

Welcome to the Immigration Session:

- **Learn how to Overcome the H-1B Visa Quota; and**
- **Protect Your Organization from Immigration Audits**

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The H-1B Visa Quota Deficiency

Exceptions to the H-1B Quota

- 1. Graduates of master's or higher degree from U.S. universities count towards an additional 20,000 quota**
- 2. Applying for H-1B extension**
- 3. Applying for change of H-1B employer**
- 4. Applying for concurrent H-1B employment**
- 5. Nonprofit research organization**
- 6. Institution of higher education or an affiliated non-profit entity**



Alternatives to the H-1B Visa

L-1 International Transfer Visa

- **Foreign companies with U.S. office**
- **U.S. entity may be a branch, parent, subsidiary, or affiliate of foreign company**
- **Transfer key employees to U.S.**
- **Including managers, executives, and specialized knowledge workers**
- **Employee worked for foreign office for at least one year**

O-1 Extraordinary Ability Visa

- **Person with extraordinary ability in science, business, education, athletics, and arts**
- **Risen to the top of their field**
- **Achieved national or international recognition**
- **Coming to U.S. to work in area of expertise**

B-1 Business Visitor's Visa

- **Business activities: attend meetings, conferences, training, contract negotiation, perform research, etc.**
- **May not perform employment services in U.S.**
- **May not receive compensation from U.S. source**

E-1 Treaty Trader Visa

- **Engaged in international trade between U.S. and applicant's home country**
- **Trade includes: international exchange of goods or services.**
- **Eligible persons include: managers, executives, and essential skilled employees**
- **Applicant's country must have commercial treaty with U.S.**

E-2 Treaty Investor Visa

- **Foreign company or person invested in the U.S. by setting-up a new U.S. business or purchased an existing business**
- **Eligible persons include: investor, managers, executives, or essential skilled employees**
- **Applicant's country must have commercial treaty with the U.S.**

E-3 Professional Visa for Australians

SIMILARITIES TO THE H-1B Visa:

- **Must pay market wage**
- **Must be a professional occupation**
- **Bachelor's degree or equivalent**

DIFFERENCES:

- **Must be CITIZEN of Australia**
- **10,500 visas per year**
- **Not expensive H-1B filing fees**
- **No "Dual Intent"**

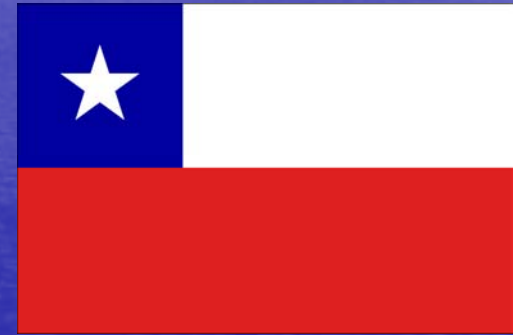
H-1B1 Professional Visa for Chileans and Singaporeans

SIMILAR Requirements TO H-1B:

- **Market wage for professionals**
- **Bachelor's degree**

DIFFERENCES:

- **Apply directly at U.S. Embassy**
- **6,800 annual quota usually not met**
- **Granted in 1-year increments**
- **No expensive H-1B filing fees**



TN Visa for Canadians and Mexicans



- **Granted in 1-year increments with no limits on number of extensions**
- **Myriad of occupations that qualify for the TN Visa (examples Engineer, Accountant, Registered Nurse)**
- **No quota limits on TN visas**

TN visa applicant must intend to return home



- **TN worker (unlike H-1B or L-1 worker) must prove nonimmigrant intent**
- **Do NOT File I-140 Petition**
- **Change status to H-1B or L-1 status before applying for extension**

J-1 Training Visa

- **May come to train in the U.S.**
- **Valid for 6, 12 or 18 months**
- **Must have a bachelor's degree plus 1 year of experience or 5 years related to the proposed training**
- **Employer must submit a training program**



J-1 Two-year home residency requirement

- **May need to return home after Completion of J-1 Program**
- **Government Funding from United States or Home Country**



H-3 Trainee Visa



REQUIREMENTS:

- **Must submit a training program**
 - **Training program must specify how much classroom instruction and on-the-job training**
- **2-year maximum stay**

F-1 Student Visa Work Permit

- **Optional Practical Training**
 - **Post Graduation: 1 year of Employment**
 - **During School: Complete 1 year of school and part-time work *related* to the student's major area of study**
- **Severe Economic Hardship**
- **Curricular Practical Training**
 - **Training must be *part of* student's academic program**



H-2B Visa for Temporary Employment



- **The employer must demonstrate to the Department of Labor:**
 - 1. The job is a one-time occurrence**
 - 2. Seasonal need (resorts, e.g., Lake Tahoe)**
 - 3. Peak load need**
 - 4. Intermittent need**
- **Test Labor Market: No U.S. Worker qualifies**
- **Multiple Beneficiaries may be requested on single petition**

TIMING IS EVERYTHING

Four strategies to extend your H-1B employee's status beyond 6-year limit

Introduction

- **H-1B visa has 6-year limit**
- **Three H-1B strategies require commencing the Green Card Process**



TIMING IS EVERYTHING

Four strategies to extend your H-1B employee's status beyond 6-year limit

- 1. May extend H-1B visa in 1-year increments if Labor Certification or I-140 petition pending over 1-year**
- 2. May extend H-1B visa for 3-years, if I-140 approved, but unable to apply for green card due to no immigrant visa quota available**

