

When to sponsor the permanent residence (Green Card) process for your foreign national population in H-1B and L-1 status

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Today's Presenter



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Let's put this discussion into perspective

Taxi driver: "What I like most about my job is the independence. I'm my own boss. No one tells me what to do, I make my own decisions."

Me: "Take the next left."

OR, I refer you to what is prominently displayed in my home:



Brief overview: H-1B

- **Definition**

- ❖ 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

- **Validity period**

- ❖ A total of six (6) years (only physical presence in the U.S. counts)
 - Initially granted for three (3) years with the option to extend for another three (3) years
 - NOTE: H-1B status can be extended beyond the 6 year limit if certain conditions are met
 - PERM filed one year prior to reaching the 6 year limit
 - I-140 approved prior to 6 year limit being reached

- **H-1B cap**

- ❖ H-1B petitions are subject to annual H-1B cap
- ❖ All potential applicants are selected in a lottery (held around March-April timeframe). If selected in the lottery, H-1B petition can be filed on their behalf with an effective date of October 1st for that given fiscal year

Brief overview: L-1A



- **Definition**

- ❖ To qualify for L-1 classification in this category, the employer must:

- Have a qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate, collectively referred to as *qualifying organizations*); and
- Currently be, or will be, *doing business* as an employer in the United States and in at least one other country directly or through a qualifying organization for the duration of the beneficiary's stay in the United States as an L-While the business must be viable, there is no requirement that it be engaged in international trade.
- Generally have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding his or her admission to the United States; and
- Be seeking to enter the United States to provide service in an *executive or managerial capacity* for a branch of the same employer or one of its qualifying organizations.

- **Validity period**

- ❖ A total of seven (7) years (only physical presence in the U.S. counts)
 - Initially granted for three (3) years with the option to extend in two (2) year increments
 - NOTE: L-1A status cannot be extended beyond the 7 year limit (can recapture though)

Brief overview: L-1B

- **Definition**

- ❖ To qualify for L-1 classification in this category, the employer must:

- Have a qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate, collectively referred to as *qualifying organizations*); and
- Currently be, or will be, *doing business* as an employer in the United States and in at least one other country directly or through a qualifying organization for the duration of the beneficiary's stay in the United States as an L-While the business must be viable, there is no requirement that it be engaged in international trade.
- Generally have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding his or her admission to the United States; and
- Be seeking to enter the United States to provide service in a *specialized knowledge* for a branch of the same employer or one of its qualifying organizations.
 - ❑ **Specialized knowledge** means either special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures (See 8 CFR 214.2(l)(1)(ii)(D)).

- **Validity period**

- ❖ A total of five (5) years (only physical presence in the U.S. counts)
 - Initially granted for three (3) years with the option to a two (2) year extension
 - NOTE: L-1B status cannot be extended beyond the 5 year limit (can recapture though)

Typical PR options for H-1B and L-1

- **PERM**

- Labor Certification filed with the Department of Labor (most common path)

- **EB-1 (First preference)**

- Extraordinary ability (You must meet at least 3 of the 10 criteria* below, or provide evidence of a one-time achievement (i.e., Pulitzer, Oscar, Olympic Medal) as well as evidence showing that you will be continuing to work in the area of your expertise.

- Criteria:

- Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
- Evidence of your membership in associations in the field which demand outstanding achievement of their members
- Evidence of published material about you in professional or major trade publications or other major media
- Evidence that you have been asked to judge the work of others, either individually or on a panel
- Evidence of your original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
- Evidence of your authorship of scholarly articles in professional or major trade publications or other major media
- Evidence that your work has been displayed at artistic exhibitions or showcases
- Evidence of your performance of a leading or critical role in distinguished organizations
- Evidence that you command a high salary or other significantly high remuneration in relation to others in the field
- Evidence of your commercial successes in the performing arts

Typical PR options for H-1B and L-1

- **EB-1**

- Outstanding professors and researchers (You must meet at least 2 of the 6 criteria listed below** and provide an offer of employment from the prospective U.S. employer. The private employer must show documented accomplishments and that it employs at least 3 full-time researchers. No labor certification is required).
 - In order to demonstrate you are an outstanding professor or researcher, you must include evidence of 2 of the 6 listed criteria below (or comparable evidence if any of the criteria do not readily apply):
 - Evidence of receipt of major prizes or awards for outstanding achievement
 - Evidence of membership in associations that require their members to demonstrate outstanding achievement
 - Evidence of published material in professional publications written by others about the noncitizen's work in the academic field
 - Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
 - Evidence of original scientific or scholarly research contributions in the field
 - Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

Typical PR options for H-1B and L-1

- **EB-2 (Second preference) – National Interest Waiver**

- Those seeking a national interest waiver are requesting that the job offer, and thus the labor certification, be waived because it is in the interest of the United States. The endeavors that qualify for a national interest waiver are not defined by statute; instead, USCIS considers the 3 factors below.** Those seeking a national interest waiver may self-petition (they do not need an employer to sponsor them).
 - The proposed endeavor has both substantial merit and national importance.
 - You are well positioned to advance the proposed endeavor.
 - On balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus the labor certification.

