

# U.S. IMMIGRATION LAWS --- UNDER THE --- TRUMP ADMINISTRATION

## EMPLOYMENT BASED IMMIGRATION OPTIONS NONIMMIGRANT VISAS

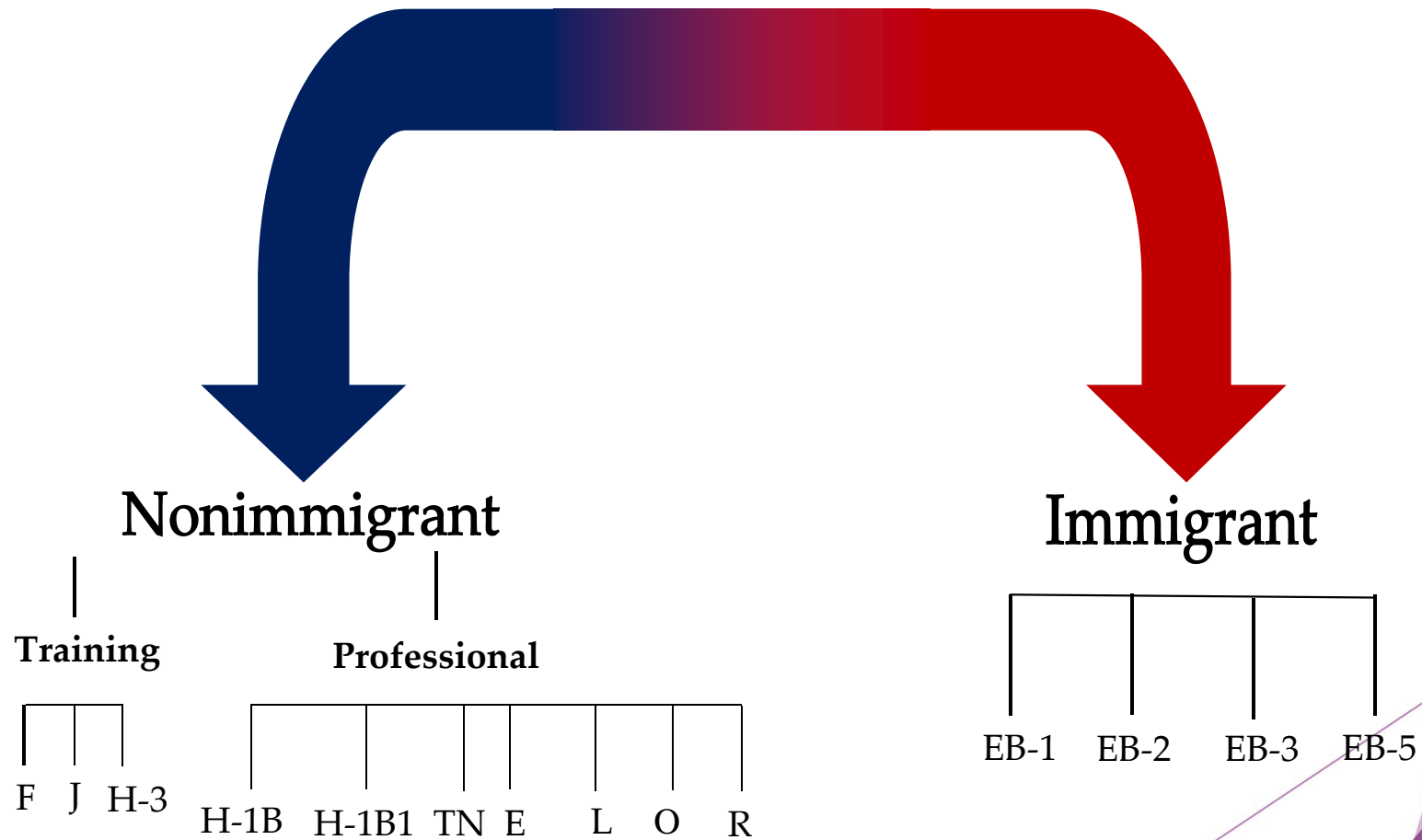
*THE PENNSYLVANIA BAR INSTITUTE  
PHILADELPHIA, PA  
SEPTEMBER 21, 2018*

Jack Doebley, Esq. & Nicole Simon, Esq.



