US Immigration: Basic Concepts

- Non-Immigrant Visa
- Lawful Permanent Resident/Immigrant Visa (Green Card)
- Citizenship (Naturalization)
Overview of US Immigration Process

Nonimmigrant Visa

1-5 yrs.

Immigrant Visa
LPR / “Green Card”

3-5 yrs.

Citizenship

**FAMILY-BASED CATEGORIES**
- IR: Immediate relatives
- FB-1: Unmarried sons/daughters of USCs
- FB-2: Spouses/children of LPR
- FB-3: Married sons/daughters of USCs
- FB-4: Brothers/sisters of USC

**EMPLOYMENT-BASED CATEGORIES**
- EB-1: Outstanding researchers
  - Aliens of extraordinary ability
  - Multinational managers
- EB-2: Advanced degrees/NIW
- EB-3: Professionals
  - 2 yrs. experience
  - Other workers
- EB-4: Special immigrants/religious
- EB-5: Investors

- B-1/2: Visitor for Business/Pleasure
- E-1/2: Treaty Trader/Investor
- E-3: Specialty worker – Australian
- F-1: Student - OPT
- H-1B: Specialty Occupation worker
- H-2: Temporary/Seasonal Worker
- H-3: Trainee
- J-1: Exchange Visitor
- L-1: Intracompany Transferee
- O-1: Alien of Extraordinary Ability
- R-1/2: Religious Worker
- TN: Trade NAFTA

3 yrs. if by marriage to U.S. citizen
5 yrs. for everyone else
### The H-1B Visa: Professionals

<table>
<thead>
<tr>
<th>REQUIREMENTS</th>
<th>APPLICATION STEPS</th>
<th>TIMETABLE</th>
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</thead>
</table>
| 1. Job must require BA/BS degree or equiv. as minimum entry-level requirement | 1. Determine prevailing wage for position *(recent changes have significantly increased wages)* | 3-6 months - **Variable!** | Granted for up to 3 years initially  
Renewable for 3 years |
| 2. Applicant must have degree equivalent to U.S. BA/BS, or equiv. experience | 2. Post Labor Condition Application (LCA) at employer’s work place | Premium processing: decision in 15 days | May extend beyond 6 years only if GC or PERM pending one year before H maxes out. |
| 3. Employer must pay at least prevailing wage for the position in geographic area | 3. File LCA with U.S. Dept. of Labor; wait 7 days for certification | **H-1B portability:**  
May work as soon as filed if already holding H-1B visa | **WATCH OUT FOR GAPS IN STATUS** |
| NO TEST OF U.S. LABOR MARKET REQUIRED; NO ADVERTISING; NO RECRUITMENT | 4. File visa petition with USCIS | | |
| | 5. Change of status with petition if in US US consular processing overseas if out of status or overseas | | |
| | Canadians can apply at U.S. border | | |

### COSTS

- **USCIS filing fee:** $460  
- **Antifraud fee:** $500  
- **ACWIA fee:** $750 (25 or fewer EEs) or $1,500 (> 25 EEs)  
- **Credentials evaluation:** ($75-500)  
- **Premium processing:** ($2,500)
H-1B Basics

- “Specialty Occupation” – job must require BA/BS or equivalent in a specific field for entry-level requirement
  - And employee must have a degree related to the specialty occupation – rules were recently tightened by USCIS

- Employer-employee relationship
  - W-2 employee
  - Employer-specific – no moonlighting, but can have concurrent H-1Bs
  - Off-site employment permitted if petitioner retains control over work, salary, etc. – but be aware of recent changes to H-1B rules limiting off-site placements to 1-year H-1B increments

- Granted for up to 3 years at a time; maximum of 6 years in H-1B status
H-1B visas: the numerical cap

H-1B Visas Currently Capped at 65,000 per year
- Cap exemptions for colleges/universities, non-profit/governmental research organizations, and non-profits that are affiliated with colleges/universities
- Fiscal Year (FY) begins October 1; Applicants for H-1Bs can apply 6 months in advance, or on/after April 1 each year

Advanced Degree Allocation
- 20,000 visas reserved for graduates of Master’s or higher degree programs from a U.S. college or university

