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# The Compass<sup>®</sup>

**The Law Firm of Tidwell, Swaim & Associates, P.C.**

Specializing in U.S. Immigration and Nationality Law Since 1978

## Ask David

Dear David,

*For many years our company has had a policy which prevents us from hiring foreign students or foreign nationals. This has resulted in missing opportunities for very talented potential employees, but the policy remains in effect. On occasion we may be permitted to hire a foreign student in Optional Practical Training (OPT) if they are eligible for the STEM extension.*

*However, we have not been permitted to hire foreign students and file for an H-1 visa or a green card.*

*We have noticed that our competitors apparently hire foreign students and our own employees have told us that those companies' hiring decisions are made based on the best available applicant rather than on immigration status.*

*Is there some way that I can discuss these issues with our management and owners so that they might consider hiring foreign students and engaging in the immigration process?*

Sharon Stone  
Director of Persons  
Enciteful, Inc.

Dear Sharon,

There are generally two reasons why a company may choose not to hire foreign nationals and/or engage in the immigration process. The first reason is usually the perception that the company will take on liability and obligations to the foreign national employee. This assumption, however, is simply not true



**David Swaim**  
Managing Partner

and is discussed below. The second reason is usually financial. Many employers are under the impression that the cost associated with the immigration process outweighs any benefit the foreign national might bring to the company. This also is a false assumption discussed below.

The basic advantage to hiring a foreign student or foreign national is, simply, retention. Due to the nature of the process, a foreign national employee must remain with the company for at least five to seven years. In order to obtain permanent residence this obligation starts around the fourth year of employment and then lasts for an additional three to six years. For natives of India the necessity of remaining with the company is much longer.

Although it is true that during the first few years of the employment the foreign national is free to transfer to another company if that company will sponsor the H-1 and the green card. However, most employers today will require the foreign national to sign a "liquidated damage clause" to protect the company if the employee leaves. This is not an employment contract and based on the information we have from our employment lawyers, is much easier to enforce, with some agreements for more than \$20,000.

Regarding the liability and obligation issues which some companies assume will attach if they hire a foreign national, it is important to emphasize at the outset that employers have

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virtually no liability and virtually no obligation which attaches to this process. The employer is free to begin or end the process at any time without any obligation to the employee or the government. The only minor obligation is that the termination of an H-1 employee results in an offer of return transportation to that employee. It is extremely rare for any foreign national to accept the return transportation offer as they usually desire to find another US employer. The only other obligation for the employer throughout the entire process is to pay the prevailing wage to the foreign national established in both the H-1 and green card process by the Department of Labor. Of course, that obligation can be terminated simply by ending the employment.

The second assumption regarding the financial obligation of the company to either the employee or the government has been tremendously overstated. In general, if an employer hires a foreign student or a foreign national the financial obligation of the employer for the entire process until the employee obtains permanent residence is roughly \$7,000. This is of course over a very long period of time from a minimum of five to seven years and often more than ten years.

The best way to assess the financial obligation is to consider the retention advantage which is built in to the immigration process. For example, studies have shown that a US citizen will remain in their first job after graduation for approximately twenty-two months. Foreign nationals will be forced by the immigration process to stay with an employer for a much longer period of time. If we assume that a foreign national is going to be compensated in terms of salary and benefits of around \$600,000 over a seven-year period, then adding an additional \$7,000 for a total of \$607,000 does not seem to be much of a financial burden in exchange for the retention advantage. And, the retention advantage is solely at the discretion of the employer since the case can be stopped at any point for any reason and the employer has no more obligation to that employee than it does a US citizen.

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## **Meet our Newest Paralegal**

# **Jena Nickerson**



Jena joined Tidwell, Swaim, & Associates as a paralegal in April. Jena was born in Fort Hood, Texas, and lived there throughout her childhood. She moved to Denton in the summer of 2012 to attend the University of North Texas. Jena obtained her Bachelor's degree in 2017 in Criminal Justice with her certification in Criminalistics from UNT. She achieved the honor of being on the Dean's List each semester while she was there. Jena is currently working on her Master's degree in Forensic Psychology while working at TSA.

