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Immigration Law Partners, LLP

# What Now? Post-H-1B Lottery Alternatives

*Andrew Zeltner • Carolina Regales • Sarah Holler*

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**Andrew Zeltner**      **Carolina Regales**      **Sarah Holler**

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## Recap the Cap

- Selection percentages were low
- Abuse in registration process
  - Numbers skewed by multiple registrations
  - USCIS needs to address that with a change in the process
- USCIS will increase fraud investigations, deny and revoke petitions accordingly, and increase law enforcement referrals for criminal prosecution

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## Recap the Cap (Cont'd)

This chart shows registration and selection numbers for fiscal years 2021-2024 (as of April 24, 2023).

Cap Fiscal Year	Total Registrations	Eligible Registrations*	Eligible Registrations for Beneficiaries with No Other Eligible Registrations	Eligible Registrations for Beneficiaries with Multiple Eligible Registrations	Selections**
2021	274,237	269,424	241,299	28,125	124,415
2022	308,613	301,447	211,304	90,143	131,924
2023	483,927	474,421	309,241	165,180	127,600
2024	780,884	758,994	350,103	408,891	110,791

\*The count of eligible registrations excludes duplicate registrations, those deleted by the prospective employer prior to the close of the registration period, and those with failed payments.

\*\*The number of selections was smaller in FY 2024 than in prior years primarily due to (a) establishing a higher anticipated petition filing rate by selected registrants based on prior years; and (b) higher projected Department of State approvals of H-1B1 visas, which count against the H-1B cap.

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## Employment-Based Nonimmigrant Categories

- Visitors for Business or Tourism (B) (includes Visa Waiver Program/ESTA)
- Students (F)
- Professional Workers (H-1B)
- Exchange Visitors (J)
- Extraordinary Ability (O-1)
- Canadian & Mexican Professionals (TN-1)
- Intra-Company Transferees (L-1)
- Treaty Traders and Investors (E-1/E-2)
- Family Members (F-2, J-2, H-4, L-2, O-3, TD)



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## F-1 OPT and CPT

### OPT

- Valid for one year
- Available for employment/training in the field/occupation related to the U.S. degree
- STEM OPT—If authorized STEM CIP Code, eligible for additional 24 months practical training

### CPT

- Go back to school (F-1)
- Same degree level vs. next degree level
- “Day 1” CPT issues

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## H-1B1: Chile & Singapore

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- 5,400 visas available for Singapore
- 1,400 for Chilean nationals
- Specialty Occupation standard
- LCA required
- Valid for 1 year, no limit on extensions but must continue to show nonimmigrant intent.

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## J-1 Visa

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- Interns and Trainees
- **Specialists**: experts in a field of specialized knowledge or skill, coming to the United States for observing, consulting, or demonstrating their special skills. Maximum duration of one year.
- **Scholars**: conduct research, observing or consulting in connection with research projects at research institutions, corporate research facilities, museums, libraries, post-secondary accredited academic institutions, or similar types of institutions.
- Two-year foreign residence requirement applies to some (not all) J Exchange Visitors

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## E-3 Visa

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- For professional workers coming to work for a U.S. employer in a “specialty occupation”
- Applies only to nationals of Australia
- Spouses and children may be of any nationality; spouses may apply for EAD
- Apply directly at consular post (can apply outside of Australia)
- Employer must obtain LCA from DOL
- 24-month maximum validity
- Numerically limited – 10,500 annually

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## TN Visa

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- List of professions – Canada Mexico Agreement
- A Mexican or Canadian national in a listed profession may enter the U.S. for **three years** to work for a U.S. employer in that profession
- Renewable, no regulatory upper limit but must continue to show nonimmigrant intent
- Pure nonimmigrant intent!
- No prevailing wage requirement
- Canadian nationals – apply at border / Mexican at consular post

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## O-1 Visa

- Extraordinary Ability (O-1)
  - National or international renown
  - Employer-sponsored
    - Can be own company
  - “One of a few at the top of his peers”
- Length of visa
  - 3 years
  - 1-year extensions
  - Can extend indefinitely

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## Requirements for O-1 (and EB-1A)

Meet at least 3 criteria below and show sustained national or international renown as one of a few at the top of the field:

- |   |  |
|---|--|
| <p>1. <b>Membership</b> in associations in the field which require <b>outstanding achievements</b> of their members, as judged by recognized national or international experts.</p> | <p>4. <b>Original</b> scientific, scholarly, artistic, athletic, or business-related <b>contributions</b> of major significance.</p>                         |
| <p>2. <b>Published material about</b> the individual in professional or major trade publications or other major media, relating to the individual's work.</p>                       | <p>5. <b>Authorship</b> of <b>scholarly articles</b> in the field, in professional or major trade publications or other major media.</p>                     |
| <p>3. Participation, either individually or on a panel, as a <b>judge</b> of the <b>work of others</b> in the field.</p>  | <p>6. The individual had performed in a <b>leading or critical role</b> for organizations or establishments that have a <b>distinguished reputation</b>.</p> |
|   | <p>7. The individual has commanded a <b>high salary</b> or other significantly high remuneration for services, in relation to others in the field.</p>       |

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## L-1 Intracompany Transferees

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- Allows multinational companies to transfer key employees to related entities in the U.S.
- May be used to transfer managers/executives (L-1As) and individuals with specialized knowledge (L-1Bs) who have worked for the company abroad for one of the prior three years
- Some large companies with numerous transfers have “blanket L” programs which pre-qualify related entities and streamline L process.

