



## OFFICE OF INTERNATIONAL SERVICES

University Center for International Studies  
University of Pittsburgh

### Alternatives to H-1B Visa for Individuals Outside the United States

OIS has received several questions regarding exceptions to the June 22nd White House Proclamation affecting individuals seeking H-1B visas from outside the United States. Following is information about the National Interest Exception, along with information about potential alternative visa alternatives to the H-1B.

- National Interest Exception
- J-1 Researcher Visa
- O-1 visa
- TN Professionals under NAFTA
- E-3 Visa

#### National Interest Exception

The June 22, 2020 White House Proclamation excluded “any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.” The Proclamation further instructs, “The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security [to] establish standards to define [National Interest] .....[as positions] that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States.” No further guidance on these statements has been released.

##### Pros:

- This may be a viable option, particularly for researchers in the COVID-19 arenas
- Normal H-1B process could be utilized through the USCIS stage

##### Cons:

- Process for requesting consideration is unclear
- There is significant likelihood that this will be difficult to obtain

#### J-1 Visa Requirements

A J-1 visa is available to individuals coming to the U.S. for a temporary positions as “exchange partners” in the category of researcher, short-term researcher, or professor. This visa may be a good option for Post Doctoral positions, temporary research positions, and/or visiting faculty positions. The J-1 is NOT appropriate for tenure-track or permanent faculty or staff positions. The J-1 can only be approved for up to five years.

##### Pros:

- No USCIS petition necessary
- Very easy process
- J-2 Dependent Spouse is eligible to apply for employment authorization

##### Cons:

- Only available to temporary positions
- Often comes with a “Two year foreign residency requirement” which may be unappealing to the employee
- Not available to anyone who has been in a J-1 research or professor position within the past 24 months



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### O-1 Visa Requirements

The O-1 visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics.....and has been recognized nationally or internationally for those achievements. The O-1 is valid for an initial 3 years, with 1 year extensions possible after that. There is no maximum time. (An employee can be on an O-1 visa indefinitely, but in 1 year increments after the third year.)

The O-1 Petition requires a written advisory opinion from "an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization" before an O-1 petition can be approved. The consultation must be regarding the nature of the work to be done and the alien's qualifications. In addition to this advisory opinion, the following evidentiary criteria must be submitted:

Evidence that the beneficiary has received a major, internationally-recognized award, such as a Nobel Prize, **or** evidence of at least (3) three of the following:

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- Membership in associations in the field for which classification is sought which require outstanding achievements, as judged by recognized national or international experts in the field
- Published material in professional or major trade publications or major media about the beneficiary related to the beneficiary's work in the field for which classification is sought
- Original scientific, scholarly, or business-related contributions of major significance in the field
- Authorship of scholarly articles in professional journals or other major media in the field for which classification is sought
- A high salary or other remuneration for services or that the beneficiary will command a high salary or other remuneration for services as evidenced by contracts or other reliable evidence
- Participation on a panel, or individually, as a judge of the work of others in the same or in a field of specialization allied to that field for which classification is sought
- Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation

If the above criteria do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Information taken from: <https://www.uscis.gov/working-united-states/temporary-workers/o-1-visa-individuals-extraordinary-ability-or-achievement>

#### Pros:

- May be the only option available to candidates in permanent positions
- Does not require a Labor Condition Application from the Department of Labor

#### Cons:

- The burden of proof to establish extraordinary ability will probably exclude new graduates and those with few professional publications.
- Heavy documentation burden; must obtain an advisory opinion and numerous letters from peers in the field describing the alien's outstanding ability and to obtain an advisory opinion.
- Sometimes it is difficult to identify a "peer group" that can provide the required advisory opinion.



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### **TN Professionals under NAFTA**

The TN (Trade NAFTA) category was developed as part of the North American Free Trade Agreement (NAFTA), to facilitate the entry of Canadian and Mexican citizens to the United States to engage in professional business activities on a temporary basis. Only occupations specified in [NAFTA Appendix 1603.D.1 to Annex 1603](#) treaty can serve as the basis for TN employment.

#### **Pros:**

- Extremely easy to obtain
- No USCIS application
- Valid indefinitely, in three year increments

#### **Cons:**

- Only available to citizens of Canada and Mexico
- Not recommended to anyone hoping to file for a green card

### **E-3 Visa**

The E-3 classification applies only to citizens of Australia to perform services in a specialty occupation. The process is very similar to the H-1B.

#### **Pros:**

- Similar process to H-1B
- Valid indefinitely, in two year increments

#### **Cons:**

- Only available to citizens of Australia