

# PARKER GALLINI

## **ALTERNATIVES TO H-1B STATUS**

MAY 2021

By Molli Freeman-Lynde

© 2021 Parker Gallini LLP

- Cap subject H-1B status
  - Available to individuals from any country with at least a Bachelor's degree who will be employed in a specialty occupation.
  - Each year there are 65,000 regular H-1B visas available and an additional 20,000 H-1B visas reserved for individuals with U.S. Master's degrees.
  - Registration opens in early March and runs until the end of March. At this point, USCIS closes registration and runs a lottery to select individuals for the available visas. If selected, sponsors have 90 days to file a petition.
  - H-1B status, if approved, goes into effect on October 1<sup>st</sup> each year and can be held for a total of 6 years, approvable in 3-year increments.
- FY 2022
  - USCIS hasn't released the exact number of registrations for FY 2022, but we estimate over 300,000.
  - Low to mid 20% of registrants were selected, at least 10% lower than last year.

1. General Alternatives

1. Full time Curricular Practical Training
2. L-1 Intracompany Transferee
3. O-1 Extraordinary Ability
4. J-1 Business Trainee

2. Alternatives Tied to Nationality

1. TN USMCA Professionals (NAFTA)
2. H-1B1 Free Trade Agreement Workers (Chile & Singapore)
3. E-3 Specialty Occupation Workers from Australia

3. Green Card Sponsorship

- Applies when a FN who has worked for at least one year out of the preceding three years outside of the US with a foreign company is transferred to a U.S. affiliate of the foreign company.
- FN must be coming to work in the U.S. as an executive or manager (L-1A) or in a position requiring specialized knowledge of the company's products/services (L-1B).
- Can stay for 7 years (executives/manager) or 5 years (specialized knowledge employees).
- Companies with an approved "Blanket L" can have FNs apply at a consular post abroad.

- Available to a FN of extraordinary ability in the arts, sciences, education or business.
- The highest standard for extraordinary ability is for FNs in the sciences, education or business – the standard is whether the FN has sustained national or international acclaim in their field.
- Evidence of “extraordinary ability” is defined as either receipt of a major international prize or evidence of meeting at least 3 criteria from an enumerated list.
- Must provide a letter from a union or peer organization confirming the FN’s “extraordinary ability” and expressing no objection to her working in the U.S.
- First O-1 visa petition can be approved for 3 years; thereafter in one-year increments and extendable indefinitely.

- Available to a FN coming to the U.S. to obtain on-the-job training with a U.S. employer.
- Must have a foreign degree and 1 year of experience outside of the U.S. or 5 years of experience outside of U.S.
- Sponsorship is through a J-1 sponsor, commonly a non-profit cultural exchange/training organization ([www.AIPT.org](http://www.AIPT.org), [www.AILF.org](http://www.AILF.org)).
- Permits the FN to train/work under the auspices of the J-1 sponsor with a U.S. employer that has been approved by the J-1 sponsor.
- Valid for up to 18 months.
- J-1 visa holders may be subject to a two-year foreign residence requirement.
  - Skills List or Government Funding.
  - Foreign residence requirement prohibits obtaining an H or L visa status or becoming a U.S. permanent resident.
  - Waivers of the two-year foreign residence requirement.

- TN USMCA Professionals (NAFTA)
- H-1B1 Free Trade Agreement Workers (Chile & Singapore)
- E-3 Specialty Occupation Workers from Australia

- Allows a Canadian or Mexican national to work for a U.S. employer in the U.S. for up to 3 years.
- Only available in specified job categories (approx. 50) – includes “engineers”, “systems analysts”, “graphic designers” and requires sponsorship by a U.S. employer.
- Canadian nationals can obtain TN visa status at a border post or through USCIS.
- Mexican nationals must apply for a TN visa at a U.S. consulate in Mexico or through USCIS.
- Canadian TN obtained in 3-year increments and Mexican TN in 1-year increments – no outside cap on number of successive years in TN status.
- Difficult to transition to U.S. permanent resident (Green Card) status.



# H-1B1 FREE TRADE AGREEMENT WORKERS

- FN is a citizen of Chile or Singapore.
- FN will be employed in a “specialty occupation” (same as H-1B).
- FN has a U.S. Bachelor’s degree or its equivalent (same as H-1B).
- Requires LCA process (same as H-1B).
- Application is typically made directly at a U.S. consulate abroad but can also be made through USCIS.
- There is a numerical cap of 6,800 new visas issued each year (cap has never been reached).
- Difficult to transition to U.S. permanent resident (Green Card) status.
- Visa foil is valid for 18 months.
- Only admitted for 1 year at a time.
- Not subject to 6-year limit.

- FN is an Australian citizen.
- FN will be employed in a “specialty occupation” (same as H-1B).
- FN has a US bachelor’s degree or its equivalent (same as H-1B)
- Requires LCA process (same as H-1B).
- Application is typically made directly at a U.S. consulate abroad but can also be made through USCIS.
- There is a numerical cap of 10,500 new visas issued each year (cap has never been reached).
- Difficult to transition to U.S. permanent resident (Green Card) status.
- Can request up to two years at a time with unlimited renewals (no 6-year limit).

- In some cases, the Company can sponsor an employee for Permanent Residency and the FN can go directly from F-1 or other underlying status to Lawful Permanent Resident without an H-1B in between.
- Applicable in cases where the priority date is current for an employee's country of chargeability or there is a short wait.
- The Employment-Based Visa Categories
  - EB-1:
    - FNs of Extraordinary Ability
    - Outstanding Professors and Researchers
    - International Managers and Executives
  - EB-2:
    - FNs with Advanced Degrees
    - FNs of Exceptional Ability
    - National Interest Waiver – waives the PERM process
  - EB-3:
    - Professionals – Possessing a Bachelor's Degree
    - Skilled Workers

- Overview of the Green Card Process
  - 3 Stage Process in most EB-2 and EB-3 cases:
    - Stage 1 - PERM Labor Certification Application – 12-15 months to complete
    - Stage 2 - Immigrant Visa Petition – 4-8 months to complete
    - Stage 3 - Adjustment of Status Application – 8-12 months to complete
      - OR
      - Consular Processing – 5-8 months to complete
  - 2 stage process for FNs who qualify in EB-1 categories or for a National Interest Waiver:
    - Stage 1 – Immigrant Visa Petition
    - Stage 2 – Adjustment of Status Application or Consular Processing