

NATIONAL TEACHER SHORTAGE COULD BE MITIGATED BY THINKING OUTSIDE OF THE UNITED STATES

The latest survey conducted by the National Education Association (NEA) – the United States’ largest union representing nearly 3 million educators – shows that massive staff shortages in schools is leading to educator burnout. In fact, an alarming number of educators indicated that they planned to leave the profession. According to the Bureau of Labor Statistics, there are currently 567,000 fewer educators in America’s public schools today than there were before the COVID-19 pandemic, but these problems didn’t start with the pandemic.

Teacher shortages have affected school districts for decades, especially in hard-to-staff subjects such as math, science, special education and bilingual education. The COVID-19 pandemic has added pressure on the staff and faculty that remain. There is a clear need that is not being met through the current system and countless schools are searching for solutions. The H1B is the most used visa category for professional employees, but the demand has exceeded the visas allocated each year under the program. These annual limits have created a lottery system, thereby making it highly uncertain if a visa can be secured for a new teacher.

A 2017 regulation titled “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Improvements Affecting High Skilled Nonimmigrant Workers,” provides a pathway for many school districts to hire qualified foreign national teachers as H-1B highly- skilled workers without regard to the annual limits on the H-1B program.

H-1B VISA: FAST FACTS

WHAT IS IT?

Employment-based nonimmigrant visa

- Allows for international travel
- Allows for period of up to 3 years; ability to extend for total of 6 years
- Allows for “dual intent” – or the ability to apply for permanent residency without violating nonimmigrant status
- Requires a bachelor’s degree or higher
- Requires licensure for the state where work will take place
- Requires payment of union wages or prevailing wages

WHAT IS THE PROCESS?

Registration through the H-1B Annual Cap Lottery

- 85,000 total H-1B visas available annually through USCIS
- USCIS provides the following numbers:
 - FY 2022 = 308,613 registrations received
 - FY 2023 = 483,927 registrations received

- Lottery system chooses which registrations are allowed to move to the next step of application process, which is a formal filing with USCIS and Dept of Labor

SOME SCHOOLS CAN QUALIFY FOR H-1B EXEMPTION

The H1B lottery can be avoided for organizations that are cap exempt. This allows them to submit H-1B petitions on behalf of qualified employees at any time during the year and without regard to the annual limit. The following are some examples:

- Institutions of higher education
- **Nonprofit entities related to or affiliated with an institution of higher education**
- Governmental research organizations related to or affiliated with an institution of higher education
- Nonprofit research organizations

Many U.S. school systems were unable to qualify for this exemption prior to the 2017 regulations due to the extremely narrow way in which the Department of Homeland Security interpreted “related to” or “affiliated with.” However, these regulations have now created a way for school districts to demonstrate that they meet the requirements of H-1B cap exemption through their affiliation with local universities.

NONPROFIT ENTITIES MAY QUALIFY FOR H-1B CAP EXEMPTION BASED ON THE FOLLOWING:

Having a **written** affiliation agreement with an institute of higher education as it is defined in Title 20 of the Federal Regulations (20 CFR § 1001(a)) that demonstrates the following:

- The agreement must establish an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research and education;

AND

- The fundamental activity of the non-profit organization is to directly contribute to the research or education mission of the institution of higher education

Many school districts have formally executed agreements with nearby universities and colleges to provide for student teachers or participants in “teacher-in-residence” programs. In most circumstances, it is possible to show that a fundamental activity of the nonprofit school district is to directly contribute to the research or education mission of the institution of higher education. This would include providing would-be teachers with the practical education and experience to work as educators themselves, thus helping train the next generation of highly desired teachers. The H1B is first filed with the United States Citizenship and Immigration Service and, after approval, the teacher can request an H1B visa from the U.S. Consulate. Spouse and children may apply for an H4 visa as dependents.

ANOTHER VISA PATHWAY FOR SCHOOLS TO CONSIDER IS THE J1 EXCHANGE PROGRAM

The Department of State can authorize foreign teachers to work in the U.S. in primary or secondary schools under its J1 program for a 3 year period, with a possible 2 year extension, as part of its cultural exchange mission. The program requires school districts to work with an authorized sponsor to issue a DS-2019 to qualified foreign teachers. To qualify, a teacher must:

- Meet the qualifications for teaching in primary or secondary schools in their country of nationality or last legal residence;
- Be working as a teacher in the home country or country of legal residence at the time of application, or, if not working as a teacher, otherwise meet the eligibility qualifications and (a) have recently (within 12 months of application) completed an advanced degree and (b) have two years of full-time teaching experience within the past eight years;
- Have a degree-equivalent to a U.S. bachelor's degree in either education or the academic subject field in which they intend to teach;
- Have a minimum of two years (24 months) of teaching or related professional experience;
- Satisfy the standards of the U.S. state in which they will teach;
- Seek to enter the United States for the purpose of full-time teaching as a teacher of record at a primary (including pre- kindergarten) or secondary accredited educational institution in the United States (pre-kindergarten teachers must teach full-time, and at the pre-kindergarten level, may teach only language immersion at an accredited host school); and
- Possess sufficient proficiency in the English language.

There are 67 agencies authorized to serve as sponsors for J1 teachers, but many are state specific. The agencies can advise if the school qualifies to sponsor teachers, and if the candidate they have meets the requirements for the program. They will work with the school to verify their education, English proficiency and teaching experience. Each agency may charge their own fees for their sponsorship. Depending on the country of residence/citizenship, some teachers may be required to return to their home country for 2 years before changing status in the United States: for example, working in H1B status after J1, or applying for permanent residency. The J1 program is for foreign teachers who are outside the United States, and they will first need to obtain a J1 visa at the U.S. consulate to enter the U.S. There is a J2 option for spouses and children to accompany the teacher for the duration of the J1 program.

CULTURALLY UNIQUE Q1

While a lesser used visa category, for certain teaching positions the Q1 culturally unique visa may be useful for teachers working in language immersion settings or culturally unique school districts. The Q1 is for teachers over age 18 who, as part of their position, will be effectively communicating their cultural attributes to the community. This could include a Spanish language teacher who not only teaches the language, but also introduces customs, culture, and unique heritage as part of the curriculum. The petition is filed with the United States Citizenship and Immigration Services for approval, and then the teacher can request a Q1 visa from the U.S. embassy. Wages offered must match those of others in the same or similar position and the teacher must be qualified for the occupation of teacher and possess knowledge and experience to educate others about their culture. The Q work status visa can be requested for up to 15 months and there is no opportunity to extend. It does not allow spouses or children to accompany the teacher as dependents.

While these pathways to address the teacher shortage are promising, individual school districts should consult with their legal counsel to discuss specific hiring situations.

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