

# Advanced Immigration

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## Overview

**Non-immigrant (temporary) work visa categories to consider when the H-1B work visa cap has been met.**

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## What is the H-1B?

- Temporary work status
- Specialty occupations / professional level
- Labor Condition Application
- Six-year maximum stay (limited exceptions)

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## The H-1B Cap

- Capped at 65,000 visas each fiscal year
- U.S. Master's degrees – additional 20,000 visas
- Cap exempt organizations

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## Cap for FY 2017

- April 1 filing date, October 1 start date
- H-1B lottery
- Over 236,000 petitions received for FY 2017

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**Employer's H-1B petition does not win  
the lottery.**

**What are the employer's options?**

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## Optional Practical Training (F-1)

- Relate to course of study
- Pre-completion vs. post-completion OPT
- 24-month STEM extension – new Rules/Form I-983

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## NAFTA Professionals (TN)

- Requirements
  - Citizen of Canada or Mexico
  - Specified list of occupations
  - U.S. position requires a professional
  - Job with U.S. employer
  - Qualifications to practice the professions

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## Business Visitors

- Visa Waiver Program vs. B-1
- Business activities
- B-1 in lieu of H-1

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## Treaty Traders (E-1)

- Requirements
  - Nationals of treaty countries
  - Substantial trade
  - Principal trade
- Employees
  - Same nationality
  - Executive or supervisory duties, or special qualifications

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## Treaty Investor (E-2)

- Requirements
  - Nationals of treaty countries
  - Substantial investment
  - Develop and direct the enterprise
- Employees
  - Same nationality
  - Executive or supervisory duties, or special qualifications

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## Australian Specialty Occupation Professionals (E-3)

- Requirements
  - Australian nationals
  - Offer of employment
  - Qualifying credentials
  - Specialty occupation
- Cap of 10,500 Visas Annually

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## Intracompany Transferees (L-1)

- U.S. employer requirements
  - Have a qualifying relationship with a foreign company
  - Do business in U.S. and at least one other country
- Employee requirements
  - Work for a qualifying organization in an executive, managerial, or specialized knowledge position for one continuous year within the past three years preceding U.S. admission
  - Fill an executive, managerial or specialized knowledge position in the U.S.

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## Extraordinary Ability (O-1)

- Sciences, education, business, and athletics
  - Sustained national or international acclaim
  - Working in the U.S. in area of extraordinary ability
- Arts
  - Distinction
- Types of evidence
  - Awards
  - High remuneration
  - Comparable evidence

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## Best Practice

- Plan Now for FY2018 (4/1/2017) H-1B Needs
  - ID qualified foreign candidates & positions
  - Assess candidates' current status expiration
  - Pre-filing/clearance required by DOL
  - Finalize decision on H-1B filings by early January

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