

Start-up Essentials Program: Immigration

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Agenda

- Start-up Business Considerations
- Nonimmigrant Visas for Employees
- Immigrant Visas for Employees
- Green Card Process
- Current Events

Immigration Considerations

- Ensure all employees are authorized to work in the U.S.
 - Form I-9s Completed
- Do any foreign national employees need visa nonimmigrant sponsorship?
 - Understand responsibility as petitioning employer
- Are you considering sponsoring any employees for their Immigrant Visas and/or Green Card Applications?
 - PERM Process
 - Risks and potential payback agreements
- Do we have an action plan if ICE/DHS comes into the workplace?

Nonimmigrant Visas

Optional Practical Training (OPT) for F-1 Students

- **Enrolled as a full-time student at an accredited college, university, seminary, conservatory, academic high school, elementary school, or other academic institution**
- **Curricular Practical Training (CPT)**
 - Training relates directly to the student's major area of study;
 - Training is an integral part of the school's established curriculum.
- **Optional Practical Training (OPT)**
 - Eligible for 12 months of employment authorization.
 - Employment must be directly related to major area of study
- **STEM Extension**
 - 24 month extension of Employment authorization for students with STEM degrees
 - Requires an offer of employment from an E-Verify Employer

F-1 Student Hires: Benefits to Employers

- No sponsorship by employer required
- Assess talent before offering visa sponsorship
- Up to 36 months of employment with STEM OPT
- Exempt from paying FICA (Social Security and Medicare) taxes

H-1B Visa for Specialty Occupations

- The H-1B visa is a nonimmigrant visa category that enables employers to petition the USCIS (immigration service) and enable foreign nationals to be employed in a specialty occupation
- By far the most well-known and utilized employment visa in the United States
- According to the latest statistics, over 500,000 foreign nationals are currently employed in the United States in H-1B status
- Created in 1990 with the intent to assist employers who cannot otherwise obtain needed business skills and abilities from the US workforce
- **Employee must be employed in a “specialty occupation” which is defined as:**
 - The position requires a Bachelor’s degree at a minimum
 - The job duties to be performed must be specialized
- **Elements of the H-1B:**
 - Employee must hold valid degree that is related to the offered position
 - Degree can be foreign but must have a professional evaluation establishing that is equates to a U.S. Bachelor’s degree (or Master’s degree)
 - If the employee does not hold a related degree, experience can be combined with educational credentials and evaluated by a professional service to equate to a related degree
 - Position must be a professional degree which means that it requires at a minimum, a Bachelor’s degree
 - The degree requirement is common in the industry in parallel positions among similar organizations
 - The job duties for the offered position must be specialized in nature
 - The H-1B requires an employer/petitioner to file on the employee’s behalf

Subject to annual cap/lottery held every year in March*

H-1B Visa for Specialty Occupations

- **Updates for H-1B Visas**

- **H-1B 100k Fee:**

- Effective Date: September 21, 2025, at 12:01 a.m. EDT.
 - Scope: Applies only to new H-1B petitions filed after the effective date. Employers must pay a \$100,000 fee per sponsored worker for these petitions.
 - Current H-1B holders with valid visas or approved petitions are not subject to the fee or entry restrictions.
 - Uncertainty around international travel and visa processing for foreign national employees

The situation remains fluid, but we expect further guidance from USCIS

- **Weighed H-1B Lottery**

- Entries based on Wage Level (i.e. 4 Entries for Level IV Wage, 3 Entries for Level III Wage, 2 Entries for Level II Wage, and 1 Entry for Level I Wage)
 - New method favoring higher skilled and higher paid applicants

TN USCMA Employees (Canada and Mexico)

- Employee must be a citizen of Canada or Mexico
- Serve in a role within the specific employment categories of USMCA
- Meet degree requirements for the position
- Uncertainty surrounding future of program

E-3 Specialty Occupation Workers from Australia

- Only nationals of Australia.
- Offer of Employment in a Specialty Occupation in the U.S.
- Possess the required education for the position.
- Renewable indefinitely for two-year periods.