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## L-1 Intracompany Transferees

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*(Cont'd)*

- L-2 spouse may obtain unrestricted work authorization
- Dual Intent
- L-1 site visits are now being conducted
  - Conducted by USCIS Fraud Detection & National Security (FDNS) Unit to confirm existence of employer and the L-1 employees work location and duties
  - 60-day grace period

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## Nomad Visas

- Generally, not an employer-sponsored visa application.
- Last resort option when all U.S.-based options have been exhausted and the employer does not have a global presence.
- Available for employees whose work can be performed fully-remote.
- Time Zone considerations.
  - Mexican non-lucrative activities visa
  - Caribbean Islands
  - South America (Argentina, Brazil, Costa Rica, Colombia, Ecuador, Uruguay)
- Tax implications for both employer and employee.

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## Questions?



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# For Further Information



Andrew "Drew" Zeltner  
azeltner@klaskolaw.com



Carolina Regales  
cregales@klaskolaw.com



Sarah Holler  
sholler@klaskolaw.com


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## Upcoming Webinars


- **EB-1 Updates**
  - Thursday, June 8
  - 2:00pm
- **PERM Hot Topics**
  - Wednesday, June 14
  - 1:00pm
  - *SHRM credit available*
- **EB-5 Regional Centers**
  - Tuesday, June 13
  - 2:00pm
- **EB-5 Investors Basics**
  - Thursday, June 15
  - 2:00pm
- **EB-5 Direct Investors**
  - TBD


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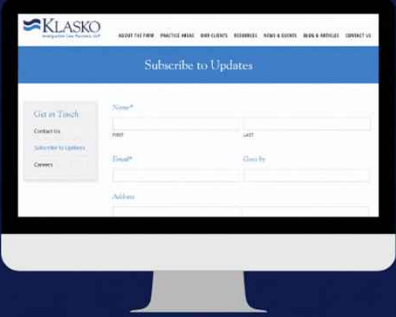


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**Andrew J. Zeltner** is a partner at Klasko Immigration Law Partners. Mr. Zeltner handles a wide array of corporate immigration matters including those involving the processing of permanent resident applications (green cards) on behalf of multinational corporate and individual clients, including labor certification applications, immigrant visa petitions and adjustment of status applications.

He has significant experience providing employment-based U.S. immigration services for large corporate clients, including applications for B-1 OCS, E-1/E-2, H-1B, H-3, J-1, L-1, O-1, TN, labor certifications, multinational manager and executive immigrant petitions, outstanding researchers, extraordinary ability aliens, and national interest waivers. He has provided extensive advice to human resources professionals and corporate counsel regarding immigration compliance matters including I-9 and LCA compliance issues.

Mr. Zeltner received a Bachelor of Arts degree in Politics (cum laude) from The Catholic University of America. He earned his J.D. (cum laude) from Quinnipiac University School of Law. While in law school, Mr. Zeltner served as Opinions Editor of the Quinnipiac Probate Law Journal.

**Andrew J. Zeltner**  
Partner

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**Carolina Regales** is a senior associate and has 15 years of immigration law experience. She thrives in a fast-paced environment with deep experience in providing business immigration solutions for corporate clients on behalf of their foreign national employees. She assists corporate clients from a variety of industries including finance, fintech, healthcare, logistics, real estate, higher education, hospitality, and mining.

She has successfully obtained a wide range of nonimmigrant business visas like H-1B, H-1B1, L-1, O-1, E-3, and TN, as well as successful experience with immigrant processes including PERM, EB-1A, EB-1B, EB-1C, and NIWs through both adjustments of status (AOS) or consular processing. She stays informed on the constantly changing immigration legislation, regulations, and policies changes to assess and recommend the best course of action for each case. She approaches each case with the motivation of serving others and is honored for the opportunity to assist others in achieving their American Dream.

Carolina is an active member of the American Immigration Lawyers Association (AILA). She graduated top of her class and valedictorian of the university from the Universidad Católica Santa María La Antigua, Republic of Panama with a Bachelor of Laws (LL.B.). She earned her Master of Laws (LL.M.) in International Law (magna cum laude) from Stetson University's College of Law. She is admitted to practice law in the District of Columbia and New York. Carolina speaks English and Spanish.

**KLASKO**  
Immigration Law Partners, LLP

**Carolina Regales**  
Senior Associate

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**Sarah Holler** is an associate attorney and is responsible for providing business immigration support for individual and corporate clients. Sarah focuses her practice on advising multinational corporations and their employees on employment-based immigration matters. She represents clients in a wide range of U.S. Immigration matters submitted for adjudication by the U.S. Citizenship and Immigration Services (USCIS) and by the Department of State at U.S. consulate locations around the world.

Sarah has significant experience with employment-based immigration matters, including H-1B, L-1, O-1, and E-2 nonimmigrant visas as well as the EB-1 and PERM-based categories of the I-140 Immigrant petitions and green card applications. At Klasko Immigration Law Partners, Sarah represents individual and corporate clients while providing expert advice to companies and their employees regarding immigration strategies, international travel, consular affairs, and I-9 compliance. She is also responsible for coordinating with local counsel around the world to assist clients with global immigration matters.

Sarah received her Bachelor of Arts degree in Political Science from the University of North Florida and earned her J.D. from the Wake Forest University School of Law. After graduating from law school, Sarah worked as an associate at a boutique immigration law firm in the Washington, D.C. area where she specialized in immigrant and nonimmigrant visa applications for intracompany transferees, outstanding researchers, and individuals with extraordinary abilities.

**KLASKO**  
Immigration Law Partners, LLP

**Sarah Holler**  
Associate

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