Tidwell, Swaim is the first law firm Jena has worked for and is excited to learn so many new things. She is very thrilled with what she is doing for the firm as well as the clients. Jena has a passion for helping others and wants to continue doing so within her career. Knowing that she is now part of the oldest immigration law firm in Dallas, she will continue to strive for others to the best of her ability. Jena believes this is the start to an exciting career in law and is looking forward to see what the future holds.

Jena lives in Arlington where she enjoys sports, the outdoors, and spending time with her family and two Australian Cattle dogs, Charlie and Mack. She enjoys hiking, music and relaxing outside of the office. Jena appreciates the chance to work for Tidwell, Swaim at the beginning of her new career.



# Restaurant Review: **Si Tapas**

**By Marissa Young**

Sometimes I reminisce about my days sipping on sangria and eating tapas in Barcelona, so when my boyfriend told me about Si Tapas, I knew we had to go. Anything to bring me back the varieties of flavors and aromas was always going to be more than okay in my book.

It is very easy to miss Si Tapas or even barely notice that a restaurant is situated there. Snuggly located in a residential area of the Uptown neighborhood of Dallas, the restaurant resides in what looks like a house amongst large apartment complexes and condos. Entering the restaurant is like entering the home of a friend or a family member, feeling warm and cozy. The inside is dimly lit, creating a romantic ambiance. It was a perfect spring evening in Dallas and we got to sit outside on the porch which overlooked a large lush open space. The porch had light music playing, I could understand why Si Tapas had a strong date night reputation.

When we first opened the menu, we noticed how extensive the menu was, almost overwhelming with the amount of choices. After glancing over all the choices, we decided to start out with some Patatas Bravas, fried calamari with a sweet aioli sauce and Pan con Tomate. The Patatas Bravas were potatoes baked to perfection



with a savory tomato sauce. The bread used for the Pan con Tomate was toasted, topped with fresh chopped tomatoes. The mix of warm bread and cool tomatoes made for a great dish. The standout appetizer was the calamari with the aioli sauce as the combination worked in a way that is difficult to describe. After our appetizers, we both noticed the marinated baby shark on the menu. My boyfriend joked that fortune favors the bold and we had to try it. I have never had shark before so there was a bit of fear of what was it going to be like. Was it going to look like a baby shark? All of these questions came to my mind. When it came out, luckily it did not look like a baby shark, it had the appearance of fried chicken and my boyfriend described it tasting like a fishy chicken. It was a great dish and we were both glad that we overcame whatever fears we had. We accompanied our meal with the fantastic house sangria.

One of my favorite things about the restaurant is that it transports you to another place and makes you forget you are still in Dallas. The ambiance and the aesthetics of the restaurant are very different from almost anything I've experienced in this city. All that was missing for me was the Mediterranean breeze and I would have been transported back to Barcelona. Would I come back here? Si.

**Si Tapas**  
**2207 Allen Street**  
**Dallas, Texas**  
**214-720-0324**



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***Ask David (continued from page 2)***

The advantage of retention which a foreign national brings to a company is not to say that companies should prefer to hire foreign nationals rather than US citizens. The entire point of the immigration process is to give employers an option should they find a qualified potential employee who is from another country. Other than contractors or what the Immigration Service terms "job shops," the most successful companies using the immigration process have a blend of US workers and foreign nationals. These companies make their hiring decisions based upon the best talent available irrespective of a person's citizenship.

Hopefully this will provide your company with the basic information about the current immigration process which may lead them to a different conclusion than a blanket policy of not hiring foreign students or foreign nationals. There is additional information about this complex area at [www.hiref-1students.com](http://www.hiref-1students.com).



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