

H-1B Visas Going, Going...Gone

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The cap of 65,000 new H-1B visas for FY2013 was met in June. The shortened availability of these visas took some employers and professionals by surprise. With the option of obtaining an H-1B visa for 2013 off the table, what options are available to employers seeking work visas for skilled foreign nationals? What should the plan of action be for professionals seeking an employment visa?

Unfortunately, some employers will have to wait until April 1, 2013, when the H-1B quota re-opens and employers can file petitions for 2014 fiscal year. Early planning will be even more essential next year so be sure to gather the necessary documentation and meet with an immigration attorney to help plan and expedite the process. In the meantime, employers and international professionals can look into some of the options outlined below.

Options Currently Available

USCIS will continue to accept certain H-1B petitions such as:

- From cap-exempt employers such as institutions of higher education
- For extension and/or amendment of H-1B status, for change of H-1B employer and for concurrent H-1B employment; and
- On behalf of foreign nationals who were in H-1B status, have been counted against the cap, and have not used up the full six years in H-1B status.

H-1B1 Visas for Citizens of Singapore and Chile:

Citizens of Singapore or Chile can apply for one of the 6,800 H-1B1 visas available under the US-Chile and US-Singapore Free Trade Agreements. This cap has not been reached since it was created. This visa is very similar to the typical H-1B visa.

E-3 Visas for Citizens of Australia:

Citizens of Australia can apply for an E-3 visa. The requirements of the E-3 visa are similar to the ones for the H-1B visa.

TN Status for Canadian and Mexican Citizens

Canadian and Mexican citizens can apply for TN status under NAFTA. The main limitation of the TN classification is its limitations to the 48 professional occupations listed under NAFTA.

O-1 Visa

Those individuals with extraordinary ability in science, sports, and business and distinguished ability in the arts/entertainment can consider applying for an O-1 Visa.

L Visa Intra-company Transferee

Executives or managers and individuals with specialized knowledge who have worked for a foreign entity related to a U.S. company for at least one year can consider applying for an L visa.

H-3 Trainee

Those coming to the U.S. to engage in a training program that is not available in the person's foreign country can apply for an H-3 Visa. The training must assist the employee to qualify for employment outside the U.S.

There are several congressional proposals to try to alleviate the H-1B Cap problem. Many of the proposals include provision aimed at keeping U.S. educated foreign nationals, particularly those in STEM fields, employed in America and creating jobs.

With some luck, the next H-1B season will bring about reform and new opportunities for international professionals with valuable knowledge and talents.

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