H-1B1: Specialty Occupation for Nationals of Chile and Singapore

- **Only nationals of Chile and Singapore**
- **Offer of Employment in a Specialty Occupation in the U.S.**
- **The period of employment is one year.**
- **Extensions may be obtained twice but only in one-year increments.**
- **Further extensions can be obtained only with the filing of a new Labor Condition Application.**
- **Spouse and Children eligible for H-4 Dependent Visas.**

L-1 Intracompany Transferees

- International Organizations
- Specific Employment Requirements Abroad
 - Worked for one year of the previous three years
 - Performed in a Specialized Knowledge or Managerial/Executive role
- Company must demonstrate relationship between foreign and U.S. entities
 - Common ownership by the same parent company
 - One entity owns the other entity
- L-1A Manager/Executive vs. L-1B Specialized Knowledge Employee
- Dependent Spouse and Children eligible for L-2 status
- Dependent Spouse obtains work authorization based on status

E-2 Treaty Investor (Essential Employees)

- **Nationals of a country with which the U.S. maintains a treaty of commerce and navigation**
- **Certain employees of a qualifying organization investing in the U.S.**
- **Qualifying organization must meet E-2 requirements**
- **Must serve in a multinational manager, executive, or specialized knowledge role in the U.S.**
- **Dependent Spouse and Children eligible for E-2 dependent status**
- **Dependent Spouse obtains work authorization based on status**

O-1 Visa: Extraordinary Ability

General O-1 requirements:

- In support of an O-1A Petition for a Nonimmigrant Worker ([Form I-129](#)), the petitioner must establish that the beneficiary:
 - Has extraordinary ability in the sciences, education, business, or athletics, which has been demonstrated by sustained national or international acclaim;
 - Has achievements that have been recognized in the field through extensive documentation; and
 - Is coming to continue work in the area of extraordinary ability (but not necessarily that the particular duties to be performed require someone of such extraordinary ability).[
- The supporting documentation for an O-1A petition must include evidence that the beneficiary has received a major internationally recognized award (such as the Nobel Prize) or satisfies at least three of the following evidentiary criteria:
 - Criterion 1: Documentation of the beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.
 - Criterion 2: Documentation of the beneficiary's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
 - Criterion 3: Published material in professional or major trade publications or major media about the beneficiary, relating to the beneficiary's work in the field for which classification is sought. This evidence must include the title, date, and author of such published material and any necessary translation.
 - Criterion 4: Evidence of the beneficiary's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization for which classification is sought.
 - Criterion 5: Evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field.
 - Criterion 6: Evidence of the beneficiary's authorship of scholarly articles in the field, in professional journals, or other major media.
 - Criterion 7: Evidence that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.
 - Criterion 8: Evidence that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services as evidenced by contracts or other reliable evidence.

