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# Immigration Options for Essential Workers in Hospitality

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# Disclaimer

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The information in this presentation is provided for informational purposes only and should **not** be construed as **legal advice** on any specific case or subject matter. You should **not** act or refrain from acting based on any content included in this training without seeking **legal** or other professional **advice**.



# Speakers



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# Legislation: Essential Workers for Economic Advancement Act



# Restaurant Labor Shortage

- Restaurant operators report that recruitment remains a top challenge.
  - 79% of operators face difficulties filling job openings.
  - 62% of operators cannot meet customer demand with current staff.
  - 89% expect recruiting and retention challenges to persist or worsen.
- Restaurants face a critical shortage of workers due to the lack of year-round visa programs.
- Current nonimmigrant visa programs are insufficient for the restaurant industry's continuous needs.



# EWEA: Addressing the Workforce Gap

- The Essential Workers for Economic Advancement Act (EWEA) proposes a new year-round visa program (H-2C) for nonimmigrant workers.
- Targets industries like restaurants, which face persistent labor shortages.
- Essential Workers – only occupations that do not require a college degree are eligible.
- Creates a stable pathway to hire foreign workers when U.S. workers are unavailable.



# Key Features of the EWEA

- H-2C visas are valid for three years and can be renewed twice, for a total of nine years.
- Allows workers portability after the first year, giving flexibility and protection for both employees and employers.
- Establishes a visa cap managed by economic need, expanding or contracting based on workforce demand.
- Program administered by the Department of Homeland Security (DHS).



# Employer Obligations Under the EWEA

- Employers must show efforts to recruit U.S. workers before hiring H-2C workers.
- Participation limited to areas with unemployment below 7.9% to protect U.S. workers.
- Employers required to pay fair wages based on Bureau of Labor Statistics or local wage data.
- Employers must comply with E-verify.





# Visa Caps and Economic Regulation

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- Initial visa cap set at 65,000 per year, with a potential maximum of 85,000 based on economic demand.
- Cap adjusts annually based on market conditions, ensuring the program responds to actual needs.
- Renewals of visas do not count against the annual cap, ensuring a steady flow of new workers.
- The flexible cap ensures that when the economy contracts, fewer visas are issued.



# Small Business Considerations

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- 25% of visas are reserved for small businesses, which are disproportionately affected by labor shortages.
- Small businesses are prioritized if they participate in safety and training programs, work with disadvantaged groups (WOTC), or have comparatively low sales per employee.
- Allows small businesses to hire workers eligible for portability, even if they do not bring in new H-2C workers.



# Policymakers Can Help Expand the Workforce

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- The restaurant industry urges Congress to advance and pass the Essential Workers for Economic Advancement Act
  - [H.R. 3734](#)
  - Co-sponsored by Lloyd Smucker (R-PA) and Henry Cuellar (D-TX)





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# Current Legal Options





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# INADMISSIBILITY



# Inadmissibility

The options discussed here assume the foreign worker is admissible to the U.S., that is, they are currently outside the U.S. or if in the U.S., currently in valid immigration status, and they do not have anything in their background (criminal conviction, prior immigration violations) that could interfere with the immigration process.

For workers with admissibility issues, some options exist but they are more limited and will require consultation with a qualified immigration professional.





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# H-2B Temporary Non-Agricultural Workers



# H-2B Temporary Non-Agricultural Workers

Skilled and unskilled workers who come to the U.S. to meet temporary or seasonal needs (of less than one year) in positions for which qualified U.S. workers are not available may qualify for H-2B status. Seasonal properties (such as ski resorts or swim clubs) often use this category to fill their temporary employment needs.







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# H-3 Trainees



# H-3 Trainees

An H-3 training program must offer a learning opportunity that is not available in the trainee's own country, and that will benefit the trainee in pursuing a career outside the United States. H-3 trainees may not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed, and they may not engage in productive employment unless such employment is incidental and necessary to the training.





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# **P-3 Culturally Unique Artists or Entertainers**



# P-3

The P-3 classification applies to you if you are coming temporarily to perform, teach or coach as an artist or entertainer, individually or as part of a group, under a program that is culturally unique. “Art form” is interpreted liberally in the P-3 context to apply to a broad range of creative endeavors (performing arts, visual arts, culinary arts etc.). Culturally unique can relate to your own culture or another culture – *for example*, you can be a German chef cooking German food, or an Argentine chef cooking German food.





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# L-1B Specialized Knowledge Workers



# L-1B Specialized Knowledge Workers

Individuals who are coming to the U.S. to work in a specialized knowledge capacity for a U.S. company, and who have worked for at least one year out of the preceding three years for a foreign affiliate of that U.S. company in a specialized knowledge capacity, may be eligible for L-1B status.

## **REQUIRED EXPERIENCE COULD BE BASED ON CULTURALLY ACQUIRED KNOWLEDGE.**

- An argument could be made that a professional's native knowledge of their culture's cuisine and customs qualifies as "culturally acquired knowledge" for the purpose of an L-1B visa.
- An interesting legal case on this topic involved Brazilian restaurant chain Fogo de Chão. In 2014, a federal court ruled that knowledge someone gains growing up in their culture—such as traditions and customs— could potentially constitute specialized knowledge for L-1B purposes.





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# Domestic Workers of Nonimmigrants and US Citizens Habitually Stationed Abroad



# Domestic Workers of Nonimmigrants and US Citizens Habitually Stationed Abroad

Personal employees or domestic workers, including private chefs and housekeepers, can enter the U.S. on a special B-1 business visitor visa to work for employers who are either (1) U.S. citizens living abroad or temporarily assigned to the U.S. or (2) foreign nationals in the U.S. on a temporary visa (like B, E, H, or J). The experience requirement is minimal (one year of experience in the offered job).







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# Non-Sponsored Work Authorization



# Non-Sponsored Work Authorization

The following individuals can receive unrestricted work authorization without employer sponsorship:

- Refugees/ Asylees (individuals granted refugee/ asylee status)
- Asylum applicants
- Spouses of: E, and L, certain H-4 workers
- Spouses & kids of: A / G (diplomats & international organization employees), J (exchange visitors), adjustment (green card) applicants





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# Permanent Residence or the “Green Card” Process



# PERM

A PERM application is the first step in the permanent residency (green card) process for most foreign workers seeking to immigrate to the U.S. for work reasons. PERM applications can be filed for all categories of workers from unskilled to executive. PERM applications must be sponsored by a U.S. employer, who must demonstrate that they were unable to find a qualified U.S. worker for the position and will pay the foreign worker the prevailing wage.



# Refugees

**WelcomeCorps** - <https://welcomecorps.org> – A program that allows individual US citizens to sponsor individual refugees. Working in groups of at least five people, sponsors come together to help refugees transition to life in their new community, supported by tools and resources from the Welcome Corps as well as ongoing guidance from resettlement experts.





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# Questions?





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**Thank you!**

