

B-in-lieu-of-H1B: Another Illegal Tech Subsidy

Federal Agency Oversight: [DOS](#)

The Basics:

- The [B visa](#) is commonly referred to as the tourist visa, but was created by Congress for temporary trips to the United States for business or pleasure.
- Congress explicitly barred aliens with a B visa from “coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation.” In other words, they are not permitted to work or attend school.
- Despite this clear prohibition, the Department of State has authorized many B visas for aliens coming to study or perform labor in the United States.
 - In the Foreign Affairs Manual (FAM), the Department of State at [9 FAM 402.2-5\(F\)](#) explicitly allows aliens to apply for a B visa in lieu of an H-1B visa, and thus bypass all H-1B vetting and petition requirements, including bypassing the lottery, as well as the visa cap.
 - U.S. [law firms](#) offer their [services](#) with detailed intelligence regarding which consulates are more likely to approve B in lieu of H visas.

The Problem:

- The B-in-lieu-of-H visa allows unscrupulous employers to bypass all regulations and statutory requirements of hiring an H-1B. Similar to [Optional Practical Training \(OPT\)](#), there is minimal oversight of the program.
 - H-1B admissions must be petitioned for by the employer, who is vetted by the Department of State, Labor, and Homeland Security.
 - H-1B visas are also subject to numerical caps (except for certain nonprofit and academic employers), while the B Visa is uncapped and largely unvetted.
- CBS News reported on the [abuse](#) of B-in-lieu-of-H for auto manufacturers who claimed to be hiring Americans, but were using the “tourist” visa for labor.
- Examples of [abuse](#) of the [vastly more regulated](#) H-1B program are legion. Meanwhile, this B-visa pathway to H1B employees has minimal oversight or review, leading to a far higher likelihood of fraud and abuse.

LEGISLATIVE RECOMMENDATION: Congress should pass a bill explicitly limiting the permissible activities allowed on a B visa. Such activities should be limited to actual tourist activities or unpaid business conferences and meetings.



ADMINISTRATIVE RECOMMENDATION: Delete 9 FAM 402.2-5(F) and explicitly bar any skilled or unskilled labor as a permissible activity in the B Visa. The DHS and DOS should publish new regulations clarifying the narrow permissible activities authorized by statute for aliens seeking a B Visa.