Pennsylvania Bar Institute

## Two Arms of Employment-Based Immigration Law:



# Nonimmigrant Visa Overview

- **Visa Waiver Program (VWP)**
- **B-1:** Business Visitors
- **E-1:** Treaty Traders – Managers, Executives, Specialized Knowledge
- **E-2:** Treaty Investors – Managers, Executives, Specialized Knowledge
- **E-3:** Australians in Professional Specialty Occupations
- **F-1 / M-1:** Students
- **H-1B:** Professionals in Specialty Occupations
- **H-1B1:** Professionals from Singapore/Chile in Specialty Occupations (Free Trade Agreement)
- **H-2B:** Non-professional seasonal, peakload, and project related employees
- **H-3:** Trainees
- **J-1:** Exchange Visitors & Trainees
- **L-1A** (Managers / Executives)/ **L-1B** (Specialized Knowledge): Intracompany Transferees
- **O-1:** Scientists & Other Aliens of Extraordinary Ability
- **P:** Internationally recognized performers and athletes
- **Q-1:** Cultural Exchange Visitors
- **R-1:** Religious Workers
- **S:** Suppliers of Critical Information Relating to Criminal Organizations or Terrorism
- **T:** Victims of Trafficking in Persons
- **TN:** Canadian and Mexican Professionals in Specialty Occupations
- **U-1:** Victims of Crime

# The Visa Waiver Program (“VWP”)

The VWP was established in 1986 to promote better relations with United States allies by eliminating unnecessary barriers to travel. The VWP enables nationals of these certain countries (countries with a lower incidence of illegal immigration to the United States) to travel to the United States for business for stays of 90 days or less. Please note, however, that this stay **cannot** be extended. The Visa Waiver Program participating countries are:

Andorra	Denmark	Hungary	Liechtenstein	New Zealand	Slovenia
Australia	Estonia	Iceland	Lithuania	Norway	South Korea
Austria	Finland	Ireland	Luxembourg	Portugal	Spain
Belgium	France	Italy	Malta	San Marino	Sweden
Brunei	Germany	Japan	Monaco	Singapore	Switzerland
Czech Republic	Greece	Latvia	The Netherlands	Slovakia	United Kingdom

*All individuals entering the U.S. pursuant to the VWP must complete an on-line registration (ESTA) prior to boarding.*

# Business Visitor: B-1

## Versatile visa for Business Meetings & Transactions

- Maximum stay: 6 months
- Requires 100% nonimmigrant intent
- Apply directly at the consulate abroad
- Additional permissible activities include (but are not limited to):
  - Sales initiatives
  - Installation / service related to contractual agreement
  - Prospective investment activities
  - Short stay professional work on behalf of foreign entity  
(B-1 in lieu of H-1B)
  - Short stay training for foreign workers  
(B-1 in lieu of H-3)

# Professional Specialty Occupations: H-1B

## **Four Part Test:**

1. Foreign National has a U.S. baccalaureate degree or a foreign degree that is equivalent of a U.S. baccalaureate degree in field of study related to intended position;
  2. Position requires a degree in a specific field of study;
  3. Position pays the “prevailing wage” for the occupation in the metropolitan area as determined by the Department of Labor (“DOL”); AND
  4. There is an “H-1B number” available (65,000 for those with a 4-year degree or its equivalent and 20,000 for those with a U.S. master’s degree available annually). Certain sponsors are exempt from this cap.
- 6 year maximum period of stay (can be extended when Foreign National has reached certain milestones in the Green Card process – AC 21 has been codified)
  - Allows for dual intent
  - Significantly more Requests for Evidence in the past two years – questioning specialty occupation eligibility and/or wage level in the Labor Condition Application.

# The H-1B Problem

## Lack of availability for “cap subject” positions

- **IMPORTANT:** Can (and should) file for an October 1<sup>st</sup> cap subject H-1B six months before fiscal year commences (April 1<sup>st</sup>) in order to secure a cap subject number.
- **POTENTIAL PROBLEM:** For FY 2019 the H-1B visas for baccalaureate degrees and for U.S. master’s degrees visas ran out within the first week of the filing period, which ended April 6, 2018! (Over 190,000 Petitions were received by USCIS during such period.)

