

Morgan Lewis

STARTUP & ACCELERATE

**Global Immigration Options For U.S. Based
Startups**

December 14, 2023

Eleanor Pelta, Shannon Donnelly, and Yesim Usluca

Before we begin

Tech Support

If you are experiencing technical difficulties, please contact WebEx Tech Support at +1.866.779.3239.

Q&A

The Q&A tab is located near the bottom right hand side of your screen; choose "All Panelists" before clicking "Send."

CLE

We will mention a code at some point during the presentation for attendees who requested CLE. Please make note of that code, and insert it in the pop-up survey that will appear in a new browser tab after you exit out of this webinar. You will receive a Certificate of Attendance from our CLE team in approximately 30 to 45 days.

Audio

The audio will remain quiet until we begin at **INSERT TIME**.

You will hear sound through your computer speakers/headphones automatically. Make sure your speakers are ON and UNMUTED.

To access the audio for by telephone, please click the "phone" icon below your name on the Participants Panel for teleconference information.

Overview

- U.S. visa options, including advantages and challenges
- Overview of visa options for Hong Kong and Singapore

Potential US Visa Options for Emerging Businesses

- H-1B: Temporary Professional Worker in Specialty Occupation
- Treaty-Based Visas:
 - TN: USMCA Professionals for Nationals of Mexico and Canada
 - E-3: Specialty Occupation Workers from Australia
 - H-1B1: Specialty Occupation Workers for Nationals of Singapore and Chile
- F-1: Foreign Students with CPT, OPT and STEM OPT Authorization
- O-1: Individuals of Extraordinary Ability
- L-1: Intracompany Transferee
- E-1/E-2: Treaty Trader/Investor
- J-1: Early Career STEM Research Initiative

H-1B: Temporary Professional Worker in Specialty Occupation

- Available for professional-level workers with specific baccalaureate degrees or higher (or equivalent based on education and professional experience), working for a US employer in a “specialty occupation,” i.e. one that requires a degree in a specific field of study
- Advantages:
 - Provides 6 years of employment authorization
 - Dual intent: Permits flexibility for future green card application
 - Carries spousal employment authorization at a certain stage of the green card process
- Disadvantages:
 - Subject to annual lottery and quota of 85,000 (65,000 plus 20,000 for U.S. advanced degree recipients)
 - If selected in lottery, earliest start date of H-1B authorization is October 1
 - Company must pay “prevailing wage” for the area of employment

TN: USMCA Professionals for Nationals of Mexico and Canada

- Professional work visa for Canadians and Mexicans pursuant to USMCA, formerly NAFTA
- Canadians: Visa exempt; can apply at border or through USCIS
- Mexicans: Initial application must be made at a US consulate
- Advantages:
 - 3-year validity with ability to request 3-year extensions
 - No restriction on employment duration, but must maintain non-immigrant intent
 - Quick adjudication for Canadians
- Disadvantages:
 - Offered position and foreign national's qualifications must fit within one of predesignated occupations, i.e. Economist, Engineer etc.
 - No dual intent
 - No spousal employment authorization
 - Adjudication of applications by Mexican nationals subject to consular availability

E-3: Specialty Occupation Workers from Australia

- H-1B equivalent for Australian nationals
- Advantages:
 - Can be adjudicated at a US consulate or through USCIS
 - Provides automatic spousal employment authorization upon U.S. entry
 - Can be extended indefinitely
- Disadvantages:
 - No dual intent
 - Granted in 2-year increments
 - Company must pay “prevailing wage” for area of employment

H-1B1: Specialty Occupation Workers for Nationals of Singapore and Chile

- H-1B equivalent for nationals of Singapore and Chile
- Advantages:
 - Can be adjudicated at a US consulate or through USCIS
 - Can be extended indefinitely
- Disadvantages:
 - No dual intent
 - Granted in 1-year increments
 - Company must pay “prevailing wage” for area of employment
 - No spousal employment authorization

F-1: Foreign Students with CPT, OPT and STEM OPT Authorization

- F-1 students can receive employment authorization during or after completion of degree program
- CPT: Granted during degree program
- OPT: Granted upon completion of degree program; typically valid for 12 months following degree
- STEM OPT: Granted to F-1 students with a STEM degree who are employed by e-Verify employer; valid for 24 months beyond initial OPT

F-1: Foreign Students with CPT, OPT and STEM OPT Authorization (*cont.*)

