

*The benefits mentioned do not mention cheap american fucks who do not want to pay*



# Limited Visa Options Make Offshoring Attractive for Some Employers

By Allen Smith, J.D.

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*the industry always says top talent but Department of Labor shows*

**E**mploying workers who live outside the U.S. can be an effective option for staffing hard-to-fill positions when there are no feasible U.S. visa options. While many different kinds of visas exist, not many are up for grabs. In these cases, employers might want to consider offshoring, or hiring remote workers who live in other countries.

"It can be challenging to find a suitable and available visa option to hire foreign national workers," said Yova Borovska, an attorney with Buchanan Ingersoll & Rooney in Tampa, Fla.

The benefits of hiring international talent include not only filling skills gaps but also gaining diverse perspectives and expanding a company's reach and access to new markets, said Bjorn Reynolds, CEO of Safeguard Global in Austin, Texas. Safeguard Global offers HR support in more than 170 countries. "Other countries have capitalized on these benefits and have even pioneered new visa processes to encourage the hiring of foreign talent."

Canada, in particular, has a visa framework that encourages the hiring of top foreign talent much better than U.S. visa programs do, said Mira Mdivani, an attorney with Mdivani Corporate Immigration Law Firm in Overland Park, Kan. Rather than losing international staff, some U.S. employers move their foreign-born staff to Canada when U.S. visas expire.

However, Mdivani said many employers "are weary of establishing a foreign operation just for the purposes of hiring abroad. They don't have the local expertise and are concerned about legal and tax exposure in a foreign country."

## U.S. Visa Options

As the H-1B cap in the U.S. becomes increasingly competitive, savvy employers will consider the full menu of options, including hiring talent outside the U.S. in a manner that could pave the way for an intracompany transfer down the road, said Kimberly Grant, a lawyer with Pryor Cashman in New York City.

Some employers hire workers through a branch, affiliate, subsidiary or parent in a foreign country, which can potentially qualify them for an L-1 visa, Borovska noted.

The H-1B visa category is used the most often to recruit foreign talent in science, technology, engineering and mathematics, said Patrick Shen, an attorney with Fragomen in Washington, D.C. Yet, the H-1B category is capped at 65,000 plus an additional 20,000 for graduates with a master's or doctorate degree from a U.S. institution.

"The market's demand exceeds the quota by so much that the U.S. Citizenship and Immigration Services has to hold an annual lottery, and the chance of actually winning an H-1B visa is about 15 percent," Shen said. "As a national policy, the ability to recruit and retain top talent should not be left to a game of chance, much less one with a 15 percent chance of success."

Many foreign graduates from U.S. universities have had to work for their employers in other countries because they couldn't get authorization to work stateside. This visa unavailability hinders U.S. competitiveness, innovation and economic growth, Shen said.

Employers can plan to apply through the H-1B registration once it becomes available in March of each year, Borovska said.

Some employers who seek to hire foreign national workers from certain countries may use other visas, such as the TN for Canadian and Mexican nationals, the E-3 for Australian workers, or the H-1B1 for Chilean and Singaporean nationals. Some employees can gain citizenship in Canada or Australia, which would provide them with additional visa options relatively quickly, she said.

"A select few may also qualify for O-1 extraordinary ability visas, but only if they meet certain rigorous criteria to show a high level of achievement in their field of work," Borovska said.

Other visa options include:

- F-1 Optional Practical Training.
- Curricular Practical Training.
- Occupation-specific visas, such as R-1 for religious workers and P-1 for performers and athletes.

"However, these options are limited and can take a significant amount of time and money," Borovska said. "Even applying directly for permanent residence takes approximately two years—and sometimes even longer."

An employer can start the permanent residency process while the foreign national is working outside the U.S. Once the process is complete, the employee can move to and work in the U.S. in lawful permanent resident—"green card"—status. Employers with difficulties recruiting for certain positions—such as registered nurses—are willing to invest in the green card process, Borovska said.

### **Hiring Foreign Employees to Work Abroad**

U.S. companies have a good alternative to employing foreign workers in the U.S.—hiring foreign workers to work remotely from their home countries, Borovska said.

"This is because they do not need U.S. visas to work when they are not physically in the U.S., and since the COVID-19 pandemic, many employers have developed the infrastructure to employ workers virtually without requiring in-person attendance," she said. "However, this approach is not without challenges."

Companies need to thoroughly research the employment laws and regulations of the country in which the remote worker is living and working, Borovska said. By employing someone in a foreign country, an employer could inadvertently subject itself to local labor and employment laws in that country. There can also be tax, corporate and compliance consequences, she added.

The employer may need to hire local counsel in the country because some countries have more stringent laws than others. For example, in some countries, terminating an employee can trigger labor law obligations that are far more extensive than what an employer would expect in the U.S., Borovska said.

Nonetheless, hiring workers in other countries is "a smart way to stay competitive, reduce costs, increase productivity and improve revenue opportunities," Reynolds said.

Companies sometimes decide to hire a strong candidate who may want to move to the U.S. but isn't ready to do so, either for personal reasons or because they haven't yet secured their visa, he said. Or, an employee's visa has expired and the worker needs to return home, but the organization doesn't want to cut ties with them. Remote work could be an option for these candidates and employees.

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