Typical Employment-based Visa Sponsorship Options after OPT

H-1B VISA FACT SHEET
Visa Status for Temporary Professional Workers

A Breakdown of the H-1B Process: How an Employer Obtains an H-1B Visa for a Temporary Professional Worker

The employer undertakes a two-step H-1B process:
1) Applies for and receives a certified Labor Condition Application (LCA) from the Department of Labor (DOL).

2) Applies for and receives approval of an H-1B Petition from United States Citizenship and Immigration Services (USCIS) on behalf of the candidate it wishes to employ.

Step One: The Labor Condition Application (LCA)

- Employer must attest that:
  1) It will pay the higher of what it pays its own similarly employed workers or what similarly employed workers in the area are paid.
  2) The working conditions of its U.S. workers are not adversely affected.
  3) There is no strike/lockout at the worksite in the occupation for which a worker is sought.
  4) It has given notice to current employees that it intends to hire an H-1B worker.

- The DOL does not "approve" these attestations; only certifies its acceptance of them (i.e. that they have been properly completed) to create a public record of the employer's attestations.

- A strict set of requirements goes along with the LCA attestations; an employer must not only say it is going to comply with the above, but it must also follow through or it is violating the law.

- If an employer does not comply, the DOL has a system in place to enforce and punish:
  1) Available to the public.
  2) Formal complaint and investigation mechanisms.
  3) The DOL gives itself the power to go after an employer even without a public complaint.

Step Two: The USCIS H-1B Petition

- The employer must submit a request to USCIS, proving that it has completed the above process and demonstrating that both it and the candidate qualify for the H-1B category.

- Must prove:
  1) The need for someone who is a professional (i.e., the job requires someone with at least a bachelor's degree in a field relating to the work to be performed).
  2) The candidate it seeks to hire has the required degree (including an equivalency of a foreign degree) and any other qualifications required.

Note: The approval of the H-1B Petition does not necessarily qualify the candidate to commence employment. The employer must verify whether the candidate has been granted a change to or an extension of H-1B status, or whether the candidate needs to obtain an H-1B visa.

TN VISA FACT SHEET

U.S. Immigration Status for Citizens of Canada And Mexico For Professions Listed In The North American Free Trade Agreement (NAFTA) (Now the USMCA)

A. Introduction

On January 1, 1994, the North American Free Trade Agreement (NAFTA) created the Trade NAFTA (TN) category for certain Canadian and Mexican professionals. Even though the NAFTA was replaced by the United States–Mexico–Canada Agreement (USMCA) in 2020, all of the TN provisions from the NAFTA were retained in the USMCA.

B. Benefits

While a TN petition may be submitted to USCIS (and Premium Processing is available), the major benefit of TN status for Canadian and Mexican citizens are the streamlined application procedures at ports of entry for Canadian citizens and U.S. Consulates for Mexican citizens. Other benefits include no limit on the number of extensions of status or applications for readmission (applied for in three-year increments), as well as no cap on the total number of TNs that may be granted annually. This last benefit becomes even more important when the annual cap on H-1Bs is reached. Moreover, there are some professions that are eligible for TN status even though they do not meet the criteria for H-1B status.

C. Professional Categories

TN status is available only for the professional categories listed in the NAFTA (now the USMCA).

Examples of qualifying professional categories for TN status and requirement(s):

- Accountant (Bachelor's degree, C.P.A, C.A., C.G.A, or C.M.A.)
- Computer Systems Analyst (Bachelor's degree; or post-secondary diploma/certificate plus 3 years' experience)
- Economist (Bachelor's degree)
- Engineer (including Software Engineer) (Bachelor's degree or state/provincial license)
- Graphic Designer (Bachelor's degree; or post-secondary diploma/certificate and 3 years' experience)
- **Lawyer (including Notary in the province of Quebec) (L.L.B., J.D., L.L.M., B.C.L., or membership in a state/provincial bar)**
- Management Consultant (Bachelor's degree or 5 years' experience in consulting or related field)
- Research Assistant (working in a post-secondary educational institution) (Bachelor's degree)
- Scientific Technician/Technologist (work in direct support of professionals in chemistry, engineering, geology, geophysics, meteorology, physics, astronomy, agricultural sciences biology, or forestry; possession of theoretical knowledge of discipline; and possession of the ability to apply principles of discipline to basic or applied research)
- Scientist (including Biochemist, Biologist, Chemist, Geochemist, Pharmacologist) (Bachelor's degree)
- Teacher (College or University) (Bachelor's degree)

L-1 VISA FACT SHEET

Visa Status for High-Level Foreign Nationals Working In The U.S.

An L-1 is available to foreign nationals coming to work temporarily in the U.S. for an employer that is related to a company abroad for which the foreign national worked prior to entering the U.S. While there are a number of important requirements to qualify for an L-1, the L-1 offers a number of advantages that make it worth considering over other options. For example, unlike the H- 1B, there is no annual limit on the number issued, one may pursue permanent residency ("Green Card") while in L-1 status, and for many L-1s, there is a corresponding Green Card option that is relatively quick and pain-free.

The first and main requirement for the L-1 is that the foreign national must have been continuously employed abroad for one of the last three years for a parent, affiliate, or subsidiary of a U.S. employer. Any time spent working in the U.S. will not count toward the one year of required employment, though time spent in the U.S. will not be considered to have interrupted the continuity of employment abroad.

Second, the foreign employer and the potential U.S. employer must have a "qualifying relationship." This qualifying relationship involves common majority ownership, or, where there is less than majority ownership, common control by the same person or entity.

Third, the foreign national must be coming as an executive, manager, or specialized knowledge employee. An executive is one who directs the management of the company or a major part or function of the organization. Typical executive positions include presidents, vice-presidents, and controllers. A manager directs the organization, a department, or a function of the organization.

A specialized knowledge employee is one with special knowledge of the company's products and their applications in world markets, or an advanced or proprietary knowledge of the company's processes or procedures. Additionally, the L-1 Visa Reform Act of 2004 prohibits specialized knowledge employees from being "outsourced." This means that they may not work primarily at a worksite other than that of their petitioning employer if the work will be controlled or supervised by a different employer, or if the offsite arrangement is to provide labor for hire.

Fourth, although the foreign national must intend to depart the U.S. when his or her stay is over, the foreign national may also pursue a Green Card simultaneously without it having a negative effect on his or her ability to keep or extend an L-1. This concept is known as the doctrine of dual intent, and it applies to the L-1 just like it does to the H-1B.

Petitions for L-1 status must first be approved by the USCIS Service Center having jurisdiction over the location where the transferred employee will be employed. After USCIS approves the petition, the foreign national must apply at the U.S. Consulate in his or her home country for the L-1 Visa, in order to enter the U.S. in L-1 status.

Executives and managers granted L-1A status may stay in the U.S. for up to seven years. Specialized knowledge employees granted L-1B status may stay in the U.S. for up to five years.