

# Mid-Atlantic Restaurant Digest

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## IT'S THE LAW

### Immigration Law In The Hospitality Industry

# “H” IS FOR HOSPITALITY

## H Visas For Restaurant Workers

The restaurant owner who wishes to sponsor a foreign national to work in the U.S. is confronted with a dizzying array of visa choices. Each visa category is designated by a letter of the alphabet (A for diplomats, B for visitors, C for crewman) and has its own specific requirements and applications. Of the multitude of visa categories available to sponsor foreign workers for employment in the U.S., three popular choices are the “H” visas: H-1B, H-2B, and H-3. This article will discuss several hypothetical situations to give you an idea of how each of these “H” visa categories applies to the restaurant industry.

**Scenario #1: You have an opening for a manager at your acclaimed gourmet restaurant in downtown Washington, DC, and the leading candidate is a British citizen who has a European Bachelor’s degree in Restaurant Management.**

You should be able to sponsor this worker for an H-1B professional worker visa, if you can prove that (1) he has completed at least the equivalent of a U.S. Bachelor’s degree in restaurant management, and (2) the job you are offering requires a Bachelor’s degree in restaurant management.

First, you must submit the worker’s foreign Bachelor’s degree to a professional credentials evaluation service to confirm that it is equivalent to a U.S. Bachelor’s degree in restaurant management. Once you have satisfied yourself that this is the case, you must be able to prove that the job you are offering requires *that specific degree* in

order to proceed with the H-1B filing. In other words, you must show that the job requires a degree in restaurant management (or a related field such as hospitality or hotel management) in order to qualify for the H-1B; if the Immigration Service thinks that someone with a general degree (such as a degree in Business Administration or Marketing) could do the job, they will not grant H-1B status.

**Scenario #2: You operate a popular crab house in Ocean City, Maryland. Each year you need to hire several dozen cooks and wait staff to fill your need during the high season, and you can never find sufficient workers in Ocean City or the surrounding areas. You have identified a ski resort in South America with a high season opposite to yours, and you would like to bring some of their employees to work in your restaurant this summer.**

You should be able to sponsor these workers for H-2B visas, because your need is seasonal, and because you have not been able to find U.S. workers to fill the jobs. Unlike the H-1B visa, which focuses on the qualifications of the sponsored worker and the requirements of the offered job, in the H-2B context the most critical consideration is the nature of the employer’s need. In order to prove this need, the H-2B employer must first make a filing with the state labor department (State Workforce Agency or SWA), and conduct a “mini recruitment” for the position. Only after the “mini recruitment” has been completed may the employer

file an H-2B petition with the Immigration Service. Because this process is time consuming, employers must commence the H-2B process well ahead of the anticipated need.

**Scenario #3: You receive an intriguing resume from a young chef in Australia. She has read about your innovative cuisine and is convinced that she could implement a similar menu with great success in her hometown. She wants to come to the U.S. and train with you for a year, with the goal of returning to Australia and opening her own restaurant, which has always been her dream.**

You should be able to sponsor this worker for an H-3 trainee visa, because the training you can offer is unique to the United States, and will benefit the trainee in pursuing a career in her home country. You will need to show that you can offer training that is unavailable in Australia, so you must be prepared to document what is unusual about your restaurant and your cuisine. You must also be able to show how the trainee will apply what she has learned with you once she returns home. Another important aspect of H-3 training is that the trainee may not engage in productive employment other than that which is incidental and necessary to the goals of the training program, so you cannot fill a regular position on your staff with an H-3 trainee.

#### Conclusion

Of course, the many legal issues and other technical aspects of assem-



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bling and filing an H-1B, H-2B, or H-3 visa petition cannot be covered in this brief article. However, the above examples illustrate the potential application of each category in the restaurant industry, depending on the requirements of the offered job, the nature of the employer’s need, the qualifications of the sponsored worker, and the type of sponsoring employer.

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