



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



The H-1B nonimmigrant visa category allows employers to sponsor foreign nationals performing work 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 specialty. There is an annual limit or “cap” on H-1Bs of 65,000, with an additional 20,000 slots awarded to recipients of a U.S. master’s degree or higher. In order to allocate those H-1B numbers, USCIS holds an H-1B cap-subject “lottery” each year.

In recent years, that lottery has been conducted at the end of April, based on electronic registrations submitted during a filing window in March. Selected registrants have a 90-day deadline to file an H-1B petition, demonstrating that the offered job and the candidate meet all requirements. Then, if insufficient petitions are approved to meet the cap, additional lotteries may be held to meet the cap.

Our company registered one or more candidates who weren't selected in the lottery. Are there any other options to employ them?

In short – maybe! Here are some alternative nonimmigrant visa categories your company may consider:

■ 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) and employment in a field related to their degree. Those who have graduated with a degree in a STEM field may extend the initial period of OPT for an additional 24 months. Students still enrolled in school may qualify for employment authorization through a period of Curricular Practical Training (CPT). Qualifying students should coordinate with their school’s Designated School Official to seek OPT or CPT work authorization.

■ Work Visas Based on Nationality

- There are some nonimmigrant employment visa categories that are available only to citizens of certain countries.
 - H-1B1 visas are available to citizens of Chile and Singapore. The requirements for the category are similar to an H-1B.
 - E-3 visas are granted only to citizens of Australia who will work in specialty occupations.
 - TN employment sponsorship is an option for citizens of Mexico and Canada, who are coming to the United States to perform work in certain “Professional Occupations.”

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■ Treaty Traders and Treaty Investors

- Nationals of certain countries party to a qualifying treaty with the United States may receive an E-2 visa if the individual or their company invests a substantial amount of capital in a U.S. enterprise. Certain essential employees of a company with the same nationality may also qualify for an E-2 visa.
- The E-1 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.

■ International Entrepreneurs May Have an Option for “Parole” into the United States

- The International Entrepreneur Rule allows lawful entry into the United States and work authorization for employees/part owners of certain start-up companies that have received qualifying investments or grants.

■ 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.
- The O-1B category is open to individuals with extraordinary ability in the arts, or achievement in the motion picture/television industry, demonstrated by meeting certain criteria.

■ Visas for Trainees

- An H-3 visa might be an option if the goal is to provide job-related training for work that will ultimately be performed outside the United States.
- The J-1 exchange program may be a good option to provide training and enhanced skills for individuals with a degree or professional certificate and at least one year of work experience. Employers should coordinate with a sponsoring agency approved by DOS.

■ Jump Straight to Green Card Sponsorship

- If none of the nonimmigrant options are a good fit, the best route to employing a foreign national might be an immigrant petition filed by a prospective employer or self-petitioned by the individual. If sponsored by an employer, it may be necessary to first request certification from DOL.

If you believe that one or more of the options outlined above would work for your company and candidate(s), we encourage you to contact our office at The Law Office of Jacqueline Lentini at 630-262-1435.