

2016 H1B Cap Reached Alternatives to the H-1B Visa Category

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On April 7, 2015, United States Citizenship & Immigration Services (USCIS) announced it received sufficient H-1B petitions to meet the Master's and regular H-1B quotas (or "caps") for Fiscal Year 2016, which begins on October 1, 2015.

Many U.S. employers recruit worldwide for professional talent to fill positions requiring a bachelor's degree or equivalent. H-1B visas have long been the visa of choice for such foreign nationals. But many employers do not realize there are other visa categories that provide options for foreigners to work in the U.S.

The J-1 visa is available to a foreign national under the designation "Exchange Visitor." Individuals who qualify for J-1 status include business trainees, primary and secondary school teachers, college professors, research scholars, and medical residents receiving medical training within the U.S.

Beginning May 26, 2015 USCIS will be extending U.S. employment authorization to certain H-4 spouses of foreign nationals in H-1B status. This change permits spouses in H-4 status to apply for an unrestricted work card provided that the principal H-1B employee: Is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker; or Has been granted H-1B status under the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), which permits H-1B employees seeking permanent residency to extend their H-1B status beyond the usual six-years.

An E Visa is available to a foreign national of a country with which the United States maintains a treaty of commerce and navigation, if the foreign national travels to the United States to carry on substantial trade (E-1 treaty trader visa), or to invest substantial capital in a new or existing American business (E-2 investor visa).

The L-1 visa may be an option for those who have worked outside the U.S. for a foreign company affiliated with an American company such as a branch, subsidiary or joint venture. Unlike the H-1B visa, the L-1 does not have a degree requirement. While most L-1 recipients will be educated, the degree need not be in any specific field. The recipient, however, must have "specialized knowledge" regarding how their company functions or have worked abroad as a manager or executive.

An O visa is available to foreign nationals who are extraordinary in the fields of science, arts, education, business, athletics, motion pictures, or television. An O-2 visa is given to support personnel of the primary O visa holder. The petitioning U.S. employer must establish the foreign national's extraordinary ability and that the foreign national will continue working in the qualifying field while in the U.S.

The F-1 Visa allows a foreign national to enter the U.S. to study at an established university or college. F-1 status is valid for the time necessary to complete a full course of study. Upon graduation, many F-1 holders can receive twelve months of work eligibility, called Optional Practical Training (OPT).

Immigration is a patchwork quilt of options. There are often creative alternatives when the most obvious path is

unavailable.

For additional information or questions regarding alternatives to the H1-B visa category, please contact Attorney [Silas Ruiz-Steele](#), Chair of the Immigration Section, at 610-898-7153 or sruizsteele@barley.com.

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