

**Mark B. Rhoads**

Direct Dial: 804.775.3824

Facsimile: 804.249.9595

E-Mail: [mrhoads@lawmh.com](mailto:mrhoads@lawmh.com)

**Helen L. Konrad**

Direct Dial: 804.775.3825

Facsimile: 804.249.9595

E-Mail: [hkonrad@lawmh.com](mailto:hkonrad@lawmh.com)

Practice Limited to Federal Immigration Law

### **H-1B EXEMPTIONS AND ALTERNATIVES**

Each year, CIS exhausts the full quota of 65,000 “bachelor’s degree” H-1B’s and the additional 20,000 quota for U.S. advanced degree holders. As a result, many foreign students and employers seek alternatives to the H-1B. In addition, some employers qualify for an exemption from the H-1B quota. The following is a summary of exempt employers, and alternatives to the H-1B, which may allow a foreign graduate to remain and work in the United States after graduation.

#### **Organizations exempt from the H-1B quota**

Certain organizations are exempt from the H-1B quota. Exempt organizations can file H-1B applications at any time, regardless of the quota.

Exempt organizations include:

- Universities
- Non-profit organizations affiliated with universities (such as research facilities or hospitals)
- Non-profit research organizations, engaged primarily in basic or applied research
- Governmental research organizations

Note that there are is no blanket exemption for “non-profits”. To be exempt from the quota, the non-profit either must be affiliated with a university, or must be a non-profit “research organization.”

### **Alternatives to the H-1B**

1. **Optional Practical Training**. F-1 students can work in the U.S. for up to 12 months using Optional Practical Training (OPT). They can stay in the U.S. for 60 days after expiration of their OPT, but cannot work during that time. F-1 graduates in “STEM” degree programs (Science, Technology, Engineering, Mathematics) can obtain an additional 17 months of OPT (for a total of 29 months) if they are employed by an employer which registers for the federal “E-verify” program. E-verify is an electronic program to verify the employment authorization of employees in the U.S. The employer must also agree to notify the student’s foreign student advisor within 48 hours of termination of employment.
2. **TN status (Canadians and Mexicans)**. Under the NAFTA treaty, citizens of Canada and Mexico can work in the U.S. in TN status in certain designated jobs or professions listed in the treaty. Common TN occupations include engineer, architect, computer systems analyst, hotel manager, registered nurse, social worker, librarian, dentist, statistician, and physical therapist. Individuals who qualify

for TN status can work in the U.S. in one year increments, renewable indefinitely.

3. **H-1B1 (Chileans and Singaporeans)**. There is a special quota of 6,800 “H-1B1” visas available to citizens of Chile and Singapore. Like the H-1B, H-1B1 status requires that the applicant possess a bachelor’s degree or the equivalent, and the job must require at least a bachelor’s degree as a minimum entry level requirement. H-1B1 status is granted in one year increments. Unlike H-1B, individuals in H-1B1 status must have an unabandoned foreign residence to which they intend to return.
4. **E-3 for Australians**. Under a treaty of trade with Australia, the United States allows the citizens of Australia to qualify for E-3 status. Like H-1B, the applicant must possess a bachelor’s degree or the equivalent, and must work in a job that requires a bachelor’s degree. E-3 status is issued in two year increments, renewable indefinitely. There is a quota of 10,500 E-3 visas available. It is unlikely this quota will ever be exhausted.
5. **E-1 and E-2 status**. Certain countries have treaties of trade or commerce with the United States. Citizens of countries that have a treaty of trade or commerce with the United States can qualify for E-1 or E-2 status. E-1 allows an individual of a treaty country to start his/her own business in the U.S. to engage in trade with their home country (at least 50% of the trade must be with the

individual's country of citizenship). The individual can also work for a company which is majority owned by citizens of the individual's country of citizenship, also engaged in substantial trade between the U.S. and the country of citizenship. E-2 status allows an individual from a treaty country to start his/her own business in the United States, provided that the business requires substantial "investment" in the United States. The individual can also work with a company in the U.S. owned at least 50% by nationals of the individual's country of citizenship, provided that the business represents a substantial investment in the United States. These are very complicated visas but can be excellent options in appropriate circumstances. For example, a citizen of France could open up his/her own financial consulting business, or work for a French-owned financial consulting organization in the U.S. Notable countries which do not have treaties of trade or commerce with the U.S. include China and India. A listing of eligible countries is attached.

6. **L-1 Visa.** L-1 visas are for individuals who have worked for a company outside of the U.S. for at least one year, who will now work in the U.S. for a parent, branch, subsidiary or affiliate of the same company. L-1 visas are available to allow individuals to work in managerial or executive positions, or positions which require

“specialized knowledge” of the company’s operations, technology, etc.

7. **O Visas.** O visas are available for individuals with extraordinary ability in their particular field of expertise. This can be shown by significant contributions to a particular field of expertise, peer-reviewed publications, presentations at important conferences, national or international prizes or awards, serving as a judge of the work of others, and other objective evidence of the individual’s reputation as a leader in a particular field of expertise.
8. **Green Card.** For individuals who possess a master’s degree (whether U.S. or foreign), who work in a job that requires at least a master’s degree, pursuing a permanent resident green card may provide a basis for continued work in the U.S. Although the full green card process will take much longer than the one year duration of OPT, individuals with an advanced degree may be far enough along in the process to file for “adjustment of status” and obtain a work authorization card in connection with their green card application, prior to expiration of the 12 month OPT. There may also be family-based options for permanent residence.
9. **Work Outside the U.S.** A foreign graduate can work for an employer outside the U.S. without a U.S. work visa.
10. **Return to School.** Many foreign graduates re-enroll in school in F-1 status if they miss the H-1B quota.

**Eligible Countries for E-2**

Albania	Croatia	Kyrgyzstan	Singapore
Argentina	Czech Republic	Latvia	Slovak Republic
Armenia	Ecuador	Liberia	Slovenia
Australia	Egypt	Lithuania	Spain
Austria	Estonia	Luxembourg	Sri Lanka
Azerbaijan	Ethiopia	Macedonia	Suriname
Bahrain	Finland	Mexico	Sweden
Bangladesh	France	Moldova	Switzerland
Belgium	Georgia	Mongolia	Taiwan
Bolivia	Germany	Morocco	Thailand
Bosnia & Herzegovina	Grenada	Netherlands	Togo
Bulgaria	Honduras	Norway	Trinidad and Tobago
Cameroon	Iran	Oman	Tunisia
Canada	Ireland	Pakistan	Turkey
Chile	Italy	Panama	Ukraine
Colombia	Jamaica	Paraguay	United Kingdom
Congo (Brazzaville and Kinshaha)	Japan	Philippines	Yugoslavia
Costa Rica	Jordan	Poland	
	Kazakhstan	Romania	
	Korea (South)	Senegal	

**Eligible Countries for E-1**

Argentina	France	Netherlands	Turkey
Australia	Germany	Norway	United Kingdom
Austria	Greece	Oman	Yugoslavia
Belgium	Honduras	Pakistan	
Bolivia	Iran	Paraguay	
Bosnia & Herzegovina	Ireland	Philippines	
Brunei	Israel	Singapore	
Canada	Italy	Slovenia	
Chile	Japan	Spain	
Columbia	Jordan	Suriname	
Costa Rica	Korea (South)	Sweden	
Croatia	Latvia	Switzerland	
Denmark	Liberia	Taiwan	
Estonia	Luxembourg	Thailand	
Ethiopia	Macedonia	Togo	
Finland	Mexico		

