

INNOVATIVE IMMIGRATION STRATEGIES TO SOLVE CORE TALENT ACQUISITION NEEDS



MELTZER HELLRUNG
IMMIGRATION SOLUTIONS

EXECUTIVE SUMMARY

Skills gaps among native-born Americans, an aging population, and historically low unemployment have made it difficult for many businesses in the U.S. to recruit and hire qualified individuals in a range of industries. To fill vacancies, compete effectively on the global market, and ensure ongoing economic growth, U.S. businesses should leverage foreign talent more effectively. But caps on popular work visas, long waits for processing at immigration agencies, and outdated legislation that does not align with current demographic projections or labor needs have made hiring foreign talent in the U.S. much more difficult.

However, filling critical positions in the U.S. is still within reach. With strategic planning and minimal investment, businesses can take advantage of other work visa options that offer faster processing and work flexibility. Once set up, these corporate immigration programs enable businesses to create a pool of qualified foreign talent abroad to fill critical roles in the U.S. with greater ease and certainty. There are also opportunities for businesses to pursue strategic immigration litigation in the short term and push for comprehensive immigration reform in the long term. This white paper presents important context around these issues and provides details on innovative immigration options for a variety of talent needs.

Labor Shortages and Skills Gaps



Significant demographic changes are already impacting the labor force and are estimated to do so for the foreseeable future. As baby boomers move into their retirement years, the share of people of working age (15 to 64) has declined and is expected to continue to shrink over the coming decades.¹ Factors for this decline include decreasing birth rates since 2007 as well as rising mortality rates among the U.S. working-age population.²

Meanwhile, labor shortages are affecting multiple U.S. business sectors, including:

- ⇒ Construction, where a lack of roughly 650,000 workers is slowing down projects including new homes, hospitals, and critical infrastructure.³
- ⇒ Hospitality and restaurants. More than 80% of hotels report staffing shortages.⁴
- ⇒ Primary education teachers, including special education teachers.⁵
- ⇒ Technology sectors and professional services
- ⇒ Healthcare. The industry reports a lack of primary and specialty care physicians,⁶ nurses,⁷ and psychotherapists.⁸

In addition, many jobs increasingly require rigorous critical thinking skills and specialized expertise that individuals mostly develop with some type of postsecondary degree. Due to insufficient numbers of workers with those skills, expertise, and degrees, it is estimated that the U.S. could face a shortage of almost 800,000 high-skilled workers—and a loss of about \$1.2 trillion in economic output by 2029.⁹

This misalignment between education and employment is especially problematic in STEM fields, where it is predicted that U.S. universities will only produce enough graduates to fill 29 percent of computer specialist positions in the coming years. Currently, nearly a quarter of employees working in tech and other innovation-related fields are immigrants.¹⁰ That trend shows no signs of slowing, considering that foreign students currently earn roughly 40 percent of U.S. master's degrees and 43 percent of U.S. doctorates in STEM fields.¹¹

Projected shortages are occurring in the high-tech sector, especially as the country seeks to build up the domestic chip sector to meet growing demand related to AI and connectivity.¹² Looking forward, there is likely to be a shortage of talent to meet demand in the green tech sector as more businesses take advantage of federal investments in clean energy through the Inflation Reduction Act.

All of these factors point to the need for more foreign talent to fill vacancies across a wide range of U.S. industries. However, current outdated immigration policies and immigration processing slowdowns since the COVID-19 pandemic are proving to be serious obstacles to solving the high-skilled talent gap.

Challenges with Current Immigration Policies and Processes



Immigration policies under the Trump administration—including responses to the onset of the pandemic—resulted in an estimated 2 million fewer immigrants in the U.S. at the end of 2021.¹³ Additionally, enrollment of foreign national students at U.S. institutions of higher education declined by 15% between the 2016/17 and 2020/21 academic years,¹⁴ which will likely impact U.S. labor shortages in STEM industries in the near future. The Biden Administration has taken executive administration steps to reverse these effects by revamping certain consular processing procedures, expanding humanitarian parole and temporary protected status, and expanding the use of the employment authorization document (EAD) program.¹⁵ Legislatively, there is a bipartisan effort to pass new immigration rules that would expand legal pathways for high-skilled foreign workers and give certain undocumented workers already in the U.S. the right to work.¹⁶

