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Article: **VISA OPTIONS IF YOU'RE TOO LATE FOR AN H1B VISA.**

By: **Christopher A. Kerosky, Esq.**

As predicted, the yearly visa quota for the H1b professional visa was used up within days in April. The U.S. Citizenship and Immigration Service (USCIS) announced this week that it has reached the congressionally-mandated 65,000 H-1B visa cap for fiscal year 2019. USCIS has also received a sufficient number of H-1B petitions to meet the 20,000 visa U.S. advanced degree exemption, known as the master's cap.

So what are your options if you or your employee have submitted your H-1b application in time? What if you are not eligible for an H-1b visa?

This article will provide an overview of these non-immigrant visas in the U.S. based upon employment or business purposes. Some of these options surely will not apply; but perhaps there is one or more that can provide a short-term or long-term option for you or your employee.

F-1 visa: Student visa. Visa for an unspecified period of time while the student is enrolled full-time in an approved program of study. This may be a good option if you were a student before applying for the H-1b and you can extend your study or go back to school. It usually is an expensive solution as you need to study full-time and pay international student tuition. Generally, you cannot work with this visa.

J-1 visa: Training visa. Visa for up to 18 months while the person is enrolled in an approved program of training for a specific company. This can be a good option for persons having completed college recently. You obtain a work permit, but it is supposed to be "on-the-job" training only.

B-1 visa: Business visa. Available to persons doing business in the U.S. It is usually valid for six months or less but may be extended in the U.S. by simple application to the CIS. This can be a possibility to extend your time here in order to search for business partners and contacts, as long as you adhere to the visa terms: no working, visa ends in six months or less.

B-2 visa: Tourist visa. It is usually valid for six months or less, but may be extended in the U.S. by application to the CIS. This can provide a short-term solution, allowing the foreign national to stay a few months longer before returning home for touristic reasons. Filing the extension application automatically extends one's legal stay in the U.S. until a decision is reached.

L-1 visa: Intra-company transferee. This is a good option for foreign nationals employed by a multi-national company doing business here. A visa for an executive or person with specialized knowledge, sponsored by a company abroad with a related company here. The

first visa is valid for 1 year, but may be extended up to 7 years. It provides the right to work for the sponsoring company. Does not require that the applicant have a degree.

E visa: Treaty trader or investor visa. This is a good option if you happen to have a “substantial” amount of money to invest in the U.S. and want to start a business here. Requires a treaty with the country of origin of the applicant and substantial investment in the U.S. or trade with the U.S.

R-1 visa: Religious worker. A visa for persons sponsored by a religious institution, valid for 2 years but may be extended. A very good alternative for persons offered work by a church, synagogue, school or other religious institution.

O/P visa: Artist or entertainer. A visa allowing artists, entertainers or athletes to stay in the U.S. for the purpose of specific performances for a specific limited period. The government requires that they document their “outstanding” qualifications and “international acclaim”. The standards are quite high.

Every person’s unique case must be evaluated specifically to determine which non-immigrant visa might offer the best chances for extending their legal status here. These categories are not broad and the options are limited, but in many cases, one may find a solution if their H1b visa dreams were unfulfilled this year.

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About the author:

Christopher A. Kerosky of the law firm of KEROSKY PURVES & BOGUE LLP has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine “Super Lawyers” edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C.

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