

SUMMARY

Alternatives to the H1-B Visa

THE CHALLENGE

Current federal immigration policies have increased costs, timelines, and ambiguity for employer-based (EB) visas, particularly the H1-B Visa. The H1-B visa is the most common pathway for employers to hire foreign born workers for long term work in the United States. However, the visa selection rate for registered applicants is relatively low - about 25% each year for 2022, 2023 and 2024 – due to the visa cap.

Changes to the H1-B visa process under the Trump Administration, notably adding a \$100,000 fee for newly awarded H1-B visas and modifying the lottery process to favor highly skilled and highly paid workers, increase the costs and complexity of pursuing an H1-B visa. Without the ability to attract and retain foreign talent, many U.S. sectors will struggle to maintain current business operations and expand their markets. For these businesses, alternatives to the H1-B visa may exist and are worth exploring.

THE SOLUTION

Employers who have historically relied on H1-B visas may benefit from:

- **Exploring alternative visa options early:** In addition to the H1-B visa, other employer-based visas include the O-1 for extraordinary ability, L-1 for intra-company transfer, TN for Mexican and Canadian professionals, F-1 OPT/CPT for student work options, and the J-1 Exchange Visitor Visa. Companies can collaborate with universities to hire F-1 visa holders in STEM fields, enabling post-graduate work options through the F-1 Optional Practical Training (OPT) and the H1-B cap exemption pathways. Students in OPT can work for 12 months in the U.S. after graduating with an additional two-year extension currently available for STEM graduates.

Each visa has its own benefits and drawbacks. Developing a strategic staffing plan that provides foresight into the company's talents needs over the next one to five years and

pairing that with consultation from an immigration attorney on which hiring needs fit different visa categories can yield a robust global talent plan.

- **Exploring non-visa alternatives:** Where U.S. talent is unable to meet a company's needs and securing a visa is either too risky or not viable, businesses can consider leveraging freelance contracts or remote work arrangements outside the U.S. Businesses can work with organizations that are licensed to provide Global Employer of Record services for hiring and management of international employees. Additionally, companies can consider green card sponsorship for individuals that may provide high value over the long term.

THE RESULTS

Changes to the H1-B visa award process mean that individuals categorized under the federal Occupational and Employment Wage Statistics as a Level IV wage earner (the highest level) will be entered into the lottery pool four times, while those at Level I (the lowest level) will be entered once, with individuals at Level II entered twice and those at Level III entered three times. Experts predict that these changes will result in the highest wage earners experiencing a close to 100% acceptance rate while those at the lowest wage level may experience a close to zero acceptance rate.

Employers who rely on foreign talent for business operations and growth may benefit from exploring alternative employer-based visa pathways as well as non-visa options. Developing a plan early with consultation from a qualified immigration attorney can save a business significant time, expenses, and headache while also revealing where the company may need to shift its strategy if no viable pathway exists to hire foreign talent under current federal regulations.

CASE STUDY SOURCE

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ADDITIONAL INFORMATION

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