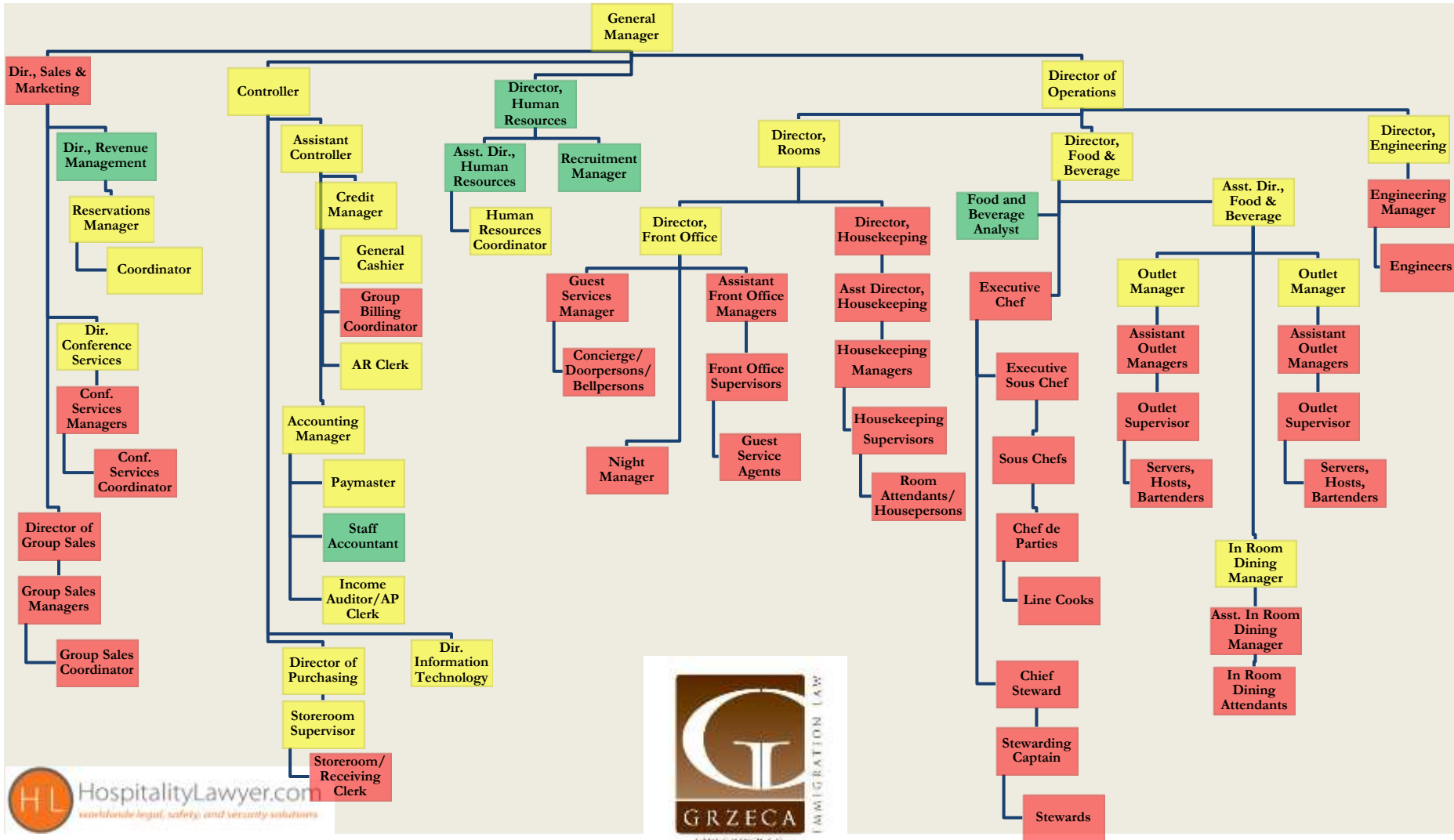
RETAINING EMPLOYEES THROUGH THE GLOBAL MOBILITY OF MANAGERIAL AND SPECIALIZED KNOWLEDGE PERSONNEL: THE L-1 CLASSIFICATION

- **What is Executive Capacity?**
 - Sample positions – Corporate-level Vice Presidents and Executives; General Managers, Managing Directors
- **What is Managerial Capacity?**
 - Sample positions – Director/Department Head positions at hotel level, Assistant Front Office Managers, Restaurant Managers, Executive Sous Chefs, Assistant Executive Housekeeper
- **What is Specialized Knowledge?**
 - Sample positions - Accountants, Director of Revenue Management, Reservations Analyst, Credit Manager and individuals coming from office/property outside U.S. to assist with opening or reopening of a hotel.
 - Individual who assists with the development or customization of software or system for hotel company and applies for L-1B class to roll-out the software or system to the individual properties.