## Professional Specialty Occupations: Chile & Singapore: H-1B1 FTA



- Special visa based on bilateral free trade agreements between the U.S. and **Chile** and the U.S. and **Singapore**.
- Available in 18 month increments.
- Theoretically renewable indefinitely.
- Carries 100% nonimmigrant intent.
- Spouses are not permitted to work.
- Apply directly at the Consulate / Embassy.



# Treaty Traders and Treaty Investors: E-1 and E-2

## **E-1: “Treaty Trader”**

- The applicant must be a national of a treaty country (underlying treaty of trade or commerce with the U.S.) and hold a supervisory / executive or essential skills position.
- The trading firm must have the nationality of the treaty country.
- The international trade must be “substantial.”
- The trade must be principally between the U.S. and the treaty country.

## **E-2: “Treaty Investor”**

- The applicant must be a national of a treaty country and if not the investor, must hold a supervisory / executive or essential skills position.
- The U.S. entity must have the nationality of the treaty country (at least 50% owned by treaty national).
- The investment must be “substantial”, “real”, and “not marginal.”

- **Can apply directly at Consulate / Embassy**
- **100% nonimmigrant intent**
- **Available for up to 5 years and renewable indefinitely**
- **Spouses can obtain employment authorization**

# Treaty Traders and Investors

## (E-1 & E-2 Countries)

Albania (just E-2)	Czech Republic (just E-2)	Kosovo	Serbia
Argentina	Denmark	Kyrgyzstan (just E-2)	Singapore
Armenia (just E-2)	Ecuador (just E-2)	Latvia	Slovak Republic (just E-2)
Australia	Egypt (just E-2)	Liberia	Slovenia
Austria	Estonia	Lithuania (just E-2)	Spain
Azerbaijan (just E-2)	Ethiopia	Luxembourg	Sri Lanka (just E-2)
Bahrain (just E-2)	Finland	Macedonia	Suriname
Bangladesh (just E-2)	France	Mexico	Sweden
Belgium	Georgia (just E-2)	Moldova (just E-2)	Switzerland
Bolivia	Germany	Mongolia (just E-2)	Taiwan
Bosnia and Herzegovina	Greece (just E-1)	Montenegro	Thailand
Brunei (just E-1)	Grenada (just E-2)	Morocco (just E-2)	Togo
Bulgaria (just E-2)	Honduras	Netherlands	Trinidad & Tobago (just E-2)
Cameroon (just E-2)	Iran	Norway	Tunisia (just E-2)
Canada	Ireland	Oman	Turkey
Chile	Israel (just E-1)	Pakistan	Ukraine (just E-2)
Colombia	Italy	Panama (just E-2)	United Kingdom
Congo (Brazzaville & Kinshasa – just E-2)	Jamaica (just E-2)	Paraguay	Yugoslavia
Costa Rica	Japan	Philippines	
Croatia	Jordan	Poland	
	Kazakhstan (just E-2)	Romania (just E-2)	
	Korea (South)	Senegal (just E-2)	

# Professional Specialty Occupations: Australia E-3



- For Nationals of **Australia** only
  - 10,500 annually.
  - Must have a university degree or its equivalent in a “specialty occupation” and be sponsored by a business in the United States.
  - Initial application is filed with local **U.S. Embassy or Consulate General**
  - Spouses of E-3 visa holders are able to work.
  - E-3 holders are permitted an initial stay of two years, and indefinite extensions of two years.

## Intracompany Transfers: L-1

- **L-1A: Intracompany Managers / Executives**
  - Maximum Stay: 7 years
- **L-1B: Intracompany Specialized Knowledge Employees**
  - Maximum Stay: 5 years

### **Requirements:**

- **Qualifying Corporate Relationship:** United States entity and foreign entity must share qualifying relationship (must have at least 50% common ownership).
- **Qualifying 1 year of Employment:** must have been employed by overseas entity for at least one year during past three years.
- **Qualifying Type of Employment:** Managers, executives (L-1A) or those with specialized knowledge (L-1B).

## Extraordinary Ability Foreign Nationals: O-1

- Obtained by those with extraordinary credentials, who have **“sustained national or international acclaim,”** and will be employed in a capacity requiring same.
- Less stringent standard for those working in the arts as opposed to the sciences.
- Often held by those subject to J visa’s two year home residency requirement.
- Can renew indefinitely.
- O visa is normally granted for the length of either a specific project or, in terms of a salaried employee, for an initial three-year period.
- Extensions granted in 1 year increments.
- Often a vehicle for subsequent pursuit of permanent residence via I-140 EB-1 Petition for Alien of Extraordinary Ability.