➤ NOTE: There must be a thorough analysis conducted to ensure that the beneficiary's qualifications rise to the level to establish that the waiver of the job offer requirement is in the national interest of the United States.

Deep dive into PERM

- **PERM stages**

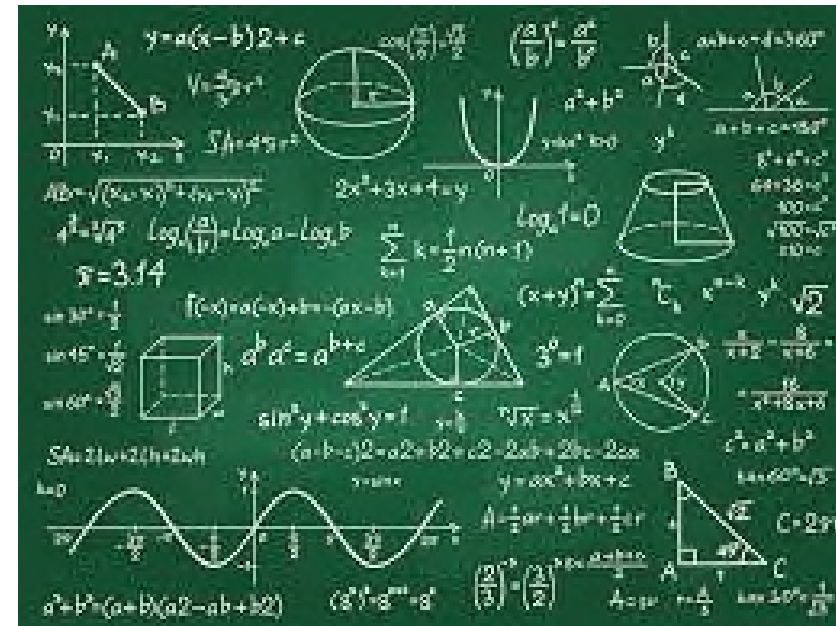
- Prevailing Wage
 - Submitted to the Department of Labor (DOL)
 - Current taking 7+ months
 - Recruitment stage
 - Ads placed and all applicants analyzed
 - 3-4 months minimum
 - PERM filed with DOL
 - Assuming no qualified applicants identified, PERM filed with DOL
 - Currently taking 8+ months
- PERM end-to-end process taking over 18 months!



Immigration math – when to initiate PERM

Example: David's H-1B 6-year limit will be reached on September 30, 2026. PERM must be filed by September 30, 2025 to ensure ability to extend beyond the 6 year limit. It takes 15+ months at a minimum to prepare the PERM application for filing assuming everything goes smoothly.

Factoring in the time it takes to secure internal approvals for authorizing PERM (due to costs associated with this process), it is recommended that the process be kicked off 36 months prior to the employee reaching the 6 year limit.



Initiating the PERM process right away: Pros & Cons

Pros:

- Great recruitment tool: You can persuade good talent to join your organization by offering immediate PR sponsorship
- Makes the overall process easier on your HR organization: There is no need to track time spent with your company, or worry about internal ratings or internal approvals or other factors and allow for a consistent policy (which makes L&E attorneys happy)

Cons:

- Risking PR sponsorship for individuals who end up not being a good fit for your organization. This means that you can invest time, money and resources into an individual who either decides to leave your organization or is terminated for bad performance.
- While it is enticing to sponsor from day one, there is a risk of “jumping the gun” on an individual who is not a good fit, which leads us to the final level of analysis.

Retaining the best talent

Each organization ultimately wants to keep good talent—retaining those who genuinely want to work for them and ensuring that there is a harmonious relationship between employer and employee.

While sponsoring right away may get someone in the door (an attractive notion, given the current challenges employers are facing in recruiting and retaining high-quality talent), it by no means keeps them there. It may, therefore, be a better decision in the long run to require that an employee demonstrate their capabilities during a set time period of strong performance before sponsorship.

KEY TAKEAWAY: Ensure that there is a consistent policy across the board and only adjust if/when necessary