RETAINING EMPLOYEES THROUGH THE GLOBAL MOBILITY OF MANAGERIAL PERSONNEL: THE L-1A CLASSIFICATION



RETAINING EMPLOYEES THROUGH THE GLOBAL MOBILITY OF SPECIALIZED KNOWLEDGE PERSONNEL: THE L-1B CLASSIFICATION



RETAINING EMPLOYEES THROUGH THE GLOBAL MOBILITY OF MANAGERIAL AND SPECIALIZED KNOWLEDGE PERSONNEL: THE L-1 CLASSIFICATION

- **L-1 Blanket Certification**
 - Employers may seek a blanket certification to expedite the transfer of employees between its corporate affiliates
 - The company must:
 - Be engaged in commercial trade or services
 - Be doing business in the US for more than one year
 - Have at least 3 domestic and foreign branches, subsidiaries or affiliates
 - Must have been approved for at least 10 L-1 visas during the previous 12 months; or have combined annual sales of at least \$25 million; or have a US workforce of at least 1,000 employees
 - Upon approval, all future L-1 Petitions filed directly with either U.S. Consulate abroad or U.S. Port of Entry for visa exempt individuals

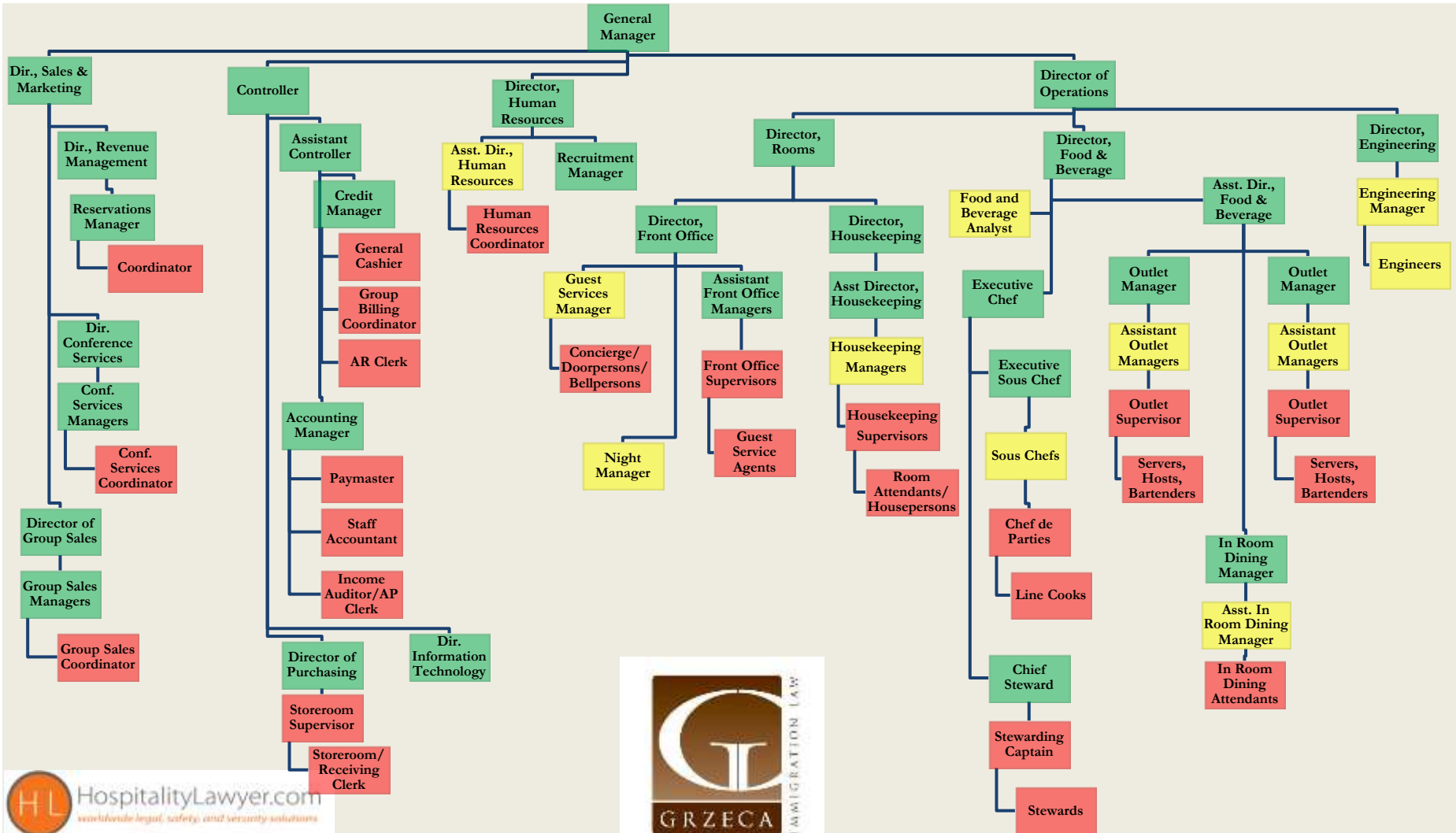


RETAINING EMPLOYEES THROUGH THE GLOBAL MOBILITY OF MANAGERIAL AND SPECIALIZED KNOWLEDGE PERSONNEL: THE E-2 CLASSIFICATION

■ E-2 Classification

- Must have a treaty of trade with the foreign national's country and the United States
- Can be obtained for executives, managers and individuals who possess essential skills
