

Employment-Based Temporary Work Visas

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Temporary work visas present a unique opportunity for employers to employ qualified, diverse workers in the United States. Our firm has helped employers find solutions to staffing issues through employment based non-immigrant visas and navigate the work sponsorship process. The most common and accessible to employers are the H-1B, TN, and L1 visas discussed briefly below.

H-1B Highlights

The H-1B specialty occupation work authorization is designed to help U.S. based employers fulfill needed business skills and abilities in the workforce by authorizing temporary employment of qualified non-resident foreign nationals. To qualify, the worker generally must hold a bachelor's degree or higher in a field that is directly related to the job offered. For this reason, it is often granted to those in fields such as business, science, technology, engineering, math, and medicine. An employer seeking engineers could use the H-1B visa to hire a foreign national who holds a degree in engineering either from a U.S. institution or another country.

Work authorization is usually initially granted for 3 years with the opportunity to be extended for 3 additional years. In some circumstances, the H-1B can be extended beyond 6 years.

The H-1B Cap and Lottery Process

H-1B visas are limited by Congress and are given to employers using a lottery system. Each March the lottery registration opens. To register, the employer must have an eligible foreign national applicant selected. On or about April 1 the lottery takes place and employers are notified if their registration is selected. 65,000 visas are available for applicants holding a bachelor's degree. Those with a master's degree are eligible to be selected in the initial 65,000 or as part of an additional 20,000 made available only to those holding a master's degree.

Cap Exempt Employers

Some employers are "cap exempt" meaning that these employers can petition for an H-1B visa at any time during the year. These employers include qualifying institutions of higher education, qualifying non-profit organizations, and private businesses with qualifying affiliations with a higher education, non-profit, or government research entity. Additionally, if an applicant is currently in the United States on an H-1B visa he or she can change employers without being subject to the cap. The new employer would simply need to file a change of employer petition on the applicant's behalf.

TN Visa Highlights

The TN visa is a product of the North American Free Trade Agreement (NAFTA), recently renamed the US-Mexico-Canada Agreement (USMCA) in 2020. The TN visa allows qualified professionals who are citizens of Mexico or Canada to enter the United States for 3-year periods to work for a U.S. employer. The USMCA provides a list of qualifying professionals [here\[MKC1\]](#). The TN visa is designed to be relatively easy to obtain and can be renewed indefinitely. Processing of the TN can vary, but can generally be achieved within one to two months.

L-1 Highlights

The L-1 visas are narrower than the H-1B and TN visas, but can be extremely beneficial to employers with foreign offices or who are affiliated with a foreign company. The L-1 visas are referred to as "intra-company transferee" visas; they allow companies to transfer foreign nationals from offices outside of the U.S. to its U.S. operations. The L-1 visas allow U.S. based employers to utilize the knowledge, skills, and abilities already within their companies and affiliate companies to continue work without slowing down operations to

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train new employees hired from outside the company.

There are two types of L-1 visas, the L-1A Executive and Managerial visa and the L-1B Specialized Knowledge visa. The L-1A allows Executives and Managerial employees to transfer from foreign based offices to U.S. based offices in support of the company which they have previously worked. The L-1B Specialized Knowledge employee must show that they have specialized knowledge of the company, its operations, products, research, etc. An L-1B does not need to hold a managerial role, but specialized knowledge is often more difficult to establish.

While many companies use the B-1/2 visa for international business travel into the U.S., the level of work permitted on a B visa is extremely limited. If USCIS or the State Department discover, or suspect, that a traveler is violating their B visa status, the visa may be revoked and future visa applications become much more difficult. With that in mind, L-1 visas are preferred for executives and managers and those with specialized knowledge who will engage in more than the minimal work contemplated on a B visa.

[MKC1] https://www.nafsa.org/_/file/_/amresource/8cfr2146.htm

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