New Developments:
- Electronic Registration process
- **Proposal to allocate H-1Bs in descending order of offered salary, instead of via random lottery selection**
H-1B issues for university personnel

- **Prevailing Wage**
  - If the position is a unionized position, the prevailing wage is often governed by collective bargaining agreement
  - If not, determine prevailing wage from USDOL OES system
    - **Recent changes to DOL wage calculations have significantly increased required prevailing wage amounts, making it impossible for many employers to sponsor H-1B visas – ongoing litigation challenging these new wage calculations**

- **Transferability limitation**
  - General rule: can transfer from one H-1B employer to another upon submission of new H-1B petition
  - University personnel have limited ability to transfer to cap-subject employer if H-1B numerical cap has been reached
    - Can transfer to another cap-exempt organization
    - Cannot transfer to a non-exempt organization (cap-subject)
Alternatives to the H-1B

- TN (Trade NAFTA) for Canadians and Mexicans in specified professions
- Special Free Trade Hs for Chileans and Singaporeans
- E-3s for Australian professionals
- O-1s (Aliens of Extraordinary Ability)
- F-1 students (CPT and OPT)
- H-2Bs for temporary need (usually unskilled workers)
- J-1s for exchange visitors
- H-3s, Ps, Qs, etc.
Work Authorization Options for F-1 Students

- Post-completion Optional Practical Training (OPT)
  - Temporary employment that is directly related to an F-1 student’s major area of study. Eligible students can apply to receive up to 12 months of OPT employment authorization after completing their academic studies
  - Fewer restrictions than H-1B
    - Not employer-specific (just requires that it be related to degree field)
    - No prevailing wage requirements
    - No “specialty occupation” inquiry
  - Can serve as bridge between completion of degree program and obtaining H-1B visa
STEM OPT Extension

- If a student has earned a degree in certain science, technology, engineering and math (STEM) fields, she may apply for a 24-month extension of her post-completion OPT employment authorization if she:
  - Is an F-1 student who received a STEM degree included on the STEM Designated Degree Program List
  - Is employed by an employer who is enrolled in and is using E-Verify, and
  - Received an initial grant of post-completion OPT employment authorization based on her STEM degree.

- Employer and student must jointly complete a detailed Training Plan to describe the training to be received and the supervision of the foreign student’s practical training experience

- Can facilitate multiple entries in H-1B lottery and multiple opportunities for selection
J-1 Cultural Exchange Visas

- INTENDED AS A ‘CULTURAL EXCHANGE’ OPPORTUNITY
  - Administration through U.S. Dept. of State
  - Employer must be authorized by DOS to sponsor J-1 visas themselves (universities, hotel chains, medical centers) OR
  - Employer must work through approved sponsoring agencies for defined categories: J-1 Trainees, Summer Work Study, etc.
  - Approved sponsors listed on DOS website (http://j1visa.state.gov)

- MANY CATEGORIES OF J-1 VISAS:
  - Professor / Research Scholar (5 years)
  - Specialist (12 months)
  - Short-Term Scholar (6 months)
  - Trainee (18 months) / Intern (12 months)
  - Au pair (2 years) / Camp counselors (4 months)
  - Teachers – primary & secondary (3 years)
# J-1 Visa Basics

<table>
<thead>
<tr>
<th>REQUIREMENTS</th>
<th>APPLICATION STEPS</th>
<th>TIMETABLE</th>
<th>DURATION</th>
<th>COSTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Must be sponsored by organization with approved J-1 program</td>
<td>1. Approved J-1 sponsor organization issues DS-2019 to applicant</td>
<td>30 days for DS-2019</td>
<td>Depends on category: 1 month to six years</td>
<td>DS-2019: depends on umbrella organization, if used</td>
</tr>
<tr>
<td>2. Must fall within sponsor’s defined program: e.g., research scholars, trainees, professors, specialists, etc.</td>
<td>2. Issuance of J visa - If in U.S., change status via USCIS - If overseas, apply for J-1 entry visa stamp at U.S. consulate overseas</td>
<td>2 weeks - 3 mos. for consular processing OR 4-6 months (or longer) for change of status</td>
<td>Research scholars: 3 years</td>
<td>Visa application fees at consulate or $455 for change of status</td>
</tr>
<tr>
<td>3. Some participants are subject to mandatory two-year home residency requirement. Waiver of requirement can be difficult or impossible.</td>
<td>3. Applicant may start work when has I-94 with J-1 stamp in hand</td>
<td></td>
<td>Trainees: 18 months</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Specialists: 1 year</td>
<td></td>
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</table>