- Beneficiary does not need to be employed by the company abroad for a certain amount of time
- Application is filed with the appropriate U.S. Consulate abroad
- Need to establish the ownership of the company, the nationality of that ownership and the nature and skill of the operations in the United States
- The nationality of the company must be the same as the country party to the treaty (i.e. 50% or more owned by the nationals of the treaty country)
- Not subject to the maximum validity periods found in the L-1 and H-1B classifications
- Initial E visa is usually granted for a five-year period
- Upon entry into the United States, the beneficiary is usually granted two-years

RETAINING EMPLOYEES THROUGH THE GLOBAL MOBILITY OF MANAGERIAL AND SPECIALIZED KNOWLEDGE PERSONNEL: THE E-2 CLASSIFICATION



RECRUITING H-2B SEASONAL WORKERS IN A WEAK ECONOMY

- Employer's need is a "one-time" occurrence, a seasonal need, a peak load time, or an intermittent need
- Typical industries: landscaping, agriculture, hospitality, construction, etc.
- 9-month maximum per year
- 66,000 annual cap
 - 33,000 visa numbers released for October 1 start date and 33,000 visa numbers released for an April 1 start date
 - Does not apply to individuals who have had an H-2B classification in the previous two years
- Hourly positions in housekeeping, servers, culinary staff, groundskeepers, etc.

