

Alternative Work Visa Options to Consider

The cap of 85,000 new H-1B visas for FY2018 was met on April 7, 2017.

With the option of obtaining a cap-subject H-1B visa for 2018 off the table, you may wonder: what options are available to employers seeking work visas for skilled foreign nationals? What should the plan of action be for professionals seeking an employment visa?

Unfortunately, some employers must wait until April 2018, when the H-1B quota re-opens and employers can file petitions for the 2019 fiscal year. Early planning will be essential next year and changes are expected, so be sure to consult with an immigration attorney to help plan for your successful workforce strategy.

In the meantime, employers using and seeking global talent should look into other options available to them. Below are some alternative work visa options to consider.

- Cap-Exempt H-1B Visas
- F-1 Visas for Students - Maximize Use of OPT or Return to School and Seek CPT
- Green Cards in Extraordinary Ability or National Interest Waiver (NIW) Categories
- Green Cards under the PERM Track
- O-1 Visas for Individuals with Extraordinary Ability
- L-1 Visas for Intra-company Transferees
- H-1B1 Visas for Citizens of Singapore and Chile
- E-3 Visas for Citizens of Australia
- TN Visas for Canadian and Mexican Citizens
- H-3 Visas for Trainees

Changes to the H-1B process are expected from the Trump administration before the next filing season. Stay tuned to our [newsletter](#), [blog](#), and [LinkedIn](#) page for updates.

*This material is not intended to substitute as legal advice.

Work Visa Options Currently Available

H-1B Visas Still Available

USCIS will continue to accept certain H-1B petitions, such as:

- From cap-exempt employers, such as institutions of higher education;
- For extension and/or amendment of H-1B status, for change of H-1B employer, and for concurrent H-1B employment; and
- On behalf of foreign nationals who were in H-1B status, have been counted against the cap, and have not used the full six years in H-1B status.

It is important to note that premium processing for H-1B visas has been suspended, and this suspension may last for up to six months.

F-1 Visas for Students - Maximize Use of OPT or Return to School and Seek CPT

The foreign national might be able to go to school or return to school to obtain a qualifying degree, preferably in a STEM field. In F-1 status, the foreign national can consider Curricular Practical Training (CPT) or Optional Practical Training (OPT) work opportunities.

Green Cards in Extraordinary Ability or National Interest Waiver (NIW) Categories

Foreign candidates may be eligible for an employment-based, first-preference visa if they have extraordinary talent and ability or second-preference visa if their work can be considered in the national interest. These two categories have very specific and high level requirements that must be met.

Green Cards under the PERM Track

PERM is the process for obtaining labor certification, the first step of the green card process for many foreign nationals seeking permanent residence through their employment.

During this process, the employer must engage in a DOL-approved recruitment and show that they were unsuccessful in recruiting a qualified US worker for the position.

This green card path also involves the filing of an I-140 Immigrant Petition for Alien Worker and the I-485 to apply for US Permanent Residence.

We have undertaken the PERM track successfully with several foreign nationals who were unable to obtain an H-1B under the lottery. This track skips the H-1B process and requires careful planning. It is a good alternative for those that qualify for STEM OPT, are in the United

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States under another stable nonimmigrant status, or can work abroad until the green card process takes place in the United States.

O-1 Visas for Individuals with Extraordinary Ability

This is a good option for individuals who can show extraordinary ability in the sciences, arts, education, sports, or business, or distinguished ability in the arts or entertainment.

L-1 Visas for Intra-company Transferees

Executives or managers and individuals with specialized knowledge who have worked for a foreign entity related to a US company for at least one year should consider applying for an L visa. This could also include exploring overseas employment for one year with a qualifying entity in a qualifying capacity for a future L-1.

H-1B1 Visas for Citizens of Singapore and Chile

Citizens of Singapore and Chile can apply for one of the 6,800 H-1B1 visas available under the US-Chile and US-Singapore Free Trade Agreements. This cap has not been reached since it was created. This visa is very similar to the traditional H-1B visa.

E-3 Visas for Citizens of Australia

Citizens of Australia with qualifying credentials can apply for an E-3 visa. The requirements of the E-3 visa are similar to the ones for the H-1B visa.

TN Visas for Canadian and Mexican Citizens

Canadian and Mexican citizens with qualifying credentials for a NAFTA profession can apply for TN status under NAFTA. TN status is limited to the certain professional occupations listed under NAFTA.

H-3 Visas for Trainees

Those coming to the United States to engage in a training program that is not available in their country can consider applying for an H-3 Visa. The training must assist the employee to qualify for employment outside the United States.

For additional information or to learn about how the Marks Gray Immigration Team may assist your business, please contact us via email: immigrationteam@marksgray.com

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