Even so, delays in immigration processing at the U.S. Department of Homeland Security and the U.S. Department of State continue to hinder foreign talent recruitment efforts. In particular, processing for certain work visas at U.S. Citizenship and Immigration Services (USCIS) can take almost a year due to outdated technology, a lack of staff, and the collection of more detailed information than in years past.^{17,18,19} Meanwhile, submissions in the H-1B lottery for new H-1B visas, which the tech industry in particular has relied on to secure employees for decades, has skyrocketed. In FY2024, USCIS received nearly 800,000 H-1B lottery submissions,²⁰ while the current yearly cap on the issuance of new H-1B visas is just 65,000 (with an additional 20,000 for professionals with graduate degrees from U.S. institutions of higher education).

Limits on work visas and a trailing regulatory scheme in the U.S. have led companies to expand their corporate structure abroad to find talent or nearshore/offshore work via employers of record,²¹ exporting cash abroad that could be used to transfer foreign talent into the U.S. or hire more U.S.-based foreign talent. Canada in particular has recently enacted immigration policies that lured H-1B high-skilled foreign talent in the U.S. to the tune of 10,000 workers in just 72 hours as a critical part of its investment in STEM workforce development.²²

The large number of vacancies across various U.S. industries as well as the fast-paced, quarterly business environment requires the development of innovative immigration solutions to feed U.S. onshore talent needs. Fortunately, there are ways to work within the U.S. immigration system from a corporate immigration strategy perspective to leverage current work visa options to the benefit of many U.S. businesses.

Solutions Now and for the Future



Foreign talent is vital to supporting ongoing U.S. economic success. For example, there are few visa options to help fill labor shortages in construction, including engineers, project managers, plumbers, electricians, and carpenters. Yet these kinds of high-skilled and skilled trade positions are essential to making housing more affordable, supporting infrastructure needs, and advancing clean energy. Beyond more immediate private sector labor issues, foreign talent is needed to help sustain many U.S. government programs, including funding Social Security and Medicare in the decades to come as birth rates among native-born Americans drop.²³

Research also suggests that foreign talent is a major contributor to U.S. innovation, which is vital to the U.S. maintaining its economic relevance in the 21st century. Immigrants found companies twice as often as native-born U.S. citizens, and immigrants or their children have founded nearly half of current Fortune 500 companies.²⁴ In the field of artificial intelligence, which is poised to be the most disruptive leap forward in innovation since the industrial revolution, immigrants have founded or co-founded 65% of leading U.S.-based artificial intelligence companies.²⁵

The immigration solution to the current U.S. talent problem is twofold. First, there are ways to work within the current system by approaching recruitment strategically by expanding talent searches to selected foreign countries. U.S. businesses can work with Meltzer Hellrung to take advantage of existing visa options available for workers from specific countries and leverage visas designed for students and temporary workers in novel ways. Second, businesses can engage in strategic litigation that expands current immigration laws and regulations as well as band together to lobby for legislation that makes the U.S. more competitive in recruiting foreign talent.



Alternative Work Visas and Programs

There are several alternative work visa options that U.S. businesses can leverage to fill onshore vacancies with strategic planning and investment.



Country-specific Visas

Among the most straightforward options are country-specific work visas that allow U.S. businesses to employ foreign talent in specific treaty/trade or specialty occupations. These visas do not require U.S. businesses to submit applicants in an annual, capped work visa lottery like the H-1B program. In addition, applications often have alternative submission structures, with most permitting processing at a U.S. consulate or embassy in the applicant's home country, which in most cases results in faster and cheaper visa processing and approval. Please note, however, that many of these work visas are for roles that generally require a U.S. bachelor's degree (or its foreign equivalent) or equivalent prior work experience, and the focus or major must be directly related to the sponsored U.S. role.

⇒ **E-3 and H-1B1 Visas:** These are similar to the H-1B visa but are limited to foreign talent from Australia (E-3) and Singapore and Chile (H-1B1). While they have annual numerical caps, these caps have never been met, which means these work visas are available year-round, unlike the H-1B program. Additionally, the initial application of a prospective employee's E-3 or H-1B1 visa is typically processed and approved at a U.S. embassy or consulate. This means the employee's visa appointment, approval, and arrival in the U.S. may take as little as four weeks.

