



Immigration pathways for TBED

July 25, 2024

Tech-based Economic Development Community of Practice

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- **Our mission:** SSTI strengthens initiatives to create a better future through science, technology, innovation and entrepreneurship.
- **Project goals:** Strengthen EDA awardees during period of performance + better-position for long-term success
- **Learn more:** ssti.org/tbedcop

Upcoming TBED COP Events

- **Next Lab-to-Market call** – Aug. 6, 2:00pm ET – [Register](#)
- **Entrepreneurship Development** – Aug. 28, 2:00pm ET – [Register](#)
- **Risk Capital** – Sept. 5, 3:00 pm ET – [Register](#)

Info at ssti.org/tbedcop

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Today's Speakers

- Sophie Alcorn, Founder & CEO of Alcorn Law
- Doug Rand, Senior Advisor to the Director of USCIS



HI! I'M SOPHIE ALCORN



- Founder of Alcorn Immigration Law @AlcornLaw
- Host of the Sophie Alcorn Podcast
- Meditation & Mom
- Stanford University (BA) & Wash U in St. Louis (JD)
- Certified Specialist in Immigration and Nationality Law by the State Bar of California, Board of Legal Specialization
- Mission: Every child has the opportunity to go to the place where they can self-actualize so they can follow their heart and build their dreams.
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ABOUT ALCORN IMMIGRATION LAW



Clients representing **70+** countries



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Who We Support:

- Economic Development
- Accelerators & Incubators
- Universities & Nonprofits
- Startup Founders, Engineers, and Investors



HERE TO HELP

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 SCAN ME



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Immigration Pathways – Working in the United States



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Biden-Harris Administration Actions



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FEBRUARY 02, 2021

Executive Order on Restoring Faith in
Our Legal Immigration Systems and
Strengthening Integration and
Inclusion Efforts for New Americans

JANUARY 21, 2022

FACT SHEET: Biden-Harris
Administration Actions to Attract
STEM Talent and Strengthen our
Economy and Competitiveness

OCTOBER 30, 2023

Executive Order on the Safe, Secure,
and Trustworthy Development and
Use of Artificial Intelligence

Resources for Tech Professionals



Pathways for
Entrepreneurs



Pathways for
Tech Workers



Options for
laid-off workers



Science: New U.S.
immigration rules spur
more visa approvals
for STEM workers



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Terminology



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- Some foreign nationals can work in the United States temporarily through one of the “[nonimmigrant](#)” [pathways](#) for STEM employment. These pathways include F-1 Optional Practical Training, H-1B, L-1, E-2 and O-1 nonimmigrant visas, and allow foreign nationals to temporarily live and work in the United States.
- Some foreign nationals can work in the United States permanently through one of the employment-based “[immigrant](#)” [pathways](#). These pathways can lead to lawful permanent residence (also known as a “green card”), which allows the individual to live and work in the United States permanently.

H-1B Visa: Specialty Occupations



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- [H-1B visas](#) provide a pathway for individuals with at least a bachelor's degree (or equivalent) in a specific specialty (or equivalent) to work in a job that is related to their degree and that qualifies as a “specialty occupation.”
- H-1B workers are generally permitted to stay in the United States for a maximum of six years but, may be able to stay longer if they have taken certain steps towards obtaining lawful permanent resident status.
- There is an [annual cap](#) on the number of H-1B workers that can be granted initial H-1B status each year, although specific types of employers may be exempt from the cap.
- In October 2023, DHS issued a proposed rule to modernize the H-1B Program.
- In February 2024, DHS issued a final rule to strengthen integrity and reduce the potential for fraud in the H-1B registration process.

O-1 Visa: Extraordinary Ability



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- The O-1 visa is for individuals with extraordinary ability in certain fields, including the sciences, education, or business.
- There is no cap on the number of O-1 nonimmigrants who may be admitted to the United States each year.
- There is no limit to the number of years a person can work on an O-1 visa. Specifically, an O-1A may be granted up to 3 years to work in the United States . After this initial validity period, an O-1A may be granted extensions of up to 1 year. There is no specified limit on the number of extensions a person can receive while working in the United States on an O-1A.
- January 2022, USCIS issued updated policy guidance, including examples of evidence to clarify how certain professionals in STEM may qualify as O-1A, individuals of extraordinary ability.