- Advantages:
 - Students with STEM degrees can receive 3 years of employment authorization
 - No “prevailing wage” requirement
 - Student can work for any employer pursuant to approval by designated student officer (no petition needed)
- Disadvantages:
 - Student must work in field related to degree
 - Cannot receive further extensions of employment authorization; student must switch to different nonimmigrant visa classification for ongoing employment authorization or secure green card prior to termination of student status
 - No dual intent
 - No spousal employment authorization

O-1: Individuals of Extraordinary Ability

- Reserved for individuals who possess extraordinary ability and sustained national/international recognition in the sciences, arts, education, business, athletics or motion picture/television industry
- Must meet at least 3 of the following criteria:
 - Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
 - Membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields
 - Published material in professional or major trade publications or major media about the beneficiary, relating to the beneficiary's work in the field for which classification is sought
 - Participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization for which classification is sought
 - Original scientific, scholarly, or business-related contributions of major significance in the field
 - Authorship of scholarly articles in the field, in professional journals, or other major media
 - Employment in critical/essential capacity for organizations and establishments with distinguished reputation
 - High salary/remuneration for services

O-1: Individuals of Extraordinary Ability (*cont.*)

- Advantages:
 - Dual intent: Permits flexibility for future green card application
 - No annual quota
 - Initially valid for 3 years; can be extended indefinitely
 - No “prevailing wage” requirement
 - Paves the way for green card application under extraordinary ability classification
- Disadvantages:
 - Extensions granted in 1-year increments
 - No spousal employment authorization

L-1: Intracompany Transferee

- Enables a U.S. employer to transfer a worker from one of its affiliated foreign entities to one of its offices in the United States
- Worker must be employed at affiliated foreign entity for at least 1 year within the last 3 years in a managerial (L-1A), executive (L-1A) or specialized knowledge (L-1B) capacity and must be offered U.S. position in one of these capacities
- L-1A grants employment authorization for 7 years (3-year initial duration plus two extensions in 2-year increments)
- L-1B grants employment authorization for 5 years (3-year initial duration plus 2-year extension)

L-1: Intracompany Transferee (*cont.*)

- Advantages:
 - Dual intent: Permits flexibility for future green card application
 - Provides automatic spousal employment authorization upon US entry
 - L-1A paves the way for “fast-track” green card application
 - Future Blanket L petition approval enables applications directly through a US consulate
- Disadvantages:
 - There must be a foreign affiliated entity before L-1 eligibility is viable; must prove corporate relationship
 - High level of scrutiny at USCIS; requires extensive information and supporting documentation
 - Workers must obtain separate nonimmigrant classification to change employers in the US

E-1/E-2: Treaty Trader/Investor

- Reserved for executive, managerial or essential employees of companies that represent substantial investments in the US by nationals of treaty countries or that conduct trade with treaty countries
- E-visa company is registered at US consulate
- Advantages:
 - Application can be made directly at US consulate (upon approval of initial registration) or through USCIS
 - Grants employment authorization for up to 5 years and can be extended indefinitely
 - Provides automatic spousal employment authorization upon the US entry

E-1/E-2: Treaty Trader/Investor (*cont.*)

- Disadvantages:
 - US company must be majority owned by treaty nationals or traded on stock exchange of treaty country
 - Applicant must have same nationality as the US entity
 - Investment enterprise must pass “marginality” test, i.e. must have present or future capacity to generate sufficient income to provide minimal living for the visa applicant
 - Corporate registration must be updated/renewed in 5-year increments
 - No dual intent

J-1: Early Career STEM Research Initiative for Exchange Visitors

- New federal initiative to help US businesses sponsor individuals to engage in science, technology, engineering and mathematics activities, including STEM research.
- The US entity collaborates with program sponsor designated by Dept. of State to prepare and adjudicate application
- Several exchange categories focused on education, research, or professional development, including research scholar, short-term scholar, specialist, college/university student, intern, trainee and professor
- Varying durations depending on J-1 category, ranging from 6 months to 5 years

J-1: Early Career STEM Research Initiative for Exchange Visitors (*cont.*)

- Advantages:
 - No restrictions on business size; small and medium-sized enterprises encouraged to participate
 - Spouse can apply for employment authorization
- Disadvantages:
 - Foreign national must provide services in STEM field
 - 2-year foreign residence requirement
 - No dual intent

