

H1-B Work Permit Alternatives



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The H-1B is a work permit classification for those who work in Specialty Occupations, which are occupations for which specific university degrees, or related degrees, are required. These are very well-used by foreign students who wish to remain in the United States after their student status and any attendant related work permit ends. There are challenges with the H-1B related to the limited number of employees who can be approved on an annual basis to work for most U.S. employers. With an annual random lottery to select 85,000 recipients, to which over 400,000 registrants seek to be selected, clearly most will be disappointed. Additionally, even if an H-1B beneficiary receives approval, their start date will be Oct. 1 of that year, the U.S. Federal government's fiscal year beginning, which is not always convenient based on the job and the beneficiary's status.

The U.S. government has entered into a handful of free trade agreements with Canada, Mexico, Australia, Singapore and Chile. Foreign nationals who are citizens of Australia, Singapore or Chile can obtain Specialty Occupation work permits year round. While there may be a maximum number of visas available annually, they are generally available. The U.S. Mexico Canada Agreement (USMCA) has 63 enumerated professions for individuals who meet the minimum requirements, which usually include a related baccalaureate degree. There are no maximum numbers of USMCA work permits available, and they can be obtained year round. All of these free trade

work permits have lesser filing fees than H-1B fees, and there are fewer processing steps, generally reducing processing times. Some who are unsuccessful in the H-1B lottery may be eligible for L-1 status. The L-1 is for those who have worked for a foreign affiliate of the United States and employed with substantially similar ownership and control, for one out of the last three years. The prior and future work must be either in an executive, managerial or specialized knowledge capacity. If there is a specific treaty between the country of the worker's citizenship and the United States that permits Treaty Trader (E-1) or Treaty Investor (E-2) visas, those can become alternatives to the H-1B.

The ownership of the employer must match the worker for both statuses. For the treaty trader, the employer must be engaged in substantial international trade between the United States and the treaty country. For the treaty investor, the requirements include substantial international investment from the treaty country, that the employer be active in the United States and that the employer has an impact on the U.S. economy. For those with extraordinary ability, the O-1 might work. This work status requires that the worker has won a major international award (the Nobel or Pulitzer) or has met three of the alternate criteria, such as winning lesser international or national awards, being a judge of the work of others in the industry, making contributions of significance for organizations with distinguished reputations, published scholarly writings, being the subject of major media articles, etc. For some H-1B beneficiaries, none of these options will work. Those beneficiaries who are sufficiently fortunate to have gained a STEM degree (science, technology, engineering and mathematics) in the United States under student (F-1) status may have several opportunities to register for the lottery while working in the United States in the hopes of winning an H-1B number. Others may have to leave the United States and return to their home country or move to another country with fewer obstacles to obtaining the requisite permission to live and work.

For those who may qualify for the H-1B, or may not, it is always recommended to seek competent immigration counsel to discuss options and opportunities. The team of immigration attorneys at Lippes Mathias LLP stands ready to be of assistance. For further guidance on this process, contact Eileen M. Martin (emartin@lippes.com) or Elizabeth M. Klarin (eklarin@lippes.com).

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