## COSTS
- DS-2019: depends on umbrella organization, if used
- Visa application fees at consulate or $455 for change of status
TWO-YEAR HOME RESIDENCE REQUIREMENT
- Some participants in full-time programs must to home country before change to H or L visa, or ‘green card’.
- Two-year home residency requirement applies if:
  - Either U.S. or home government paid for the sojourn in the US OR
  - Country has filed Skills List with DOS designating study areas which are needed in country – no matter who paid for the study.
  - Participant has engaged in Graduate Medical Education in US
- “Home country” = country of citizenship or last residence at time of J visa grant

WAIVER OF HOME RESIDENCE REQUIREMENT BY DOS POSSIBLE
- 4 statutory grounds for waiver application; decision is ALWAYS discretionary
- Some situations where waivers are almost NEVER granted: Fulbright, USAID
- Medical graduates: special alternatives, service in medically-underserved areas
## TN Visa Basics

<table>
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<th>TIMETABLE</th>
<th>DURATION</th>
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</thead>
<tbody>
<tr>
<td><strong>Canadian or Mexican citizen:</strong>&lt;br&gt;Job must appear on list of TN professions, e.g.:&lt;br&gt;Teacher (high school &amp; univ.)&lt;br&gt;Mgmt. consultants&lt;br&gt;Science/engineering&lt;br&gt;Systems analysts&lt;br&gt;Medical professionals&lt;br&gt;Must have req’d education or training: usually BA/BS and/or license. Exceptions include:&lt;br&gt;Mgmt. consultants&lt;br&gt;Scientific technicians&lt;br&gt;Systems analysts&lt;br&gt;(2 yr. degree min.)</td>
<td><strong>Canadians:</strong>&lt;br&gt;Apply at U.S. border or airport port of entry: processed on the spot&lt;br&gt;No visa petition or USCIS preprocessing required</td>
<td><strong>Canadians:</strong>&lt;br&gt;Almost immediate&lt;br&gt;Avoid processing at high-traffic or holiday weekends</td>
<td>May be granted in 3 year increments&lt;br&gt;Renewable without set limitation</td>
</tr>
<tr>
<td><strong>Mexicans:</strong>&lt;br&gt;Apply at U.S. consulate in Mexico; fast processing</td>
<td><strong>Mexicans:</strong>&lt;br&gt;2-3 weeks:&lt;br&gt;Must make appt. at consulate</td>
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</tr>
</tbody>
</table>

### COSTS
Border Fees:<br>$56+$6 per I-94
Other Free Trade Visas: H-1B1 and E-3

H-1B1 VISAS FOR CHILE AND SINGAPORE (6,800 cap never met)
- 1,400 for nationals of Chile, 5,400 for nationals of Singapore
- H-1B1 are for 18 months, renewable.
- No visa petition required if processed directly at consulate overseas

E-3 VISAS: AUSTRALIAN PROFESSIONALS (10,500 cap never met)
- Substantially equivalent to H-1B
- Specialty workers for jobs requiring BA degree
- Prevailing Wage determination/LCA required, but no public access file
- Valid for two years, renewable
- Processed directly at a US Consulate in Australia: no petition required
- Can also be processed by COS in the US – regulations notwithstanding
O-1 Visas: Extraordinary Ability

Individuals with Extraordinary Ability or Achievement

- Science, Education, Business or Athletics

- National or International Acclaim
  - Letters of support
  - Publications
  - High salary
  - Media, citations, press
  - Judge work
  - Awards, critical acclaim
  - Selective professional memberships
  - Employment in a “critical” or “essential” capacity
E-2 Visas: Treaty Investors

- Available to nationals of certain countries with whom the US has a treaty of trade and commerce ([https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html](https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html)) -- notable exceptions include India and mainland China

- Have invested, or be actively in the process of investing, a substantial amount of capital in a bona fide enterprise in the US

- Be seeking to enter the US to develop and direct the investment enterprise (at least 50% ownership interest, or operational control)

- Enterprise cannot be “marginal” – i.e., must create jobs for US workers or for individuals beyond just the investor himself/herself

- Can be granted in two-year increments, indefinitely, as long as the business continues operating and remains profitable
Overview of U.S. Immigration Process

Nonimmigrant Visa → Immigrant Visa (LPR / “Green Card”) → Citizenship

1-7 yrs.
3-5 yrs.

