

# OUR PRACTICE

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## Technology (Immigration)

Immigration by technology professionals has become a significant focus of the United States, which has recognized its position in an international economy in which advanced technology is increasingly critical. There are no temporary or permanent visa categories specifically targeted at technology professionals, but several categories are particularly helpful to them and are commonly used.

### Temporary Options

The most commonly used nonimmigrant classifications used for the employment of technology professionals include the following:

- **H-1B for "specialty occupations"**: This classification is tremendously popular, because it requires, in essence, only that the job require at least a bachelor's degree or equivalent in a specific field and that the alien be paid at least the "prevailing wage." There are no requirements to prove a cumbersome exhaustion of available U.S. workers, to have any international connection of the business, or to show any extraordinary talent of the individual. A 6 year limit for continuous status can now be overcome when substantial steps toward permanent residence are in progress. The main problem is the limit of 65,000 on the number of new H-1B workers per year.
- **B-1 business visitors**: This classification does not normally allow day to day work for hire, but it can allow such activities as technical consultations, conference attendance, independent research, business observation, employment search, multinational office establishment, and even in some cases training or professional service, when any service by the alien primarily benefits and is compensated only by a foreign entity.
- **TN professionals under NAFTA**: Canadian and Mexican citizens whose work falls within an extensive list of professionals, including a broad range of scientists, engineers and technicians, computer systems analysts, management consultants, designers, and medical professionals, can receive year-by-year extensions with no absolute limit.
- **L-1 intra-company transferees**: "Specialized knowledge" workers, as well as managers and executives, can transfer for 5 to 7 years to a U.S. operation from a foreign parent, subsidiary, affiliate, or branch business operation in which the alien has worked for at least one year out of the last three. Managers and executives enjoy a fast, easy track to permanent residence.
- **E-1 and E-2 Treaty Workers**: Persons with "essential skills," as well as owners, managers and executives, can work indefinitely in two year increments in a U.S. operation that is owned at least 50% by nationals of the same country as the alien's nationality, as long as the U.S. business is a substantial investment by such nationals or conducts substantial trade with the alien's country.
- **F-1, J-1, and M-1 Students**: These classifications allow different types of study at authorized schools and universities, on-campus work, and limited but critical arrangements for off-campus work, especially following graduation.
- **J-1 Exchange Visitors**: Qualified aliens can work as teachers, scholars, trainees, and specialists with employers and institutions that have or participate through a program approved by the U.S. State Department.
- **O-1 Extraordinary Ability Aliens**: Aliens with sustained acclaim in their field can receive unlimited approval to work with a petitioning employer or through an agent, with a parallel track to permanent residence.

## Permanent Options

Although no permanent categories are limited to technology professionals, several are well suited for them, as follows:

- **Labor Certification to Second or Third Preference:** Most commonly technology professionals obtain permanent residence through a showing by an existing or prospective full-time employer that there are insufficient minimally qualified U.S. workers available after reasonable recruitment offering the "prevailing wage." Substantial waiting lists may exist and depend on the country of origin.
- **National Interest Waiver:** Workers with "advanced degrees" or "exceptional ability" whose immigration is in the "national interest" may avoid labor certification and may even file their own petitions. The second preference waiting list still applies.
- **Extraordinary Ability:** Aliens with sustained acclaim in their field can avoid labor certification, avoid waiting lists for India, China or Mexico, and even file their own petitions.
- **Outstanding Professors and Researchers:** A professor or researcher with substantial accomplishments or recognition and at least three years of experience in teaching or research in the academic area may be sponsored (a) for a tenured or tenure-track teaching position or a permanent research position in an institution of higher learning or (b) for a permanent research position by a private employer having at least three accomplished full-time researchers.
- **Multinational Business Transferees:** Managers or Executives who would have qualified for L-1 may avoid labor certification and waiting lists.

Technology professionals may nevertheless seek permanent residence through any other means available, including other [employment-based categories](#), [lottery](#), [family sponsorship](#), [asylum](#), etc.

## How We Can Help

The Baker Donelson Immigration Group can review the goals and characteristics of the international worker and the U.S. employer to help determine the most advantageous and efficient temporary visa classification to pursue. We inform the clients of the information and documents needed in the least burdensome manner possible, and we prepare and file the official requests necessary to obtain the desired results. We coordinate visa applications and the status of accompanying family members. We coordinate cases of multiple workers for the same employer or sponsor. We strategize for possible permanent residence even as we pursue temporary status. Once the clients are ready (which is sometimes immediately), we prepare papers for permanent residence and manage the sometimes lengthy process to the most expeditious conclusion possible.