Entrepreneur Parole and Green Card

- A special “Entrepreneur Parole” program exists under US law, but it is simply not operational. Currently not a real avenue for foreign entrepreneurs
- Routes to green card/permanent residence are possible, especially for those who are of extraordinary ability or whose work can be shown to be in the US national interest; however, green card applications cannot be counted on to toll a foreign national’s ability to remain in the US
 - Foreign national may be subject to visa availability backlogs
 - Processing delays may cause gaps in employment authorization

Options in Hong Kong and Singapore: Hong Kong

- Top Talent Pass Scheme (TTPS):
 - Seeks to attract top talent, including high-income earners (annual income of HK\$2.5 million+) or graduates of eligible universities, to explore opportunities in Hong Kong
 - No need for job offer in Hong Kong
 - 24-month duration; can request extension if secured a job offer or established/joined in business in Hong Kong
- Technology Talent Admission Scheme (TechTAS):
 - Fast-track arrangement for technology talent to perform R&D work for companies in Hong Kong
 - Applicant must have STEM degree from one of the top 100 universities for STEM-related subjects
 - Quota-based visa scheme; requires sponsorship by company in Hong Kong
 - Applicant must be full-time employee of sponsoring Hong Kong company and primarily conduct R&D in the technology area, i.e. communication technology, biotechnology, cyber security, financial technology, material science, etc.
 - Initially granted 36-month employment authorization

Options in Hong Kong and Singapore : Hong Kong (*cont.*)

- Policy (GEP):
 - Available to individuals seeking to enter and stay in Hong Kong for investment as an entrepreneur, or establish or join an existing business in Hong Kong
 - Requires evidence that applicant can make substantial contribution to the Hong Kong economy, including business plan (usually no less than two-years), business turnover, financial resources, amount of capital, number of local jobs created, and introduction of new technology/skills (if any), etc.
 - Initially granted for 24 months; eligible for extensions
 - Proprietors or partners of start-up companies in Hong Kong and key researchers of relevant projects may also be eligible if the start-up business is supported by a government-backed program

Options in Hong Kong and Singapore: Singapore

- Overseas Networks & Expertise Pass (ONE Pass):
 - Newly introduced work pass scheme effective January 1, 2023
 - Designed for top talent to start a business or work in Singapore
 - Granted for 5 years to enable applicant to start, operate and work for multiple companies in Singapore at the same time without employer sponsorship
 - Can be renewed in 5-year increments
 - Requires applicant to earn fixed monthly salary of at least SGD 30,000
 - Renewal criteria:
 - Applicant must have earned fixed monthly salary of at least SGD \$30,000 during the past 5 years in Singapore, or
 - Applicant must have started and is operating a Singapore-based company that employs at least 5 locals, each earning a fixed monthly salary of at least SGD \$5,000

Options in Hong Kong and Singapore : Singapore

(cont.)

- EntrePass:
 - Available for foreign entrepreneurs seeking to start and operate a business in Singapore that is venture-backed or possesses innovative technologies.
 - Businesses not eligible include employment agencies, coffee shops, bars, food reflexology, etc.
 - Can apply if just started or intend to start private limited company that is venture-backed or owns innovative technologies and meets one of the Ministry of Manpower (MOM) approved criteria as an entrepreneur, innovator or investor
 - Initially granted for 1 year; can be renewed in 2-year increments

Biography



Eleanor Pelta

Washington, D.C.

+1.202.739.5050

eleanor.pelta@morganlewis.com

A recognized leader in immigration and nationality law, Eleanor Pelta counsels clients on legal and strategic issues arising from the international movement of key personnel, from the individual transfer of high-ranking executives to high-volume transfers of expert staff. Her experience includes the use of blanket visa programs and the qualification of companies as “treaty investor” or “treaty trader” entities. Additionally, Eleanor counsels businesses on the immigration implications of corporate changes, such as mergers, acquisitions, downsizings, reductions in force, and salary-level changes.

Biography



Shannon Donnelly

Washington, D.C.

+1.202.739.5264

shannon.donnelly@morganlewis.com

As co-head of the firm's immigration and global mobility team, Shannon Donnelly counsels clients on global corporate immigration issues and provides legal and strategic advice related to the movement of global talent, global immigration policies, and compliance best practices. Shannon works with clients to facilitate the mobility of key foreign executives and managers, specialized knowledge, and professional employees. This includes regular work with global employers to help manage business traveler programs, coordinate counsel on immigration, tax, employment requirements of remote work, and compliance with right to work provisions globally.