FAMILY-BASED CATEGORIES
- IR Immediate relatives
- FB-1 Unmarried sons/daughters of USCs
- FB-2 Spouses/children of LPR
- FB-3 Married sons/daughters of USCs
- FB-4 Brothers/sisters of USC

EMPLOYMENT-BASED CATEGORIES
- EB-1 Outstanding researchers
  - Aliens of extraordinary ability
  - Multinational managers
- EB-2 Advanced degrees/NIW
- EB-3 Professionals
  - 2 yrs. experience
  - Other workers
- EB-4 Special immigrants/religious
- EB-5 Investors

B-1/2 Visitor for Business/Pleasure
E-1/2 Treaty Trader/Investor
E-3 Specialty worker – Austr.
F -1 Student - OPT
H-1B Specialty worker
H-2 Temporary Worker
H-3 Trainee
J-1 Exchange Visitor
L-1 Intracompany Transferee
O-1 Alien of Extraordinary Ability
R-1/2 Religious Worker
TN Trade NAFTA

3 yrs. if by marriage to U.S. citizen
5 yrs. for everyone else
Overview: Green Card Process

Most Employment Based (EB) start here

PERM LABOR CERTIFICATION Form ETA 9089
6+ months

All Family-Based (FB), some EB start here

VISA PETITION Form I-130 / I-140
5-14 months

ADJUSTMENT OF STATUS Form I-485
5 - 12+ months
Filed w/ visa petition if visa number current

CONSULAR PROCESSING
If visa number not current wait may be months & in some cases up to a decade.

GC ISSUED Form I-551
Quotas and Priority Dates

LIMITS ON NUMBER OF GREEN CARDS PER YEAR
- Each type of green card (preference category) has numerical limits: numbers vary by year and by usage
- Approximately 140,000 employment-based GCs in all categories
- Approximately 226,000 family-based GCs in all categories
- Each country is also limited to a ceiling number of visas, regardless of demand
- When either preference group or country quotas are met, waiting lists build

PRIORITY DATE DETERMINES PLACE ON WAITING LIST
- When waiting lists build, cases are processed in priority date order
- Priority date established at the first official filing date of the paperwork (USCIS, DOL)

GLOBAL VS. COUNTRY WAITING LISTS
- Country which hits country ceiling taken out of the worldwide visa pool and given its own separate pool of visas (approximately 7% of total available)
- Ensures even distribution of visas across all GC categories.
- Leads to longer waits in many categories.
- The Visa Bulletin (www.travel.state.gov): priority dates for each month.
Visa Bulletin

- Available each month at: https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html
- Shows the current cut-off dates for immigrant visa availability in the various “green card” categories, by country
- Immigrant visa cases with priority dates before the stated dates are eligible for filing and/or final action
- Family Based vs. Employment Based
- “Final Action Dates” chart vs. “Dates for Filing” chart
  - For Adjustment of Status applications, this distinction is separately determined each month by USCIS: https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin
Visa Bulletin: November 2020

- USCIS: “For all employment-based preference categories, you must use the Dates for Filing chart in the Department of State Visa Bulletin for November 2020.”

<table>
<thead>
<tr>
<th>Employment Categories</th>
<th>Worldwide</th>
<th>China</th>
<th>El Salvador Guatemala Honduras</th>
<th>India</th>
<th>Mexico</th>
<th>Philippines</th>
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</thead>
<tbody>
<tr>
<td>EB-1</td>
<td>C</td>
<td>01SEP20</td>
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<tr>
<td>EB-2</td>
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<td>01OCT16</td>
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<td>15MAY11</td>
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<td>EB-3 -BA</td>
<td>C</td>
<td>01JUN18</td>
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<td>01JAN15</td>
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<tr>
<td>EB-3 - other</td>
<td>C</td>
<td>01MAY09</td>
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<td>01JAN15</td>
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<td>EB-4</td>
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<td>01FEB18</td>
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<td>Relig. Workers</td>
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<td>EB-5</td>
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<td>15DEC15</td>
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</tbody>
</table>
MOST COMMON EMPLOYMENT-BASED GREEN CARD PROCESS:

