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# Start-Ups & Immigration

September 2017

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SILICON VALLEY  
SAN FRANCISCO BAY AREA

# Is there a “Start-Up Visa?”



NO. But there was a proposed rule to allow founders to parole into the U.S. if the company has raised \$345K.

However, this does not look like it will go forward under the Trump Administration.

Moreover, this would not provide immigration status.

# Current Immigration Options for Entrepreneurs



E-1/E-2	Treaty Investors / Treaty Traders
L-1A/L-1B	Intracompany Transfers for Executives & Managers / Specialized Knowledge Personnel
H-1B	Specialty Occupation Workers
O-1	Extraordinary Aliens
EB-1(a), (b), (c)	Extraordinary Aliens / Outstanding Researchers / Executives & Multinationals
EB-5	Investors

# E-1 / E-2 Treaty Traders / Investors



- E-1: Treaty Traders &
- E-2 Treaty Investors
- Or and Employee of a Qualifying Entity

# E-2 Treaty Investors



- Treaty
- Nationality - Company or its Owners possess the nationality of the treaty country.
- Investment Control – active or in the process of investing
- Substantial Investment
- Non-Immigrant Intent

# L-1A Intra-Company Transfer

Executive or Manager is Transferred from Foreign Co. to the U.S. Co., usually to set-up the “New Office.”



# L-1A – Considerations



- **Foreign Company must be doing business for 1 year**
- **Qualifying Relationship:** Foreign company must have a qualifying relationship with a U.S. entity.
- **\$\$:** Either significant revenue or funding typically around \$500K is a good start; \$1 million is better
- **New Office L-1A:** Filed when the U.S. company has been operating for less than 1 year.
- **Validity:** New Office L-1A is valid for 1 year. Then an extension can be filed for additional 2 years.

# L-1A – Timeline



- 10 Days — US Co Formed
- 30 Days — Gather Docs, Prepare & File L-1A Petition
- 15 Days — Approval or Request for Evidence
- 30 Days — Prepare and File Response
- 15 Days — Approval or Denial
- 15 to 60 Days — Schedule Visa Appointment

USA Here I Come!





# H-1B Specialty Occupation



## Considerations:

- **Individual Contributor Role vs Executive or Managerial**
- **Control over Founder**, i.e. terminated by the Board of Directors
- **Cap Subject:** Subject to an annual lottery if the person has never had an H-1B
- **\$\$:** Funding typically around \$500K is a good start. Can do a case for less if there is revenue or if there are strong investors
- **Validity:** Valid in 3-year increments.
- **Dependent/ Work Authorization:** Dependent spouses (H-4) cannot work until an I-140 has been filed.



# O-1A Extraordinary Aliens



## Types of evidence for O-1 used for start-up founders include

- Evidence of significant funding;
- Contracts with substantial customers as evidence work is being implemented or adopted by others;
- Customer reference letters;
- Industry expert reference letters;
- Press articles;
- Part of a significant incubator program;
- Significant salary + shares (depending upon valuation of company)

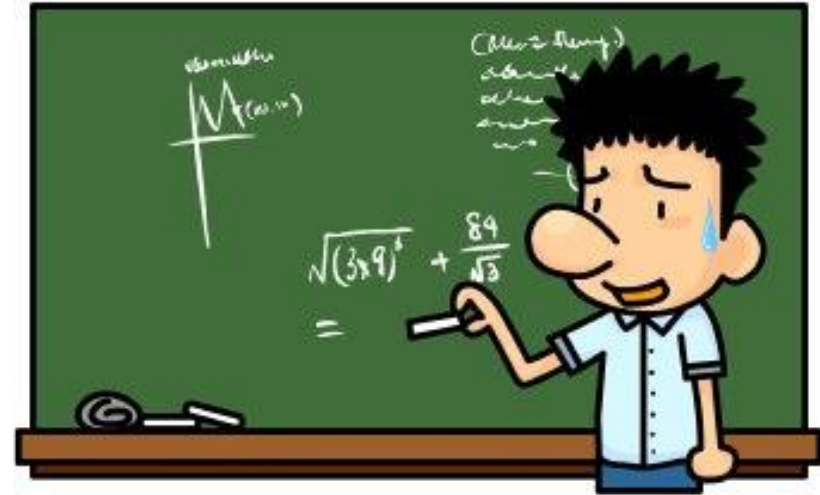


# L-1B – Specialized Knowledge Worker



The purpose of this visa is to transfer specialized Knowledge of the company's products or processes.

This is one of the most difficult visas to get. But it can work, where the company has a complex product or process, and the L-1B transfer is one of the very few people who possesses that knowledge.



# Common Pathways to the Green Card



## *O-1A to EB-1A*

### **EB-1(c) Intra-Company Transfer of Executive / Manager**

- Can file after the U.S. has been operating for 1 year. We typically file after the L-1A extension is secured.
- No PERM /Labor Certification Required.
- I-140 (immigrant petition) - No premium processing;
- I-485 / Green Card Application case can be filed concurrently with the I-140 or after the I-140 is approved.

## *L-1A to EB-1C*

### **EB-1(a) Extraordinary Aliens in Business, Sciences, the Arts**

- Higher scrutiny by USCIS
- File after Series A or significant funding
- No PERM /Labor Certification Required.
- Premium Processing available
- I-485 / Green Card Application case can be filed concurrently with the I-140 or after the I-140 is approved.

# Common Pathways to the Green Card



## EB-2 – Members of Professions Holding Advanced Degrees

## EB-3 – Skilled Workers; Professionals

- PERM (Labor Certification) – 14 mos. to 2 years from start to certification
- I-140 (Immigrant Petition) – 1 month for approval in premium; 6 months in regular processing
- I-485 / Green Card Application can be filed when the Priority Date is Current.

*Backlogged for China & India, but the rest of the world, is not too bad*





EB-2 China & India > 5-10 yrs

EB-3 China & China – 5-20 yrs



# Contact Information



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