International Entrepreneur Parole

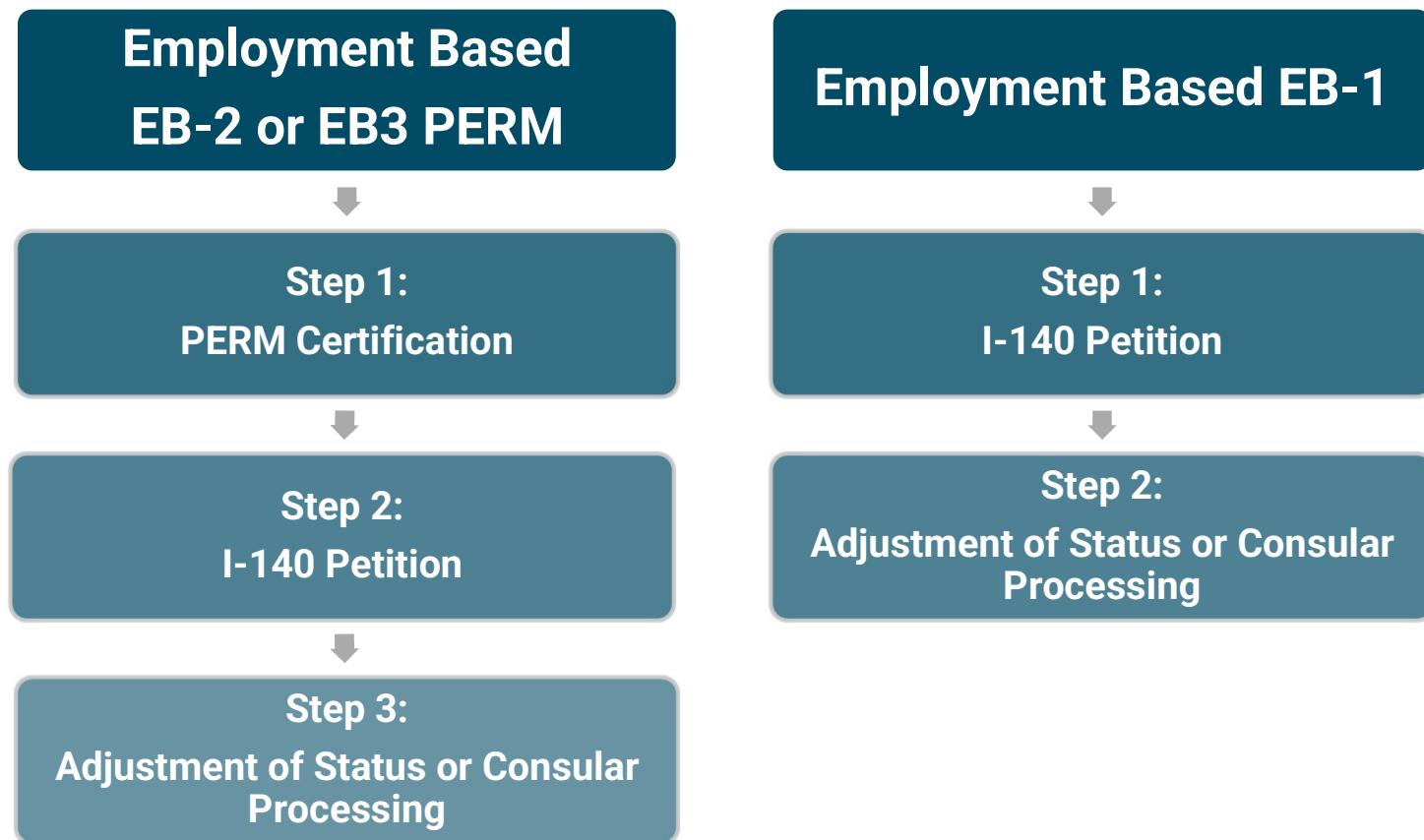
- Authorization given to foreign entrepreneurs that allows them to stay and build their business in the United States
- Entrepreneurs must be able to show that their business venture would provide a significant public benefit to the United States
 - Have a significant ownership interest (at least 10%) in a startup that was created in the past five years and this startup has potential for rapid growth and job creation
 - Have a role where they are able to significantly help with the growth and success of the business
 - Will provide a significant benefit to the United States as their role as an entrepreneur
 - Must show that the startup has already received investment (at least \$250,000, adjusted for inflation) from certain qualified U.S investors with established records of successful investments or
 - The startup has received awards or grants (at least \$100,000) for economic development, research and development, or job creation from federal, state, or local government entities or
 - The startup partially meets the previous two requirements AND provides additional reliable and compelling evidence of the startup's potential for rapid growth and job creation
- The initial maximum parole period is 2.5 years that can be renewed for up to five years
- The entrepreneurs given this authorization may only work for their start up business

Travel Bans

- The travel ban applies, either by total or partial suspension of visa issuance, to foreign nationals of nineteen (19) specific countries who:
 - Are outside of the U.S. on June 9, 2025; and,
 - Do not have a valid visa on June 9, 2025, to enter the U.S.
- Countries included in total travel ban: Afghanistan, Burma, Chad, Republic of the Congo, Equatorial Guinea, Eritrea, Haiti, Iran, Libya, Somalia, Sudan, and Yemen.
- Countries included in partial travel ban - Burundi, Cuba, Laos, Sierra Leone, Togo, Turkmenistan, and Venezuela - for nonimmigrant B, F, M, and J student and exchange visitor visas, and all immigrant visas with limited exceptions.