# Treaty Nationals (TN)- Canada/Mexico

Position must be **listed** in the NAFTA schedule.

Includes: University Teacher, Scientific Technician/Technologist, Engineer, Computer Systems Analyst, Nutritionist, Biochemist, Biologist, Chemist, Geochemist & Pharmacologist.

- Fast: Canadians apply at border, Mexicans apply at U.S. Embassy/Consulate General.
- Inexpensive.
- Unlike H-1Bs – not cap subject.
- Available in 3 year increments.
- 100% non-immigrant intent.
- Spouses not permitted to work.



## Other Nonimmigrant Working Visas

- **H-2B:** For seasonal, peak load, and “project” positions.
- **H-3:** For trainees (except for graduate medical education or training).
- **J-1 :** For exchange visitors, including exchange students, au pairs, trainees/interns, graduate medical trainees, students, professors and short-term scholars.
- **P-1/2/3:** For athletes and performers.
- **Q-1:** For Cultural Exchange Visa (“Disney World,” etc.)
- **R-1:** For ministers, pastors, and “religious” workers whose work utilizes knowledge of/teaching of religion



**STEEL, DOEBLEY & GLASSMAN, P.C.**  
IMMIGRATION AND NATIONALITY LAW

1608 Walnut Street, Suite 1500  
Philadelphia, PA 19103-5410  
Phone: (215) 486-4200  
[www.sdglawgroup.com](http://www.sdglawgroup.com)

Mr. Doebley is a Partner at Steel, Doebley & Glassman, P.C., a boutique firm specializing exclusively in immigration and nationality law. He has nearly 20 years of experience concentrating primarily in employment-based immigration, including: H, L, O, and E temporary visas; outstanding researcher, extraordinary ability, and multinational executive/manager petitions; National Interest Waiver petitions; PERM labor certifications; and employer immigration compliance issues, including H-1B/H-1B1 visa program compliance, I-9 compliance/audits and E-Verify. He also has expertise with all types of family-based and individual immigration matters including: marriage-based petitions, parent-child petitions, sibling petitions, and family-based consular processing applications; Naturalization (U.S. citizenship); and administrative appeals. A *SuperLawyers* Pennsylvania Rising Star (2012-2014), he has authored articles for and lectured at continuing legal education programs for the Pennsylvania Bar Institute, and has created materials for presentations given to attorneys at the U.S. Department of Justice. Mr. Doebley has also provided case/client management advice on a consulting basis to immigration divisions of other law firms. He has been active in the Cheltenham (PA) Little League (CLL) organization and with Mid-Atlantic Connection for PKU and Allied Disorders (MACPAD), a non-profit 501(c)(3) organization, dedicated to improving the health and well-being of individuals and families affected by Phenylketonuria (PKU) and related metabolic disorders.





190 N. Independence Mall West, Suite 602  
Philadelphia, Pennsylvania 19106  
Tel: 215.925.0705  
Fax: 215.925.5105  
<http://LHSCimmigration.com>

Ms. Simon is the managing partner of Landau, Hess, Simon & Choi in Philadelphia. She represents individuals and businesses in all facets of immigration matters, including employment-based nonimmigrant and immigrant visas, family-based cases, and naturalization. Among her clients are colleges, universities, hospitals, non-profits, and large and small private employers. Ms. Simon's practice includes counseling employers on I-9 and related employer compliance issues. She currently serves as Chair of the American Immigration Lawyers Association (AILA) Vermont Service Center Liaison Committee and as a member of the AILA Service Center Operations (SCOPS) Liaison Committee. She is a past Chair of the AILA Philadelphia Chapter and from 2013 until 2016 co-chaired the AILA Philadelphia Chapter USCIS Liaison Committee. Ms. Simon has presented on business and family immigration topics at AILA local and national conferences and has lectured on immigration options for foreign national students, physicians, and researchers to universities and professional scientific organizations. Ms. Simon is listed in The Best Lawyers in America. She received her J.D. from the University of Pennsylvania in 2001 and has been practicing federal immigration law exclusively since 2003. Ms. Simon is a member of the State Bar of California.