⇒ **Trade NAFTA (TN) Visa:** This visa is enabled by the United States-Mexico-Canada Agreement (USMCA), formerly known as the North American Free Trade Agreement (NAFTA), and allows Canadian and Mexican citizens to work in a variety of high-skilled and skilled trade positions—such as accountants, engineers, pharmacists, scientists, teachers, foresters, physicians, hotel managers, graphic designers, etc.—on a temporary basis. TN visas are an attractive option for employers that prefer to focus their hiring efforts on North America. TNs are not location-restricted or subject to a minimum wage structure policed by the U.S. Department of Labor, like H-1B visas. Canadians may apply directly at a U.S. border crossing or designated pre-inspection airport and be processed, approved, and admitted to begin work in the U.S. within a few hours. Mexican citizens can apply at any U.S. embassy or consulate in Mexico with appointment scheduling and approval in as little as two to four weeks.

Using the E-3 and H-1B1 Work Visas to Hire Foreign Pilots

In 2018, a regional U.S. airline faced two challenges trying to find qualified pilots: a labor shortage across the industry and a highly competitive recruitment environment that favored major airlines. The company had begun to recruit pilots in Australia and sponsor them on E-3 visas, but the program was disorganized and underutilized, with little process or predictability in place.

Recognizing the challenges in developing an effective corporate immigration program, the airline hired Meltzer Hellrung to enhance and streamline its efforts. Firm attorneys partnered with airline human resources executives and managers to create an innovative, tech-supported process that fulfilled ongoing talent needs, promoted greater compliance, and provided predictable new pilot onboarding timelines. This process allowed the airline to recruit foreign pilot candidates quickly, assess their qualifications with a pre-offer assessment completed by Meltzer Hellrung, and determine how quickly each qualifying pilot could be relocated to the U.S. and onboarded. Meltzer Hellrung directly communicated with pilot candidates at each step of the process, providing guidance, communicating requirements, and setting timeline expectations. By partnering with Meltzer Hellrung, the airline can now recruit pilot candidates in Australia and have them onboarded into U.S. positions in six to eight weeks on average.

This program has been so successful that the airline and Meltzer Hellrung partnered to expand the program to include recruiting and onboarding qualified pilots on H-1B1 visas from Chile and Singapore. As the airline's need to fill pilot positions is ongoing, this structured, organized, and well-communicated corporate immigration program enables the airline to continuously meet its pilot talent needs.

Moreover, the airline's annual immigration costs to recruit and onboard dozens of foreign pilots average out to about the yearly salary of one full-time U.S. pilot—a significant return on investment considering the potential lost revenue resulting from cut or canceled flights due to lack of available pilots.

Training Visas



U.S. businesses can also take advantage of training visas for temporary staffing needs, although there are more restrictions compared to E-3, TN, and H-1B1 work visas.

- ⇒ **H-3 visas:** This training visa option may be valid for up to two years, but it is limited to training programs that are not available in the foreign talent's home country. The foreign talent is restricted from engaging in "productive employment" that is not necessary to the training.

Leveraging the H-3

For a business that makes a unique fintech software solution, Meltzer Hellrung helped secure H-3 visas for foreign interns to enter the U.S. on the basis that the business was the only place to learn about the software. This approach can work for other roles at U.S. businesses with proprietary technology.

- ⇒ **J-1 visas:** This training visa is part of a cultural exchange program offered through the Department of State and the applicant's country of citizenship and is often used by employers to sponsor paid interns and trainees. There are specific educational and/or work requirements to qualify based on the category of J-1 visa applied for and, generally, the work performed must be skilled and follow a defined training plan created by the employer.
- ⇒ **Optional Practical Training on F-1 Visa (OPT):** Foreign students in the U.S. on F-1 visas qualify for up to 12 months of school-sponsored work authorization after graduation at each U.S. degree level (bachelor's, master's, PhD). Those students graduating with U.S. degrees in STEM qualify for an additional 24 months of work authorization, known as STEM OPT, making them eligible for a total of three years of school-sponsored work authorization post-graduation. Note that employers can also use this time to begin a U.S. green card sponsorship process and/or submit the foreign student as an applicant in the annual H-1B lottery program.

