

H-1B CAP RECOMMENDATION SUMMARY

CATEGORY	BASIS FOR ELIGIBILITY	NATIONALITY	GENERAL RECOMMENDATION	EXPLANATION	COMMON EXCEPTIONS
F-1	Student	Any	Critical	It is almost always critical to register any employee on an F-1 student visa in the H-1B lottery to secure long-term work authorization. F-1 students normally only have anywhere from 1 - 4 "shots" at the lottery before running out of their current work authorization.	N/A
J-1	Intern or Trainee	Any	Critical	It is usually critical to register any employee on a J-1 trainee visa in the H-1B lottery to secure long-term work authorization. J-1s are only approved in 12 (intern) or 18 (trainee) month stints.	N/A
Outside the U.S.	N/A	Any	Highly Recommended	The H-1B cap lottery is often the only way to secure U.S. work authorization for someone who has never lived or worked in the United States before.	The individual qualifies for another classification (e.g. O-1, E-3, H-1B1) that is not subject to the H-1B lottery.
L-1A/L-1B	Multinational Transferees	Any	Highly Recommended	Individuals in L-1 status are limited to 7 (L-1A) or 5 (L-1B) years. For folks from China and India, obtaining a green card before the end of their maximum time in L-1 status is often not feasible due to severe backlogs for persons from these countries. The H-1B allows them to switch status and obtain another 6 years in H-1B status while they wait for their green card.	If the individual is not subject to green card quota backlogs, the H-1B may not be critical.
Dependent Status (H-4, L-2, J-2, E-3D)	Dependent of H-1B, J-1, L-1, or E-3 Worker	Any	Recommended	Individuals in a dependent status are reliant on their spouse's status/work authorization. The H-1B secures status that is independent of their spouse. Renewals of dependent work authorization are also often subject to government processing delays that may result in having to take employees off of payroll, or delay their start date.	If the employee has a green card application underway as a derivative of their spouse, the H-1B may not be critical.
O-1	Alien of Extraordinary Ability	Any	Sometimes Recommended	The H-1B may be recommended for persons in O-1 status if they intend to obtain a green card, or if we believe extending their O-1 status may be challenging. O-1s can only be extended for one year at a time, after the first 3-year period, unlike H-1Bs.	N/A
TN	Treaty Worker Pursuant to USMCA	Canada & Mexico	Recommended (If Seeking Green Card)	If they plan on pursuing permanent residency in the United States, we recommend that they convert to H-1B status. Seeking a green card while in TN status involves travel and other restrictions that are not present when in H-1B status.	N/A
H-1B1	Treaty Specialty Occupation Worker	Chile & Singapore	Recommended (If Seeking Green Card)	If they plan on pursuing permanent residency in the United States, we recommend that they convert to H-1B status. Seeking a green card while in H-1B1 status involves travel and other restrictions that are not present when in H-1B status.	H-1B petitions are scrutinized more heavily by the USCIS than H-1B1s obtained through a U.S. Embassy/Consulate, where more difficult cases are less likely to be challenged. If the case is not straightforward, staying on an H-1B1 may be recommended.
E-3	Treaty Specialty Occupation Worker	Australia	Recommended (If Seeking Green Card)	If they plan on pursuing permanent residency in the United States, we recommend that they convert to H-1B status. Seeking a green card while in E-3 status involves travel and other restrictions that are not present when in H-1B status.	H-1B petitions are scrutinized more heavily by the USCIS than E-3s obtained through a U.S. Embassy/Consulate, where more difficult cases are less likely to be challenged. If the case is not straightforward, staying on an E-3 may be recommended.
H/L/O + AOS Pending	H-4, L-1, L-2, O-1 Worker with a Pending Application for Permanent Residency	Any	Sometimes Recommended	If an individual is working pursuant to H-4, L-1, L-2, or O-1 work authorization, and also has a pending green card application, the H-1B is sometimes recommended as a "backup" in the event that the green card application is denied.	If the employee has a marriage-based green card pending, this is usually very straightforward, and an H-1B as a backup is usually not necessary.
AOS (Green Card) Pending	Applicant for Permanent Residency	Any	Sometimes Recommended	If an individual is working on an EAD pursuant to a pending green card application, and has no other status, the H-1B can be a "backup" in the event that the green card application is denied. In some cases, H-1B status may make international travel easier.	If the employee has a marriage-based green card pending, this is usually very straightforward, and an H-1B as a backup is usually not necessary.