

ALTERNATIVES TO THE H-1B VISA

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H-1B visas have long been the visa of choice for foreign nationals seeking employment in the United States. At last month's American Immigration Lawyers Association (AILA) Conference in Utah it was announced that approximately half of the mere 65,000 H1b visas for next fiscal year's quota have already been taken. We would like to provide some common alternatives to the H1b visa. Many employers and workers do not realize that there are other visas, such as the E-2 essential worker, O-1 extraordinary ability worker and Programs such as the J-1 exchange visitor program that will provide options to allow foreign workers to legally work in the United States. These alternatives can help Employers who are looking for workers in times were the H1b cap is closed, where the position does not require a specialty occupation or where the filing fees involved with the H1b are just too burdensome.

The H-1B Visa

The H-1B visa is for professionals with at least a bachelor's degree or equivalent experience, and fashion models. The requirements are as follows: (a) the job is in a specialty occupation that requires at least a bachelors degree, and (b) the H-1B worker holds a bachelors or higher degree in the specialty or have equivalent work experience.

Some H-1B applications are not counted against the visa cap. These include applications by institutions of higher education, affiliated nonprofits, or nonprofit or governmental research organizations and applications for extensions of stay. As a result of legislation on December 8, 2004, an additional 20,000 H-1B visas are also available for foreign national with U.S. masters degree.

Unless you qualify for an exception, in order to work in the U.S., you will have to seek an alternative until more visas become available.

We encourage a foreign national intending to work in the U.S. to seek a consultation regarding other immigrant options. The following options are available:

A J-1 visa is a non-immigrant visa available to a foreign national under the designation "Exchange Visitor". To obtain a J-1 Visa, the U.S. sponsor must be accredited through the Exchange Visitor Program designated by the U.S. State Department. Individuals who qualify for J-1 status include: business trainees, primary and secondary school teachers, college professors, research scholars, medical residents or interns receiving medical training within the U.S. and other specialists. J-1 trainees can stay in the U.S. for up to 36 months and processing times could be as short as 4 weeks.

An L-1 visa may be an option for those who have worked for a company abroad affiliated with a US company. Unlike an H-1B visa, the L-1 does not have a degree requirement. While most L-1s will be educated, the degree does not need to be in any specific specialized field. Almost every office has vital personnel, often at the administrative level, who may not have four-year degrees, but who have special, in-depth understanding of how the company must function. These personnel most certainly could be qualified for an L-1 visa.

An E visa is available to a foreign national of a country with which the United States maintains a treaty of commerce and navigation who wishes to go to the United States: to carry on substantial trade (E-1 treaty trader visa); or to invest, or is in the process of investing, a substantial amount of capital in a U.S. business (E-2 investor visa).

For an E-1 treaty trader visa, the international trade must be "substantial" in the sense that there is a sizable and continuing volume of trade and the must be principally between the U.S. and the treaty country. For an E-2 treaty investor visa, the investment must be substantial, meaning, sufficient to ensure the successful operation of the enterprise. The investment may not be marginal. It must generate significantly more income than just to provide a living to the investor and family, or it must have a significant economic impact in the United States.

Another important facet of the E-2 visas is that an employee of foreign national owned business in the United States is also eligible for an E-2 visa as an essentially employee of that business. The essential employee is not required to show any previous work abroad, in fact there is no requirement that a company abroad must exist.

An O visa is available to foreign nationals who are extraordinary in the fields of science, arts, education, business, athletics, or motion picture and television. An O-2 visa is given to support personnel of the primary O visa holder. The petitioning U.S. employer must establish the alien's extraordinary ability or achievement by submitting evidence that the foreign national is coming to the U.S. to continue to work in the field and that he or she meets the evidentiary criteria. An agent may act as the petitioner for an O-1 alien, rather than the direct employer.

This article does not constitute legal advice but we hope it has been helpful in presenting your various options to legally work in the United States. If you have any questions about your particular situation, contact us and let us assist you in preparing and processing your application.

You should also be pleased to know that our law office has been recognized both locally and nationally for its expertise in the area of immigration law. Our reputation has been earned through hard work and dedicated service to our

clients. We will do our best to make certain that our high standards are upheld in your case.

About The Author

Darren B. Silver has an extensive knowledge of all aspects of Immigration Law and procedures. His career in Immigration includes a prior position as an Adjudications Officer for The Immigration and Naturalization Service in Los Angeles, California. Mr. Silver served the INS for a period of three years in the early 1990's. The experience of working inside the INS has allowed Mr. Silver significant insight into maneuvering through the complex maze which makes up the INS.