Recruiting Foreign Students Graduating with STEM Degrees with OPT and Saving Money

Meltzer Hellrung partnered with a venture-backed, Utah-based software unicorn to strategically recruit foreign students graduating from U.S. universities with STEM degrees for its technical divisions, including those majoring in UX/UI design, software engineering, and computer engineering. According to the IRS' substantial presence test, F-1 OPT work-authorized students graduating with U.S. degrees are exempt from FUTA and FICA taxes for up to five years from their first year of entry. Thus, in addition to not having to pay for each student candidate's OPT work authorizations (which are sponsored by the school), the business was able to also use money saved from not having to pay FUTA and FICA taxes for qualifying students to partially or fully offset the immigration costs invested in securing H-1B visas for them through the H-1B lottery program.

Other Options



- ⇒ **Green Card Sponsorship of Foreign Talent Abroad:** Instead of putting foreign candidates located abroad through the H-1B lottery program, U.S. businesses can sponsor foreign-based talent directly for a U.S. employment-based green card. The process may take up to three years under current staffing conditions, but the candidate or current employee can work from abroad for a subsidiary related to the U.S. business or, alternatively, be employed as a contractor or through an employer of record partner while the U.S. green card process proceeds. This strategy can be very effective in recruiting and retaining talent overseas while these employees wait for their U.S. green card processes to be approved.
- ⇒ **E-2 Visas:** Under this treaty-based work visa/investor visa classification, nationals of certain countries who invest a substantial amount of capital in a U.S. business and own at least 50% equity in the U.S. business can be admitted to work for up to five years at a time. U.S. businesses also can engage in joint ventures with qualified foreign investors to set up 50/50 U.S./foreign ownership staffing companies in the U.S. and hire foreign talent from the investor's country of citizenship.
- ⇒ **Temporary/Seasonal H-2B:** This option may be appropriate for employers who can demonstrate that their need for foreign talent is a one-time occurrence, seasonal in nature, due to peak demand, or habitually intermittent. It is also possible to extend the H-2B for longer periods, up to one-year increments. The flexibility of arguing a U.S. position's seasonal nature opens up possibilities for it to be used in industries such as hospitality, construction, education, etc.
- ⇒ **Sponsorship for Humanitarian Parole:** Some individuals and their families may be eligible for entry and work authorization into the United States for humanitarian reasons or because their presence would serve as a significant public benefit. The U.S. government created or reauthorized fast-track humanitarian parole programs in 2022 and 2023 for Ukrainians, Venezuelans, Cubans, Haitians, and Nicaraguans in response to growing political turmoil and humanitarian crises in these countries. Note that while only foreign citizens of these countries may apply directly under this program, businesses can support the individual sponsor and hire anyone approved for humanitarian parole once they are authorized to work.

Implementing a Foreign Talent Recruitment Program



For U.S. businesses that decide to approach recruiting foreign talent strategically by leveraging alternative visas, partnering with an innovative U.S. corporate immigration services provider offers multiple benefits.

Experienced immigration attorneys understand the intricacies of U.S. work/training visa requirements and eligibility as well as the U.S. work visa application process, documentation, and timelines. A skilled immigration provider can work with you to outline current and future hiring needs based on your organizational goals, industry and economic trends, and job skills required (such as specialized degrees or work experience, fluent English-language ability, etc.), and translate these into a structured U.S. immigration sponsorship program. Using this program, U.S. businesses can quickly identify the most efficient and appropriate immigration pathways to increase their access to foreign talent and fill U.S.-based roles more quickly. And, most importantly, a knowledgeable immigration service provider can work with your human resources and general counsel teams to create consistent internal and external processes and workflows for identifying, recruiting, hiring and sponsoring foreign talent, saving your teams substantial time, effort, and compliance mistakes.

