PASS

model answer

ID:

1)

1) John is not an employee of a Canadian trucking company

B-1 visa is a temporary business visa. This type of a visa does not authorize employment in the US. B-1 is granted in cases of international commerce and an incident to the international commerce.
Here, John is a citizen of Canada. His business involves trasportation of goods from Canadian manufacturers to the US. He is an owner of his business. Delivery of Canadian products to the US is international commerce. He is not going to work in the US; the only purpose of his trip to the US is his delivery of Canadian products. Therefore, he does not need authorization to work in the US. His trip is merely to unload his truck and return home. For this reason, he should be entitled to a B-1 visa.

good ✓

2) John is an employee of a Canadian trucking company

Although John is an employee, and he regularly drives his company's truck between the US and Canada, he may still qualify for a B-1 visa. If he simply delivers goods from Canada to the US, his conduct will be incidental to international commerce and should qualify for a B-1. However, this does not seem to be a case here. Once in the US, John makes several stops picking up and dropping off goods for US manufacturers. This conduct triggers John's performance of work in the US, which violates the conditions of a B-1 visa. There are enough truck drivers in the US who could be hired for transportation of goods within the US. Therefore, if John wants to continue his transportation within the US, he will need to apply for a different type of a visa. For example, in this situation, a H2-B visa will be the most proper if John receives an offer from a US employer, and the US employer proves that (1) there are not enough US truckers to transport their goods; and (2) John's wages and working conditions will not adversely affect the wages and working conditions of similarly employed US workers. Thus, a B-1 visa should not be granted to John.

good ✓

2)

To determine if Jose is a US citizen, the first step is to determine if his parents are US citizens. Since Jose was born in 1986 in Mexico, the applicable law is "on or after 12/24/52" from the chart of Acquisition of Citizenship. There are three options under "on or after 12/24/52": (1) both parents are citizens, one with prior residence in the US; (2)(a) one citizen parent with 10 years of prior residence, at least five of which were after the age 14 (for children born between 12/24/52 and 11/13/86); or (2)(b) one citizen parent with 5 years prior physical presence in the US, at least 2 of which were after the age 14 (for children born on or after 11/14/1986).

✓

Because Jose was born on July 21, 1986, option (2)(b) does not apply to him. Jose's father was born in the US; however, he moved to Mexico with his parents when he was only two years old. Therefore, Jose's father resided in the US for a really short period of time before the age of 14 that is not enough for option (2)(a).

Pursuant to option (1), the next step is to determine whether Jose's mother was a US citizen. She was born on August 11, 1951 in Mexico, but her father was born in the US. For children born on or after 1/13/41 and before 12/24/52, two options are available. The first option states: "one parent is a citizen with 10 years of prior residence in US, at least 5 of them must be after the age of 16". The second option requires both parents to be US citizens, and one of them must be with prior US residence. Jose's maternal grandfather was born in Mexico; thus, the second option shall be eliminated. The first option is applicable to Jose's mother because her mother (Jose's maternal grandmother) was born in the US in 1921, and she & her husband moved to Mexico in 1950. Her total residence in the US was 30 years, which triggers the requirement of a least five years of residence after turning 16. Thus, Jose's mother is a US citizen.

✓

Yes but the issue that arises is 'retention' because Jose's mother did not reside in the US for at least 2 years between the ages of 14-28. Good analysis though.

Returning to the initial three options for Jose, both of his parents are the US citizens: his father acquired the US citizenship at birth, and his mother acquired her US citizenship through her parents and grandparents. Although Jose's mother has never lived in the US, his father resided in the US for a brief periof of time.

Thus, Jose is a US citizen because he acquires his US citizenship through his parents under the option (1).

3)

1. John would like to petition for Clare to become a LPR

J&C will be entitled to the following three options:

First, if John (J) and Clare (C) get married in Ireland, J can petition for C as his spouse under family-sponsored preferences. C's children Michael (M) and Anne (A) will qualify as derivatives because both of them are under 18. Spouses and children of US citizens are F1 preference. Pursuant to Visa Bulletin for August 2016, the USCIS is currently processing F1 visa applications filed on and before May 22, 2009. Therefore, the approximate waiting time is seven years, which is way too long. If C waits seven years, she will be eligible to move to the US together with her children as a LPR. The Child Status Protection Act (CSPA) will freeze M's age to qualify him as a "child" for immigration purposes. C & her children will receive their green cards at the US Consulate in Ireland.

they may wait for immediate relatives to avoid the visa wait times.

Second, since J is a US citizen, he may apply for a K-1 visa, which is a fiance visa. Pursuant to K-1 guidelines, J and C will need to marry within 90 days after C's admission to the US. Here, J&C seem to be truly in love, and thus they do absolutely qualify for a K-1 visa, which requires a bona fide marriage. Also, K-1's processing times are usually from six to twelve months which are significantly shorter than the first option. C will have to go through an interview at the US Consulate in Ireland. If her application is approved, she and her children will be allowed to enter the US. After J&C's marriage, C will be qualified to adjust her status. After three years of LPR, she may become a US citizen if she would like to pursue this opportunity.

Third, J&C can get married in Ireland, and then J can apply for a K-2 visa (non-immigrant spouse visa). If C's visa is granted, she will enter the US on her visa, and then will change her status to a LPR. Generally, processing times for a K-2 are longer than for a K-1.

Therefore, a K-1 visa is the best option for J&C in their situation.

2. Can J petition for C's children to become LPRs?

✓ J can petition for C's children if they marry before M turns 18; otherwise, J can petition only for A. Also, since C's former husband died, there will be no custody issues, and no consent of the prior husband is necessary.

3. Can Michael return to Ireland?

Absence from the US for 180 days or more will trigger M's abandonment of his LPR status. Therefore, he can certainly visit Ireland for brief periods of time; however, if he goes to Ireland for two years and returns to the US, he will be inadmissible at the port of entry for abandonment of his LPR status. The only option for M is to stay in the US until he acquires his citizenship, and then he can freely travel to Ireland for long periods of time. ✓

4. C's petitioning for her sister Shannon (S)

good

Only US citizens may petition for their siblings. When C moves to the US, she will be a LPR at that point; thus, she will need to wait for her naturalization before petitioning for S. As of August 2016, the current processing date for F4 preference categoty is September 15, 2003. If C becomes a US citizen in three years and petitions for her sister, the approximate waiting time will be 13 years.

END OF EXAM