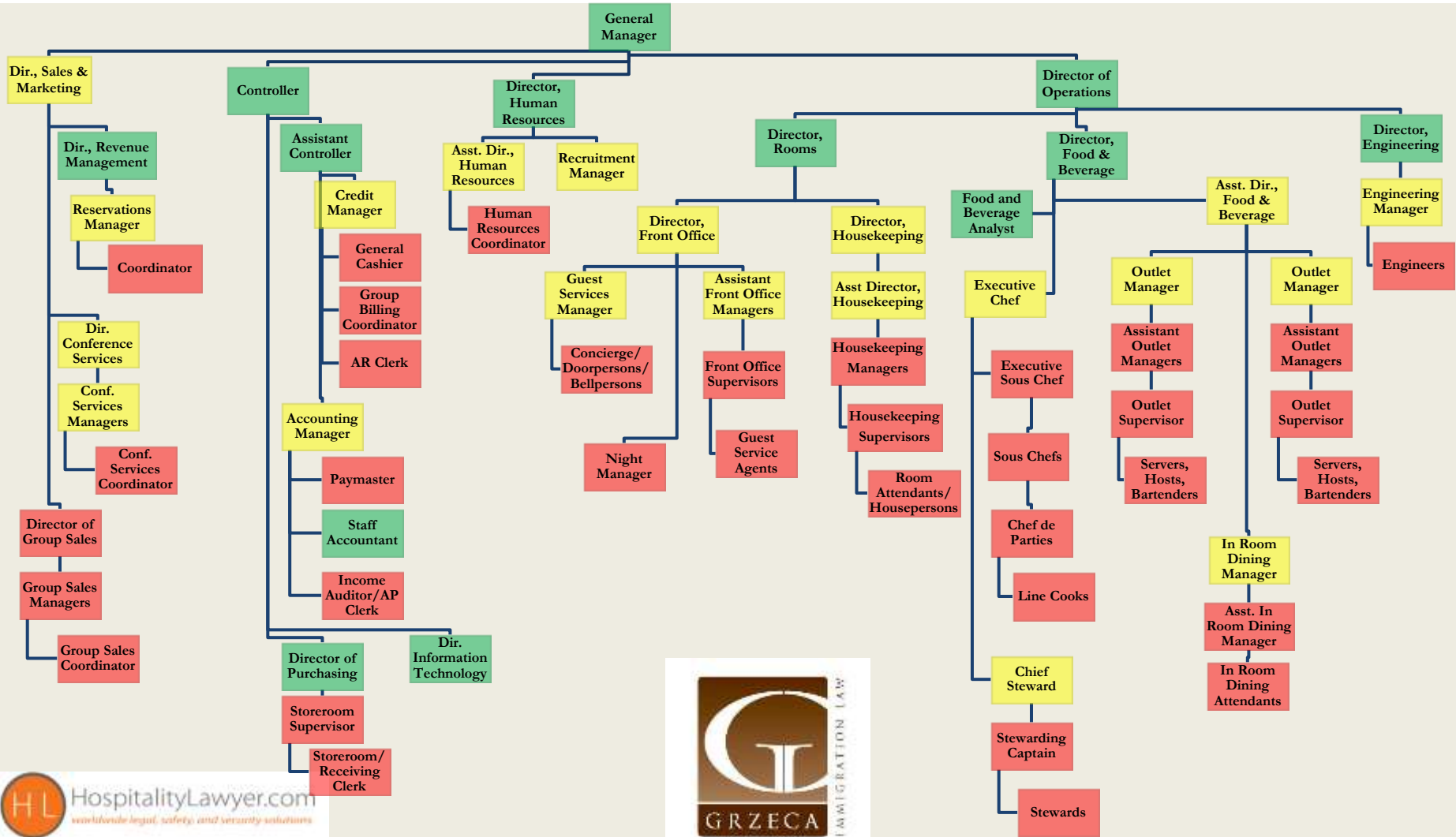
HIRING OPEN-MARKET PROFESSIONALS: H-1B CLASSIFICATION

- H-1B is the most common professional visa category, as it applies to any nationality
- “Specialty Occupation”
 - Position must require a U.S. Bachelor’s Degree, and it must be an industry standard to do so
 - Employee must possess equivalent of U.S. Bachelor’s Degree in the field
- Limited to 6 years unless permanent residence is pursued
- Can “port” from one employer to another
- B-1 In Lieu of H-1B Classification
 - Short-term (6 months or less) work authorization for foreign workers who meet certain criteria
 - No USCIS Petition needed
- Sample positions
 - Controllers, finance professionals, analyst positions

HIRING OPEN-MARKET PROFESSIONALS: H-1B CLASSIFICATION

- H-1B “Cap” - Numerical limitation imposed by Congress for each fiscal year
 - 65,000 general H-1B’s
 - 20,000 “US Masters” H-1B’s
- Extensions and transfers to new employers by foreign nationals already in H-1B classification do not count against the cap
- Specific number of visas allocated for nationals of Singapore and Chile

HIRING OPEN-MARKET PROFESSIONALS: H-1B CLASSIFICATION



HIRING OPEN-MARKET PROFESSIONALS: TN CLASSIFICATION

HOSPITALITYLAWYER.COM PRESENTS
2013 THE HOSPITALITY LAW CONFERENCE
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS
FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

- Available to citizens of Canada and Mexico when the position and employee's credentials fit within one of 63 specific categories
- Categories generally require a bachelor's degree or higher
- Sample categories: hotel managers, accountants, Computer Systems Analyst and Engineers



HIRING OPEN-MARKET PROFESSIONALS: TN CLASSIFICATION

HOSPITALITYLAWYER.COM PRESENTS
2013 THE HOSPITALITY LAW CONFERENCE
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS
FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