With U.S. businesses turning more and more to technology to manage employees, immigration management software is also critical to supporting these efforts. Digital solutions designed for this purpose—such as Voyager, Meltzer Hellrung’s proprietary immigration platform—provide a single location for documentation, communication, reporting, process updates, and project management. This enables human resources teams, in particular, greater visibility and transparency into work visa processes and progress awareness for employers, foreign talent, and their families. Further, a purpose-built, streamlined immigration management platform eliminates the need to toggle between multiple applications, spreadsheets, and tools to gather and organize information, manually enter deadlines on a calendar, or search for important emails, reducing delays and frustration.



Large-Scale Change: Strategic Litigation and Lobbying

While the solutions described above can help U.S. businesses fill vacancies in the short term, reforms to U.S. immigration laws and processes via litigation and lobbying are critical to ensure the U.S. remains competitive in the race for global talent and that U.S. businesses have predictable immigration costs and access to government processes to acquire it.

Strategic immigration litigation is a method of bringing about structural and procedural change to government immigration processing by presenting a carefully selected case to a courtroom. It can also draw significant media attention that can help publicize the issue in question and potentially serve as a bellwether garnering corporate and public support. When successful, immigration litigation can make a huge impact. U.S. businesses can partner with innovative service providers to bring these cases to federal courts.

An Example of Potential Strategic Litigation

One test case for U.S. immigration policy we have identified involves the L-1 work visa. This work visa option is for individuals coming to the U.S. as intracompany transferees—i.e., when an employee with more than one year of foreign work experience moves from a foreign entity to a related U.S. parent, subsidiary, or affiliate company. A legal argument can be made that U.S. businesses that use a foreign employer of record (EOR)—an entity that legally employs talent abroad on behalf of U.S.-based business—to employ foreign talent substantively controls those foreign workers, meaning that the U.S. business is directing their work completely and continuously. This foreign EOR model supporting U.S. businesses is comparable to hiring a foreign talent directly as a contractor—a fact pattern for which there is U.S. immigration case law supporting approval for entry into the U.S. on an L-1 visa, as long as the U.S. business has ongoing operational entities doing business outside the U.S.

There is also an opportunity for businesses to partner with each other, immigration service providers, and nonprofits to collectively lobby for legislative change by illustrating the short- and long-term effects of labor shortages on U.S. growth as well as innovation contributions made by foreign talent. Banding together, a multifaceted coalition can serve as a powerful voice calling for influential politicians to support immigration reform.

An Innovative Approach to Labor Needs Starts Here

U.S. businesses can't afford to wait for immigration agencies to speed up processing times or for proposed legislation to make its way through the courts. The labor shortages wrought by outdated immigration policies, massive demographic shifts, and a lack of sufficient STEM expertise and other sought-after skills among U.S. citizens are evidence of the need to welcome more foreign talent to the workforce. These individuals are vital not only to continue to advance U.S. innovation into the 21st century but also to support basic U.S. infrastructure needs like housing, green energy, education, and healthcare.

Meanwhile, U.S. businesses should not overlook alternative immigration options to work within the current system. By developing a strategic corporate immigration program to hire foreign talent, businesses can identify pathways to sponsor qualified foreign candidates, circumventing typical backlogs and caps on more commonly used U.S. work visas. Supported by technology and efficient processes, these frameworks are an investment in U.S. workforce development that can serve as a rich pipeline of talent for years to come.

Additionally, to promote and drive systemic immigration reform, U.S. businesses should consider engaging in strategic immigration litigation and lobbying. These efforts will be critical in paving the way for federal immigration policies and laws that are better aligned with current and future U.S. workforce needs.

About Meltzer Hellrung

Meltzer Hellrung fuses high-touch legal expertise with innovative technology to help clients build global immigration strategies for recruiting and retaining the world's best talent. These include scalable policies with customized processes that support consistency, efficiency, and visibility in corporate immigration programs. Our streamlined and strategic approach empowers U.S. businesses to develop their workforce more efficiently while continuing to focus on their core mission.

Key to these efforts is Voyager, our proprietary immigration management software. This all-in-one platform includes an easy-to-use dashboard for employers and employees and automated workflows that empower U.S. businesses to seamlessly recruit, hire, sponsor, onboard, and manage foreign national talent.

Whether working with a Fortune 500 corporation, a venture-backed unicorn, or large nonprofit organizations, we combine high-touch immigration services with enterprise-level technical capabilities to provide the best immigration experience to U.S. businesses, employees, and their families.

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