

## Immigration and Corporate Options for Foreign Entrepreneurs

With no available visa for entrepreneurs, many foreign born entrepreneurs struggle to secure the work authorization needed to start a business in the United States. Working with qualified immigration counsel, foreign entrepreneurs may be able to qualify for one of the options below.

### POTENTIAL VISA OPTIONS

<b>F-1 CPT:</b> Students can receive part-time work authorization while enrolled in school. In some instances, full time work authorization is also available. This requires an employer-employee relationship.	<b>L-1:</b> Allows a transfer of a manager, executive, or “specialized knowledge” employee from a foreign subsidiary, affiliate, or parent company to a U.S. entity. Requires one year of work outside the U.S.
<b>F-1 OPT:</b> After graduation, F-1 students can obtain one year of work authorization in their field of study.	<b>E-2:</b> Allows nationals of certain countries having treaties with the U.S. to acquire work authorization through investment in the U.S.
<b>STEM OPT:</b> For individuals in science, technology, engineering or math occupations, two additional years of OPT may be available. Self-employment limited.	<b>J-1:</b> Allows for a limited amount of paid training or work in the U.S. Sometimes requires the worker to return home for two years after the J-1 program.
<b>H-1B:</b> Visa status available to bachelor’s-level, or higher, workers in the United States. H-1B has a wage minimum and has limitations on self-employment.	<b>O-1:</b> Provides work authorization for entrepreneurs who have demonstrated extraordinary ability through their career.
<b>TN:</b> Provides work authorization to Canadians and Mexicans in particular occupations. Has limitations on self-employment.	<b>B-1:</b> Provides no work authorization, but may be appropriate for foreign-based entrepreneurs.
<b>EB-1:</b> Green Cards for individuals who have extraordinary ability or lead multinational companies.	<b>NIW:</b> Green cards for individuals working in the national interest.

Choosing the appropriate entity for a new venture requires careful consideration, especially for foreign entrepreneurs. For example, all U.S.-based companies must comply with applicable tax and securities laws and rules, regardless of the location of the investor or the founders. For entrepreneurs, this requires careful analysis when selecting which entity to form.

Although a variety of different types of legal entities currently exist (such as corporations, partnerships, and limited liability companies), most entrepreneurs seeking to raise capital from investors will benefit from incorporating their startup entity as a C Corporation in the state of Delaware.

## **BENEFITS OF DELAWARE INCORPORATION**

**Venture Capitalists generally prefer Delaware C Corporations to other entities.**

**Delaware has a separate court system for business disputes (Chancery Court).**

**With a C Corporation, foreign investors are not exposed to potential state and local tax matters as a result of “pass through” taxation.**

**It is easier to implement an equity incentive arrangement with a corporation, as opposed to a limited liability company.**