Immigrant Visas

Immigration Visas



PERM Certification

- This is the 1st step in the EB Green Card Process for *most people* and can take 18+ months.



EB-1 Extraordinary Ability

- EB-1, may self-petition, no job offer or labor certification required
- Expertise indicating individual is one of the small percentage who has risen to the very top of his or her field of endeavor by showing:
 - Sustained national/international acclaim that achievements have been recognized in the field
 - Major internally recognized award OR
 - Meet at least three “other” items:
 - Membership in associations that require outstanding achievement of its members
 - Published material about the applicant
 - Original scientific, scholarly contributions of major significance in field
 - Authorship of scholarly articles
 - Judge of the work of others
 - Performed lead or critical role for organization with distinguished reputation
 - High salary in relation to others in field

EB-2 – National Interest Waiver

- EB2, self-petition, no job offer required
- A national interest waiver may be granted if you establish that:
 - your proposed endeavor has both substantial merit and national importance
 - you are well positioned to advance the proposed endeavor; and
 - on balance, it would be beneficial to the United States to waive the job offer and thus the permanent labor certification requirements.
- Required to establish exceptional ability (a level of expertise significantly above that ordinarily encountered) or that you are an advanced degree professional (the job requires, and you possess, a degree above a bachelor's, or a bachelor's followed by at least five years of progressive experience)

Immigrant Visas – Green Card



- Priority Dates the Vias Bulletin
- Adjustment of Status – Inside the U.S.
- Consular Process – Outside the U.S.
- Naturalization – 3 years FB and 5 years EB

Current Events

Form I-9s

- All businesses are subject to I-9 audits by Immigration and Customs Enforcement (ICE) and Homeland Security Investigations (HSI)
- If selected via audit notice, employers have 3 business days to produce I-9 forms for either all or selected employees
- ICE may also request supporting documentation for the employee (i.e., passport, work authorization documents, etc.)
- ICE may request documentation from the company to establish it is a bona fide entity (i.e., articles of incorporation, list of all active employees, etc.)
- Make sure to contact your immigration attorney immediately

ICE Raids

- ICE agents may come to your workplace for a Form I-9 audit, a raid, or to detain specific people
- This may be without warning
- ICE agents are not police officers
- Uniforms may say “Police” or “Federal Agent”
- They may carry guns
- Local police officers may go with ICE agents on ICE raids
- ICE agents may be looking for a particular person (or people)
- While on site, they may try to question, detain, and even arrest other people

ICE Raids

- **Do not run to the exits. This will make things worse. ICE agents can say that people who are running are likely violating immigration laws.**
- **If ICE agents enter a public area of your business, you can say: “I am the employer. You cannot go to other areas of the workplace without my permission.”**
- **If ICE agents try to enter a private area, say: “This is a private area. You cannot enter without a judicial warrant signed by a judge. Do you have a judicial warrant?”**
- **If they have a warrant, again, ask for a copy and read it. Make a copy if you can.**
- **You are not required to answer questions or give any information or sign any documents.**

ICE Raids

- ICE shows you a warrant with an employee's name on it:
 - You do NOT have to say if that employee is working on that day or not
 - You do NOT have to take the ICE agents to the employee named on the warrant
- Monitor the agents and see if they are complying with what's written in the warrant
- May video or record what the ICE agents do at your workplace
- ICE agents try to stop, question, detain, or arrest a worker?
 - ICE agents may try to stop, question, or even arrest a worker without the proper authority.
 - You have a right to remain silent and ask for an attorney.

Future of Immigration

- Higher scrutiny at USCIS and U.S. Consulates abroad
- Longer wait times at U.S. Consulates
- Increased travel bans
- Processing times increasing with the DOL and USCIS
- TN program in jeopardy
- Gold Card Program

Questions?

