

Insights, News & Events

LOOKING FOR AN ALTERNATIVE TO THE H-1B VISA LOTTERY? CONSIDER THESE 8 OPTIONS FOR EMPLOYING FOREIGN NATIONALS

Insights

Jun 12, 2024

Missing out on the H-1B visa lottery can be disheartening, but it's not necessarily the end of the road. If you employ foreign nationals, the good news is that you can explore certain short-term, long-term, and even some lesser-known solutions that may ensure foreign national employment in the future. Here's a quick overview of eight key alternatives for workers who are not chosen under the H-1B cap. [*For a deeper dive into this topic, you can register here for our June 20 webinar.*](#)

1. Additional H-1B Options

H-1B visas are available to foreign nationals with at least a bachelor's degree (or its equivalent) working in a role deemed to be a "specialty occupation" by USCIS. The annual H-1B cap allows for 65,000 "regular" visas and 20,000 visas for workers with a U.S. master's degree or higher. But here are some additional H-1B options you may not have known about:

- H-1B1s are available for nationals from Chile and Singapore, and while there is an annual cap for these visas, it's not reached as quickly.
- Some organizations are exempt from the H-1B cap, including certain non-profit organizations and

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education institutions.

- The H-1B visa is portable. So, you may be able to hire a foreign national who is already in H-1B status working for another U.S. employer, though additional steps may be required in some circumstances.

2. Temporary Business Visitors

Instead of an H-1B, B-1 visas may be available to some foreign nationals. Workers may be eligible for a B-1 visa if, for example, they are traveling to the U.S. to consult with business associates, negotiate a contract, participate in short-term training, or attend a conference that is scientific, educational, professional, or business related.

3. Transfers within Multinational Companies

L-1 visas are available to foreign nationals who work for multinational companies full-time for at least one year in the last three years and will transfer to the U.S. to work for a related entity in a position that is executive or managerial or requires specialized knowledge, as long as the foreign position was also either executive or managerial or involved specialized knowledge.

4. Country-Specific Visas

E-2, E-3, and TN visas are available to foreign nationals from certain countries that have treaties with the U.S. For example, professionals who are citizens of Canada and Mexico can secure TN status to work in certain professional positions (such as accountants, engineers, scientific technicians/technologist, management consultants, etc.).

5. Alternate Employment Authorization

Some foreign nationals are eligible to apply for an Employment Authorization Document (EAD). You may be able to hire a foreign national who is already working pursuant to an EAD or who is eligible for an EAD obtained through a student-based F-1 optional practical training. Additionally, foreign nationals who graduated

from a STEM (science, technology, engineering, and math) program and are working in a field related to their major may be eligible for a STEM EAD prior to the expiration of their current EAD.

6. Extraordinary Ability

O-1 visas are available to foreign nationals with an extraordinary ability in the sciences, arts, education, business, or athletics – or extraordinary achievement in motion picture or television industry. While these visas do not have a cap, the threshold is very high and requires substantial supporting documentation and is extremely scrutinized by the USCIS.

7. Interns and Trainees

A J-1 intern/trainee or H-3 trainee visa is available for entry level positions that involve significant hands-on training and a structured training program. These visas may require proving why the training is not available in the home country and how the foreign national will utilize the skills gained in the U.S. in future employment in the home country.

8. Long-Term Solutions

A temporary short term-solution from the above list may be effective in place of or in conjunction with more long-term solutions, including future eligibility for an L-1 intracompany transfer, remote work from the home country, or green card sponsorship.

Do You Want to Learn More?

If you are interested in learning more, sign up for our webinar, *Navigating U.S. Employment: Alternatives for Those Not Selected in the H-1B Lottery*, which will be held on June 20 from 9:00 AM - 10:30 AM PDT. [Learn more and register here.](#)

Conclusion

Fisher Phillips stands ready to assist you as you navigate your options to hire foreign nationals. If you

have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Technology Industry Group](#) or [Immigration Practice Group](#). We will continue to monitor further developments and provide updates, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information.