Biography



Yesim Usluca

Washington, D.C.

+1.202.739.5352

yesim.usluca@morganlewis.com

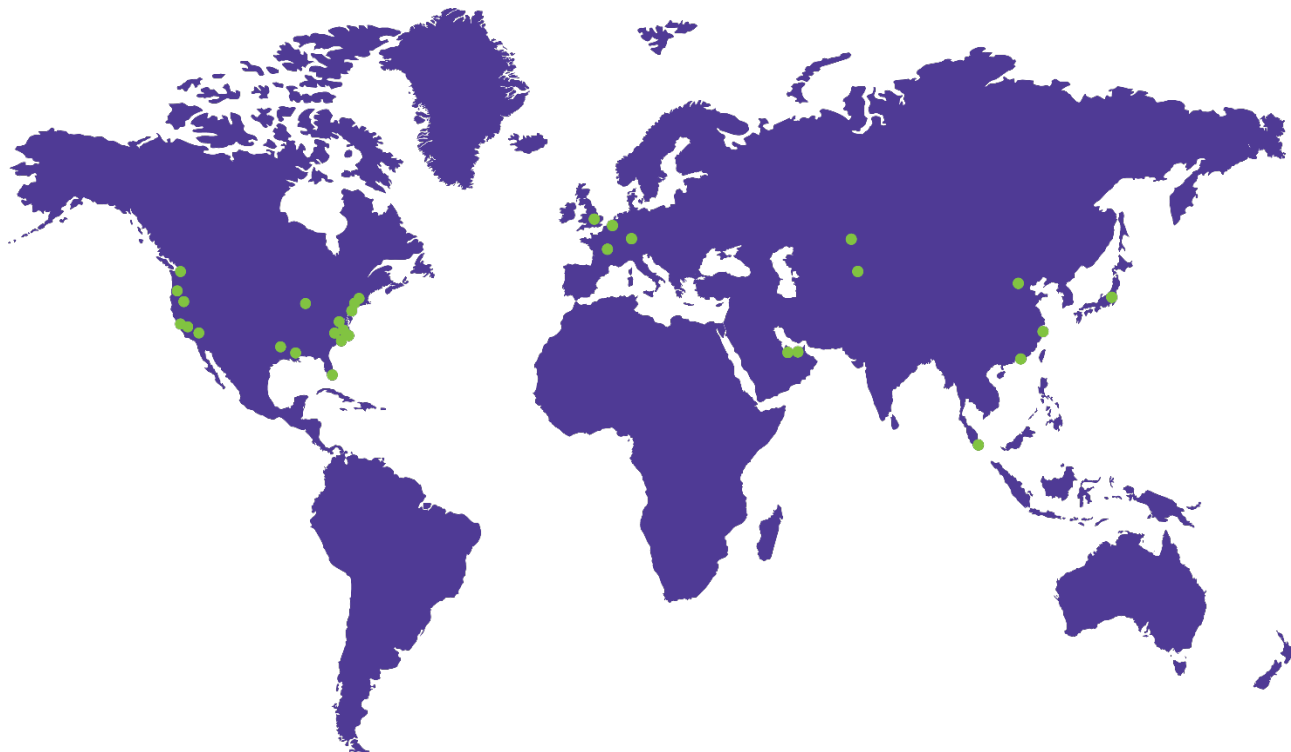
Yesim Usluca provides employment-based immigration services, primarily to clients in the financial services industry. She is experienced in various immigrant and non-immigrant categories such as H-1B, L-1, TN, EB-1(c) and EB-2/EB-3. Prior to joining Morgan Lewis, Yesim worked at the New York City offices of an international immigration law firm, as well as a boutique immigration firm also located in New York City.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Abu Dhabi
Almaty
Beijing
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong
Houston
London
Los Angeles
Miami
New York
Nur-Sultan
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Seattle
Shanghai
Silicon Valley
Singapore
Tokyo
Washington, DC
Wilmington



Morgan Lewis

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP.
In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong.

THANK YOU

© 2023 Morgan Lewis

Morgan, Lewis & Bockius LLP, a Pennsylvania limited liability partnership

Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP.

In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.