TIMING IS EVERYTHING

Four strategies to extend your H-1B employee's status beyond 6-year limit

- 3. File Labor Certification and then I-140 and Green Card applications simultaneously**
 - Assumption: Immigrant Visa Quota numbers must be immediately available
- 4. Recapture H-1B time that your employee spent outside of the U.S.**



10 Common Reasons for PERM Labor Certification Audit or Denial

- 1. Employee has ownership interest**
- 2. Employee has family relationship with owner**
- 3. Foreign language requirement**
- 4. Gained qualifying experience with petitioning employer**



10 Common Reasons for PERM Labor Certification Audit or Denial

- 5. Foreign worker lacks required education or experience stated in PERM application**
- 6. Job duties include different occupations**
- 7. Overly restrictive job requirements**
- 8. Employer paid for foreign worker's education or training**

10 Common Reasons for PERM Labor Certification Audit or Denial

- 9. Employer received payment to file PERM application.**
- 10. Employer had layoff within the last 6 months**

Form I-9 Compliance - Introduction

- **I-9 form verifies employee's identity and work authorization**
- **Increase in worksite enforcement and I-9 audits in recent years**
- **Fines of up to \$16,000 per unauthorized worker**
- **Fines of up to \$1,100 for each improperly completed I-9 form**

I-9 Compliance – 10 Best Practices

- 1. Be sure to use the latest I-9 form (June 5, 2007 edition). Download form at <http://www.uscis.gov>**
- 2. Do not let employees begin working until I-9 form is complete**
- 3. Make one person responsible for your organization's I-9 compliance program**
- 4. Conduct periodic audits to monitor your organization's I-9 compliance**

I-9 Compliance – 10 Best Practices

- 5. Keep I-9 forms separate from personnel files**
- 6. Beware of document abuse discrimination**
- 7. Consider enrolling in the E-Verify Program.
To enroll, visit this website:
<https://www.vis-dhs.com/EmployerRegistration>**
- 8. For terminated employee, discard the I-9 forms after retention requirements are satisfied**

I-9 Compliance – 10 Best Practices

- 9. Have a reminder system to re-verify employees with limited duration work authorization**
- 10. Review I-9 form before employee is terminated**



Social Security No-Match Letter

- **Employee's name and Social Security number does not match government records**
- **Sent to thousands of employers**
- **New rule: receipt of No-Match letter is evidence of "constructive knowledge" of unauthorized worker**
- **Safe Harbor Procedure**
- **Temporary injunction of new No-Match rule**

No-Match Letter: Safe Harbor Procedure

- 1. Employer should check its records for clerical error within 30 days of receiving the No-Match letter.**
- 2. Employer should promptly request employee to confirm correct Social Security number.**

No-Match Letter: Safe Harbor Procedure

- 3. Employer should ask employee to resolve Social Security number mismatch with Social Security Administration.**
- 4. If the number mismatch has not been resolved within 90 days, employer should complete a new I-9 form for employee and re-verify work authorization.**

No-Match Letter: Safe Harbor Procedure

- 5. If employer cannot verify the employee's work authorization and continues to employ that individual, then employer risks liability for knowingly employing an illegal alien.**

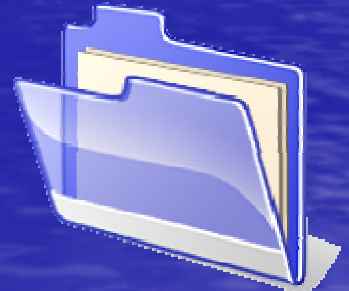
Labor Condition Application Compliance - Introduction

- **H-1B requires filing of Labor Condition Application (LCA) - Attestations on LCA include:**
 - **Prevailing Wage**
 - **Working Conditions**
 - **No Strike**
 - **10 Day Posting or Notice to Bargaining Rep.**
- **The “Public Access File” must be available for inspection within “One Working Day”**
- **Public Access File contains documents in support of the LCA attestations.**

Be Prepared for an Audit: Five documents you must keep in your Public Access File

The Public Access File must contain:

- 1. Copy of certified LCA and posting dates**
- 2. Statement of no labor strikes**
- 3. Prevailing wage determination and wage analysis**



Be Prepared for an Audit: Five documents you must keep in your public access file

- 4. Actual Wage Memo & Worksheet: How employer calculated wage, plus total number of employees in same occupation**
- 5. Evidence that the H-1B worker is receiving same benefits as other employees in same position; If H-1B worker is not receiving same benefits, then employer must provide written justification.**

Labor Condition Application Compliance – 8 Best Practices

- 1. Continue to pay the prevailing wage**
- 2. Provide raises to H-1B employee, if other employees in similar positions receive raises or provide justification**

Labor Condition Application Compliance – 8 Best Practices

- 3. Be aware of worksite transfers within Commuting Distance – Post LCA at new worksite**
- 4. Be Aware of worksite transfers OUTSIDE the original area of intended employment: Must file a new LCA. If employment already commenced, file amended H-1B petition. Exceptions include, short term travel, meaning travel on occasion to other worksites**

Labor Condition Application Compliance – 8 Best Practices

- 5. Change from Full-Time to Part-Time Employment: Must file amended H-1B petition**
- 6. Significant Change to Job Duties: File amended H-1B petition when the employee changes professional positions. *Must first analyze new job duties***



Labor Condition Application Compliance – 8 Best Practices

- 7. Perform Self-Audit at least once per year**
- 8. If there is a deficiency, the Rule of Thumb is remedy the deficiency as soon as possible.**

Thank you for joining us today.

Visit us in Room 408. We will be answering your immigration questions all day and giving away Best Buy and Cheese Cake Factory Gift Cards.

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