L-1 Visa: Intracompany Transferee



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- L-1 visas are for employees of qualifying multinational organizations who hold positions as [managers or executives](#) (L-1A) or have [specialized knowledge](#) (L-1B), allowing them to work in the United States for the same organization for a maximum of seven years (L-1A) or five years (L-1B).
- Companies can also use the L-1 classification to send an executive, manager, or employee with specialized knowledge to the United States for the purpose of establishing a new U.S. office.
- The foreign national must demonstrate that a [qualifying](#) relationship exists between their employer abroad and their intended U.S. employer to be eligible for an L-1 visa.
- There is no cap on the number of L-1 nonimmigrants who may be admitted to the United States each year.

F-1 Visa: Optional Practical Training



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- Generally, F-1 international students are not permitted to work in the United States. However, F-1 students may be eligible for Optional Practical Training (OPT).
- OPT permits an F-1 student to work in a position that is directly related to the student's major area of study for up to 12 months.
- An F-1 student may be authorized for pre-completion OPT (before completion of the course of study) or post-completion OPT (after completion of the course of study). The time granted for post-completion OPT will be reduced by any time spent in pre-completion OPT.
- F-1 students who earned a degree in certain STEM fields are eligible for a 24-month extension of post-completion OPT, for a total of 36 months.
- In December 2023, USCIS issued policy guidance in the USCIS Policy Manual to address the nonimmigrant student (F and M) classifications, including OPT and the STEM OPT extension for F-1 students.

Other Nonimmigrant Visas



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Other types of nonimmigrant visas are available to nationals of specific countries and may offer a viable pathway to global talent.

For example:

- Visas similar to the H-1B visa are available to [Australian nationals](#) (E-3) and to nationals of Singapore and Chile (H-1B1).
- TN visas are available to certain technology workers from Mexico and Canada through the [U.S.- Mexico-Canada Agreement](#) (which replaced NAFTA).

EB-1 Immigrant Visa



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- **EB-1A Visa – Extraordinary Ability:** foreign nationals who possess extraordinary ability in the sciences, arts, education, and business, or athletics.
- **EB-1B – Outstanding Professor or Researcher:** professors and researchers who demonstrate international recognition for their outstanding achievements in a particular academic field to pursue tenure or tenure track teaching, or for a term of indefinite or unlimited duration, or a comparable research position at a university, institution of higher education, or private employer.
- **EB-1C Visa – Multinational Manager or Executive:** executives and managers of multinational organizations.
- The EB-1 category has an **annual cap of 40,040** immigrant visas.

EB-2 Immigrant Visa



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- The [EB-2 category](#) enables foreign nationals with advanced degrees or exceptional ability in certain fields, including the sciences or business, to obtain lawful permanent residence.
- To be eligible for an EB-2 visa, under the [advanced degree professional](#) subcategory, the position the foreign national will fill must require an advanced degree and the foreign national must possess such a degree or a bachelor's degree followed by five years of progressively responsible experience in the specialty.
- To be eligible for an EB-2 visa under the [exceptional ability](#) subcategory, the foreign national must demonstrate that they have “a degree of expertise significantly above that ordinarily encountered” in their chosen field.

National Interest Waiver



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- Although the EB-2 category generally requires the U.S. employer to obtain a certification from the Department of Labor that there are not sufficient U.S. workers able, willing, qualified, and available to accept the job opportunity, this requirement may be waived, allowing qualifying individuals to petition on their own behalf, if USCIS determines the waiver to be in the national interest.
- USCIS may grant a national interest waiver as a matter of discretion.
- A recent USCIS policy update clarified how persons with advanced degrees in STEM fields can use the NIW to engage in endeavors of substantial merit that are in the national interest, including critical and emerging technologies such as those found in the National Science and Technology Council's Critical and Emerging Technologies Update List.

Entrepreneur Pathways



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- All of the previously discussed pathways (F-1 OPT STEM, H-1B, L-1, O-1, EB-1, EB-2 with National Interest Waiver) can be used by entrepreneurs, depending on the circumstances.
- The [International Entrepreneur Rule](#) provides an additional pathway for certain startup founders. The validity period lasts up to 5 years, and includes work authorization for spouses. Eligibility requirements for the initial 30-month period include:
 - U.S. entity formed within the last 5 years
 - At least 10% ownership stake
 - Investment of at least \$264,147 from qualified investors OR a federal, state, or local government grant or award of at least \$105,659.
 - Up to three entrepreneurs eligible based on the same startup

More Information



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- For detailed information about these and other pathways, please see:
 - [Options for Noncitizen STEM Professionals to Work in the United States](#)
 - [Options for Noncitizen Entrepreneurs to Work in the United States](#)
- These resources from USCIS are currently available in English, Spanish, Chinese, Korean, and Russian.
- Also note that for many of these pathways, the processing step with USCIS can be expedited through the payment of an additional [premium processing](#) fee.

About the Presentation



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