

# H-1B Visas for the Self-Employed Physicians and Professionals

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<http://www.physicianimmigration.com/blog/>

In 2011, the USCIS opened a window it had previously closed for entrepreneurial, self-employed professionals. Now, professionals such as doctors, lawyers, engineers, accountants, computer scientists, and others may hold H-1B status with companies they own. The USCIS has stated that “entrepreneurs with an ownership stake in their companies, including sole employees, may be able to establish the necessary employer-employee relationship to obtain an H-1B visa, if they can demonstrate that the company has the independent right to control their employment.”

In August 2011, USCIS issued an [updated Q & A on employee-employer relationship](#) clarifying how self-employed workers can establish a valid employer-employee relationship to qualify for the H-1B “specialty occupation” classification. This clarification is a reversal of the USCIS’ previous position, announced in a January 2010 [memorandum \(PDF\)](#), which effectively disqualified all business owners from H-1B visas for the first time.

While this change in policy is relatively new and largely untried, FMG physicians and other professionals who want to start their practice or work as [independent contractors](#) may wish to take advantage of this opening. It is important to be aware that the updated memorandum does not change any of the requirements for an H-1B petition. Here are the basic requirements for owner-beneficiaries of H-1B visas:

1. The position must be in a specialty occupation requiring a minimum of a bachelor’s degree or higher in a specific field. For example, a doctor who will perform patient services can start his own practice and qualify for the H-1B visa;
2. The owner must hold the required degree and be qualified to perform services in the specialty occupation;
3. The company must be a separate legal entity such as a corporation or [limited liability](#) company;
4. The company must file a Labor Condition [Application](#) (LCA) specific to each location where the owner-beneficiary will perform services; and
5. The company must have a right to control owner’s employment including the ability to hire, fire, pay, supervise or otherwise control the owner’s employment. The government gave the example of a separate board of directors with those very powers. Other arrangements such as a partnership should be acceptable as well.

In our next article, we will share a case study where Badmus Law firm was able to establish a valid employer-employee relationship for a dentist who was sole owner in her practice.

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About Badmus Law Firm

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