

SCOTT LEGAL SERVICES, P.C.

The Law Firm For Entrepreneurs, Business Owners & Investors

Ian E. Scott

40 Worth Street, Floor 10

New York, NY 10013

TELEPHONE: (212) 223-2964

www.legalservicesincorporated.com

iscott@legalservicesincorporated.com

H-1B Visa When You Are Self-Employed or Have an Ownership Interest in the Company

The H-1B visa is a non-immigrant visa that permits a company to hire workers in specialty occupations. This visa category requires that the beneficiary (the foreign worker) have a Bachelor's degree, and the Petitioner (the U.S. company) can employ the worker for up to six years. This is a very popular visa because unlike many other non-immigrant visas that make applying for a green card very difficult and require foreign workers to maintain a residence in their home country, the H-1B visa permits for "dual intent." This dual intent allows one to apply for a green card while in the U.S. without running into problems.

Until relatively recently, it was unclear whether or not individuals who owned businesses (Self-Employed) could get their company to sponsor them to obtain an H-1B Visa. In this regard, USCIS takes the position that in cases where the H-1B beneficiary is self-employed **or** has an ownership interest in the petitioning entity, the petition must demonstrate that the petitioning entity is distinct from the beneficiary such that there is an employer-employee relationship that the entity (not the individual) can control. In these cases, it is very important to document the employer-employee relationship and the petition must include clear documentation to establish this. This includes that the employer, and not the individual, will have the right to supervise, direct and review the business owner's work **and terminate/fire** his or her employment.

There are various types of evidence that can be used to establish this, including;

- An employment contract or agreement between the employer and the individual, detailing the terms and conditions of employment;
- A separate board that has control over hiring and firing decisions;
- An offer letter that describes the nature of the employer-employee relationship between the petitioner and the foreign beneficiary, as well as the services the foreign national will perform;
- Employment contracts between the petitioning employer and its client that show

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- the petitioner will have the right to control its employees that are placed at a client site and the supervisory relationship between the employer and the individual;
- Board resolutions and articles/certificates of incorporation that describe the relationship between the board, company and employee;
 - Company bylaws showing power of management and the Board
 - Shareholder and or Operating agreements showing the nature of the relationship between the parties
 - A description of the performance review process;
 - A copy of the petitioner's organizational chart showing the chain of supervisors; and/or
 - Other indicators that the employer can terminate the individual.

If you are considering sponsoring an employee for an H-1B Visa, contact Scott Legal Services, P.C.. For more information on these and other immigration Visas click [here](#). You can also call us at 212-223-2964 or email us at iscott@legalservicesincorporated.com.

Also, click [here](#) for your free **White Paper** that summarizes the top 10 Immigration Questions and Answers.