

Visa Options for Foreign National Workers in the Life Sciences Industry

By Nicola Ai Ling Prall & Jessica K. Lang

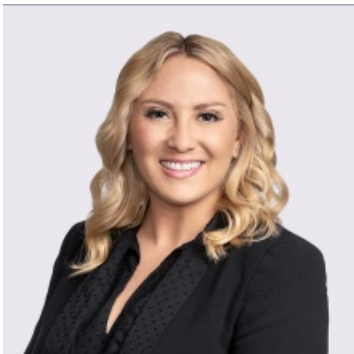
June 5, 2023

Meet the Authors



Nicola Ai Ling Prall

Principal
919-760-6467
Nicola.Prall@jacksonlewis.com



Jessica K. Lang

Principal
617-305-1228
Jessica.Lang@jacksonlewis.com

Related Services

Immigration
Life Sciences

As demand for talent surges in the fast-growing life sciences industry, U.S. employers continue to face challenges in their search for immigration options to retain their high-skilled foreign workers.

The historically low selection rate of H-1B work visas for fiscal year 2024 has resulted in a further shortage of available work visas, despite the increasing importance of foreign workers in STEM (science, technology, engineering, and math) occupations and the overall impact of the life sciences industry on the country's economy, innovation, and technological and healthcare advancement.

The traditional reliance on H-1B work visa to employ top-tier researchers, scientists, professors, laboratory specialists, postdocs, and fellows has become increasingly difficult. The Congressionally mandated quota or "cap" has not kept up as the total number of registrations submitted continue to increase (a record 780,884 registrations were submitted in March 2023 toward the 85,000 visas made available annually, a 10% selection rate). The slim selection rate has left employers in the life sciences industry searching for alternative options to retain their talented foreign workers.

Visa Options

The United States has several pathways for foreign nationals who hold certain advanced degrees and/or research accolades. This is in recognition of the importance of STEM training and skills to the competitiveness of American life sciences companies and their ability to innovate. As many foreign workers involved in biotech, pharmaceuticals, therapeutics, and so on, hold degrees in STEM fields, the visa categories outlined below may offer a solution to attract and retain these highly talented individuals in the United States.

F-1 OPT (Optional Practical Training), STEM OPT Extension

- **Duration:** Initially granted for 12 months, with a 24-month extension available for foreign students who hold a bachelor's, master's, or Ph.D. in a designated STEM field from a U.S. institution.
- Job offer is not required for initial 12-month OPT, but it is required for the 24-month STEM OPT extension.

TN

- Available for nationals of Canada and Mexico in a designated professional occupation.
- Education required: License, education, degree, and/or experience to engage in a business activity as a NAFTA/USMCA professional.
- Job offer must be for a position that requires a NAFTA professional.
- 3-year initial approval + unlimited 3-year extensions.

E-3

Available for Australian nationals in a specialty occupation (position requiring a bachelor's degree in a related field).

O-1

- Available for individuals of extraordinary ability who have sustained national or international acclaim in a specific field.
- A more likely option for highly educated workers with a Ph.D.
- Job offer must demonstrate that the individual is coming to work in an area of extraordinary ability.
- Duration: Up to 3-year initial approval + 1-year extensions based on need, with no maximum duration of status.

L-1

- Intracompany transfer visa – Available to employees who have worked for 1 year with an affiliated entity abroad in a managerial/executive position or who possess specialized knowledge.
- Job offer must be in a managerial/executive capacity or specialized knowledge.
- Duration: 3-year initial approval + 2-year extension(s) (7-year total for managers/executives; 5-year total for specialized knowledge professionals).

H-1B for Cap-Exempt Petitioners

- Types of employers: Institutions of higher education (i.e., universities and colleges), non-profit organizations associated with higher educational institutions (i.e., entities affiliated with medical labs, hospitals, and research units) and non-profit research or government organizations primarily engaged in research.
 - Obtaining an H-1B through a cap-exempt employer also may permit concurrent H-1B employment with a cap-subject entity (for example, a foreign national teaches classes at a university part-time while working for the private employer).
- Education: Must hold a U.S. bachelor's or higher degree (or a foreign equivalent degree) required by the occupation, or an equivalent combination of education and experience.
- Job offer must require the theoretical and practical application of a body of highly specialized knowledge; and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent).
- Duration: 3-year initial approval + one 3-year extension; additional extensions may be available for individuals who are in the process of obtaining lawful permanent resident status.

In addition, some employees may be able to remain in the United States on their current visa to retry the H-1B lottery the next year, while others may be able to take advantage of work authorization as a dependent of their spouse.

There are also "immigrant visa" pathways available that permit lawful permanent residents or "green card holders" to work and live in the United States without restriction. While most employment-based green card categories require sponsorship and a job offer from a specific employer, there are certain avenues for extraordinary ability individuals, outstanding researchers or professors, as well as the National Interest Waiver category for individuals in the STEM field who can demonstrate they are well-positioned to advance their proposed endeavor in the United States, the endeavors are of substantial merit and national importance, and it is in the interest of the U.S. government to waive the job offer and labor

certification requirements.

Jackson Lewis attorneys are well-equipped to advise companies and their foreign national employees in the Life Sciences industry on strategic alternatives to the H-1B visa in order to attract and retain top talent in the United States.

©2023 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.