■ Highlights

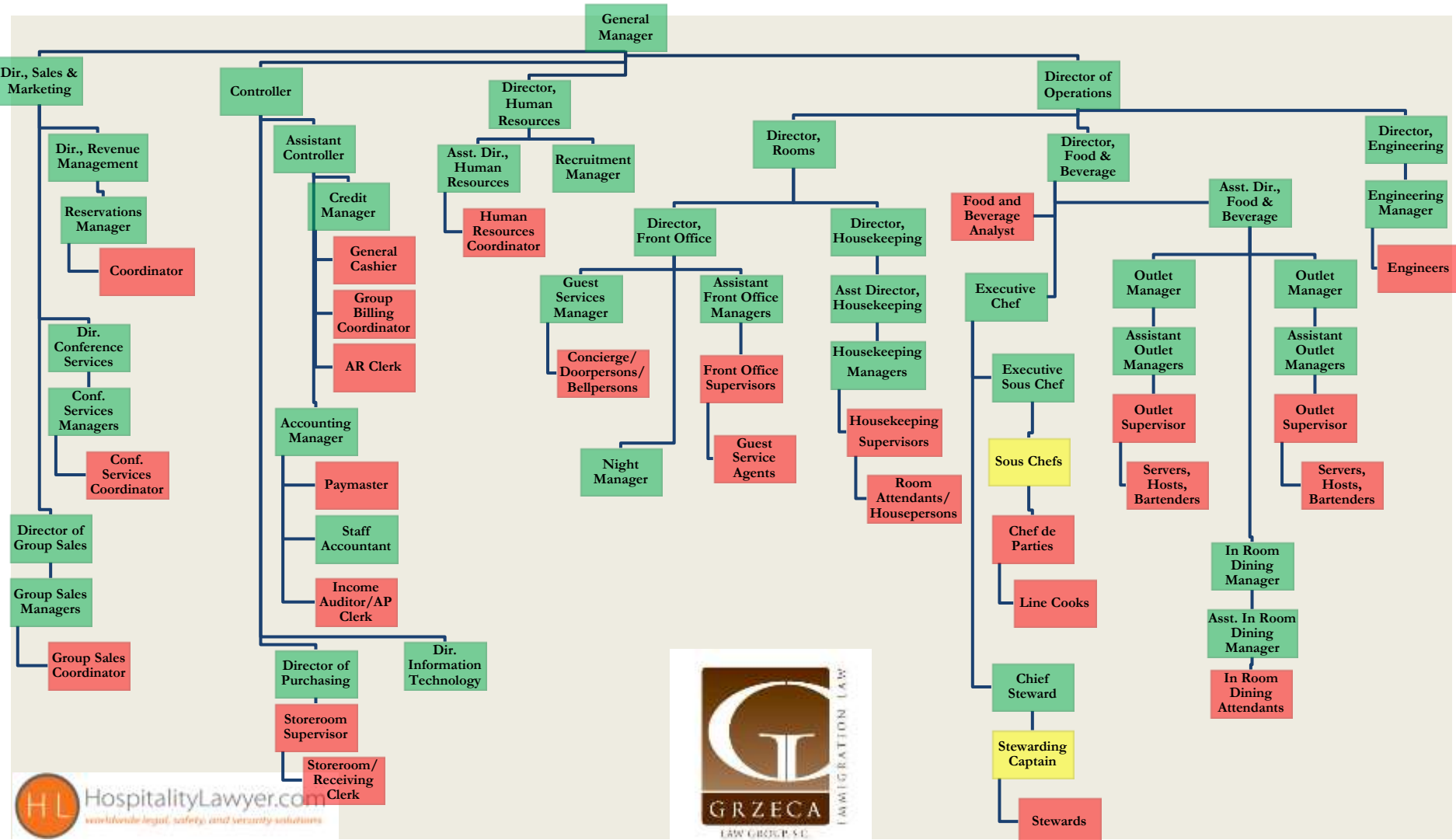
- Can be renewed indefinitely
- Alternate category to H-1B for certain foreign nationals
- Three-year period of admission
- No need to file petition with USCIS = fast adjudication

■ Lowlights

- Must fit within specific category
- No general business categories
- Hard to pursue permanent residence – no dual intent



HIRING OPEN-MARKET PROFESSIONALS: TN CLASSIFICATION



HIRING OPEN-MARKET PROFESSIONALS: O-1 CLASSIFICATION

- For foreign nationals of extraordinary ability in the science, arts, education, business, athletics or the motion picture industry
- Individual must have reached level of distinction or be at the top of their field
- Must prove extraordinary ability
- May be renewed indefinitely
- Sample positions – chefs, high-level business executives

HIRING OPEN-MARKET PROFESSIONALS: 0-1 CLASSIFICATION

