



# MY H-1B REGISTRATION WASN'T SELECTED THIS YEAR — NOW WHAT?



The H-1B nonimmigrant visa category allows employers to sponsor foreign nationals to perform temporary services in a “specialty occupation.” This typically requires an offer of employment in a job requiring at least a U.S. bachelor’s degree, or its equivalent, in a specific area of specialization. There is an annual limit or “cap” on H-1Bs of 65,000 visas, with an additional 20,000 visas allocated to individuals possessing a U.S. master’s or higher degree. Because the demand for H-1B visas far exceeds the annual allocation, USCIS conducts a pre-filing registration and a lottery process annually to select applicants randomly for the 85,000 H-1B visas.

## My prospective employer’s H-1B registration for me wasn’t selected. Do I have any other options for employment?

These are some alternative strategies that may be appropriate based on your particular facts:

### ■ F-1 Visa Optional Practical Training/Curricular Practical Training

- International students who graduate from a U.S. post-secondary institution may be eligible for a 12-month period of Optional Practical Training (OPT) employment authorization in a field related to their degree. F-1 students who have graduated with a degree in a STEM field and who are employed by a company participating in the U.S. government’s E-Verify program may extend the initial period of OPT for an additional 24 months. F-1 students still enrolled in school may qualify for employment authorization through a period of Curricular Practical Training (CPT), although students authorized for CPT must still maintain a full course of study. Students considering either of these options should coordinate with their school’s Designated School Official to seek OPT or CPT work authorization.

### ■ Nonimmigrant Work Visas Based on Nationality

- H-1B1 visas are available to citizens of Chile and Singapore. The requirements for the category are similar to the H-1B. Although there is a numerical limit on the number of H-1B1 visas that may be issued in a fiscal year, the limit has never been reached.
- E-3 visas are granted only to citizens of Australia, who will work in specialty occupations. This visa category also has a numerical limit that has never been reached.
- The United States, Mexico, and Canada Agreement (“USMCA”) on trade provides for employment authorization (TN classification) for citizens of Mexico and Canada who are coming to the United States to work temporarily in certain “Professional Occupations” that are specifically listed in the USMCA.

CONTINUE TO PAGE 2 ►

## ■ **Treaty Traders and Treaty Investors**

- Nationals of certain countries that are party to a qualifying treaty with the United States may receive an E-2 Treaty Investor visa if the individual or their company invests a substantial amount of capital in a U.S. enterprise.
- Similar to the E-2 visa, the E-1 Treaty Trader visa category is appropriate for citizens of qualifying treaty countries who are coming to the United States to engage in substantial trade in goods, services, or technology, principally between the United States and the treaty country. Executives, managers, and certain essential employees with the same treaty nationality as the company employing them may also qualify for an E-1 or E-2 visa.

## ■ **International Entrepreneurs May Request “Parole” into the United States**

- USCIS’s International Entrepreneur Rule (IER) allows lawful entry into the United States and work authorization for a period of up to two and one-half years for employees/part owners of certain start-up companies that have received qualifying investments or grants.

## ■ **O-1 Visas for Individuals with Extraordinary Ability or Achievement**

- The O-1A category is for individuals with extraordinary ability in science, business, education, or athletics based on demonstrated, sustained national or international acclaim who have an offer of employment from a U.S. employer in a capacity requiring extraordinary ability. The documentary requirements for this category are extensive.
- The O-1B category is available to individuals with extraordinary ability in the arts, or achievement in the motion picture/television industry, as demonstrated by meeting certain criteria. O-1B temporary workers are typically sponsored by an employer or agent petitioner.

## ■ **Visas for Trainees**

- An H-3 Trainee visa might be appropriate if the goal is to obtain job-related training for work that will ultimately be performed outside the United States. The job-related training must generally be unavailable in your home country and must not involve substantial productive employment in the United States.
- The J-1 Exchange Visitor visa may be used to provide training for individuals with a foreign (non-U.S.) degree or professional certificate and at least one year of work experience. Individuals who are recent graduates of a foreign college or university may alternatively qualify as J-1 interns.

## ■ **Temporary Assignment Abroad**

- If your prospective employer maintains offices in more than one country, it may be worth inquiring if there are job opportunities outside of the United States for which you may qualify. While abroad, your employer may pursue appropriate nonimmigrant visa options such as those listed above or may seek an L-1 intracompany transferee visa after you have been employed abroad for at least one year in an executive, managerial, or specialized-knowledge position. Note: unless you return to your country of nationality, you may also need a work visa for the country in which you will be working.

## ■ **Green Card Sponsorship Through Employment**

- If none of the nonimmigrant options are appropriate, it may be worthwhile to consider obtaining permanent resident (“Green Card”) status either through a petition filed by a prospective employer or self-petitioned by you as an individual.

**If you believe that one or more of the options outlined above would work for you, we encourage you to contact our office at The Dutta Law Firm at (212) 495-9089.**