

# Breaking the Borders Podcast

## Immigration Options for Entrepreneurs

Disclaimer: Breaking the Borders does not give legal advice, and none of the above should be construed as such

This is a detailed summary of a recorded conversation with Sarah Corstange which can be accessed at [breakingtheborders.com/visa](http://breakingtheborders.com/visa)

### Non-immigrant Visas

#### 1. OPT

- a. 12 months (Plus, additional 17 months for STEM. Set to be voided Feb 12, 2016 if they do not re-issue properly with notice and comment)
- b. Great for incubators
- c. No wage requirements - good way to launch and seek funding

#### 2. B1 & VWP (Visa Waiver)

- a. Can do the same things on VWP and B1, but a few differences:
  - i. VWP *only* available for certain countries
  - ii. Only good for 90 days - no extensions
  - iii. Cannot change status from VWP
- b. Preliminary stage only (market research, setting up legal entity, bank account, funding)
- c. Can be used for incubators if you limit your activities to biz dev
- d. No remuneration
- e. More information can be found at:  
[https://help.cbp.gov/app/answers/detail/a\\_id/1550/~visa-waiver-program-\(vwp\)-countries](https://help.cbp.gov/app/answers/detail/a_id/1550/~visa-waiver-program-(vwp)-countries)

#### 3. H1B (Dual Intent)

- a. For professional employees with a specialized degree who have been offered a job in a specialty occupation
  - i. Specialty occupation: Requires a specialized degree
- b. Must be paid prevailing wage
  - i. Wages vary widely by geographic region and profession
  - ii. Equity does not count towards wage

- c. Must have employer - employee relationship
  - i. Company must have ability to hire, fire, control work, and set wage
  - ii. Gets complicated as you approach 50% of ownership, gets extremely difficult if you go over 50%--have to be willing to give up control of the company to an independent board that you cannot replace
  - iii. Cannot stack the board with family members
- d. Can be part-time or concurrent
  - i. Part-time a good way to cut down on wage
  - ii. Can have multiple concurrent H1bs
- e. For first-time applicants, have to fall within cap
  - i. 65000 General Cap
    - 1. 5,400 for Singapore/Chile
    - 2. 59,600 general
  - ii. 20,000 MA Cap
    - 1. Must have degree from accredited US university
- f. Non-profit research or educational H1bs exempt from cap
  - i. Can stack a for-profit H1b on top of this

#### **4. Alternatives to the H1B**

- a. TN (Non-Imm intent)
  - i. Available for Mexicans and Canadians
    - 1. In a specific list of fields
    - 2. No prevailing wage
    - 3. Renewable indefinitely, but requires nonimmigrant intent
- b. H1B1 (NonImm intent)
  - i. H1B for Singapore and Chile
- c. E-3 (NonImm intent)
  - i. H1B for Australians

#### **5. L1 (dual intent unless owner new office)**

- a. Intra company transfer from another country
- b. Qualifying relationship
  - i. Parent-subsidiary
  - ii. Owned by same person or group of people
  - iii. Subsidiaries of same parent company
- c. Employed for at least 1 year within last 3 years in a managerial/executive or specialized knowledge employee
- d. Must be coming to work in manager/executive or specialized knowledge capacity
- e. 3 year increments, unless new office (1 year)
- f. Can be used to start new office
  - i. Good option if you have a successful company operating abroad
  - ii. Companies do not need to be related
- g. L1-A (7) and L1-B (5)

h. Time on L1 will work towards H1-B clock

**6. O1 (Defacto Dual Intent by Registrant)**

- a. Extra-ordinary ability (must meet 3 criteria) in science, business, education, athletics, arts, or motion pictures.
  - i. Standard very high for science/business, but lower for art
- b. Can have your own company petition for you
- c. No prevailing wage requirement, although a low wage can throw doubt on your extraordinariness
- d. Granted for 3 years and 1 year extensions after indefinitely

**7. E-2 (De Facto Dual Intent by Registrant)**

- a. Only available to certain nationalities (not including India, Brazil, China)
- b. At least 50% owned by person of treaty country (without GC or dual citizenship)
- c. Must invest a “substantial” amount in relation to type of business
  - i. No set amount, depends on needs of business
- d. Have choice of USCIS petition if already in US, or applying directly to consulate
  - i. Better to apply to consulate because need to anyway for visa
- e. Need a business plan
- f. Need plan to hire people (no specific amount, test is marginality)
- g. Spouse is authorized to work

## Immigrant Visas

**1. EB-1**

- a. Extra-ordinary ability (like O1) (EB1-A)
- b. Can self petition
- c. Outstanding researchers
- d. Multinational manager (L1-A) (EB-1C)

**2. EB-2**

- a. National Interest Waiver allows founders to skip PERM
- b. Not just about what have done before, but how going to benefit US in future
- c. Two routes to qualify
- d. ADV degree in profession
  - i. In NY department of transportation - most important place
    - 1. 3 things
      - a. Working in field of intrinsic merit- low bar, almost every occupation qualifies
      - b. Benefit nation - can't just be local impact
      - c. Hardest - why should PERM be waived: this person has already and will continue to contribute at a level way above that of the minimally qualified worker

- e. Exceptional ability
  - i. Same three criteria as above, AND at least 3 of these
    1. Academic degree in the field “relating to” area of EB
    2. 10 years FT Experience in the occupation
    3. License to practice if required
    4. Salary of exceptional ability
    5. Membership in professional Associations
    6. Recognition of achievements/significant contributions to the field –  
Catch all/*comparable evidence*
  - ii. “Exceptional” for EB2 used to be easier than “extraordinary for EB1, but now they have been interpreted by USCIS to be very similar

**3. EB-5**

- a. >\$500k investment (may be changing soon to \$800,000)
- b. Must create 10 new jobs for US workers
- c. Investor involved in day to day
- d. Conditional for 2 years