- Application by employer to USDOL to certify individual and position after statutorily mandated recruitment campaign — “Test the labor market”

- Nearly all positions qualify, but substantial waiting periods for non-professional positions, vs. short or no waiting for positions with higher requirements
  - EB-2 “advanced degree” category = Master’s degree; or Bachelor’s degree plus five or more years of progressively responsible work experience
  - EB-3 category = anything less

- Process requires significant employer involvement, including payment of all costs and legal fees
PERM Labor Certification: Steps

PROCEDURES/ADVERTISING:

- Define job and skills on DOL forms in compliance with DOL requirements
- Obtain DOL prevailing wage determination
- Advertise two Sundays in paper of general circulation
- Professional positions: 3 additional recruitment steps (job fairs, web ads, etc.)
- Interview and evaluate applicants; prepare recruitment report
- Submit ETA 9089 to DOL with recruitment results
- DOL reviews and approves or audits
- Possible audits in 50% of cases
Other Employment-Based Green Card Options

- Extraordinary Ability Alien (EB-1A)
- Outstanding Researcher (EB-1B)
- Multinational Manager (EB-1C)
- National Interest Waiver (EB-2)

*All of the above are exempt from the labor certification requirement*
“Alien of Extraordinary Ability”

Must demonstrate extraordinary ability in the sciences, arts, education, business, or athletics. “Extraordinary Ability” means sustained national or international acclaim and that your achievements have been recognized in your field of expertise through extensive documentation.

Must be seeking to enter the United States to continue work in your area of extraordinary ability.

Flexibility:

- Can apply to a wide variety of fields
- Can be filed as a self-petition; does not require an employer sponsor
“Extraordinary Ability” Evidentiary Requirements

Documentary Evidence must include at least 3 of the following:

- Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
- Evidence of your membership in associations in the field requiring outstanding achievement of members
- Evidence of published material about you in professional/major trade publications or other major media
- Evidence that you have been asked to judge the work of others, either individually or on a panel
- Evidence of original scientific/scholarly/artistic/athletic/business-related contributions of major significance to the field
- Evidence of authorship of scholarly articles in professional/major trade publications or other major media
- Evidence that your work has been displayed at artistic exhibitions or showcases
- Evidence of your performance of a leading or critical role in distinguished organizations
- Evidence of a high salary or significantly high remuneration compared to others in the field
- Evidence of your commercial successes in the performing arts

Must also pass USCIS’s “final merits analysis”
Outstanding Professor or Researcher

Intended to accommodate prospective immigrants who are recognized nationally or internationally for their outstanding achievement in their field. An employer must submit this petition on behalf of a prospective permanent resident.

USCIS regulations provide that applicant must demonstrate international recognition for outstanding achievements in a particular academic field, as well as at least 3 years’ experience in teaching or research in that academic area.

Applicant must be entering the United States in order to pursue tenure or tenure track teaching or comparable research position at a university or other institution of higher education, or for certain private employers.
“Outstanding Professor/Researcher” Requirements

Documentary Evidence must include at least 2 of the following:

▪ Evidence of receipt of major prizes or awards for outstanding achievement
▪ Evidence of membership in associations that require their members to demonstrate outstanding achievement
▪ Evidence of published material in professional publications written by others about the alien's work in the academic field
▪ Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
▪ Evidence of original scientific or scholarly research contributions in the field
▪ Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

Must also pass USCIS’s “final merits analysis”
National Interest Waiver

Granted to those who have “exceptional” ability and whose employment in the United States would greatly benefit the nation in the area of business, health care, economy, national security, or another important area.

3-Prong Test for evaluating NIW cases:

- You must show that you plan on working in the United States in an area of substantial intrinsic merit and/or national importance
- **You must show that you are well-positioned to advance work in your field of endeavor**
- You must show that, on balance, it would be beneficial to the United States to waive the requirement of a job offer and thus of a labor certification

Can be filed as a self-petition (no employer sponsor required)
Two Types of Presidential Proclamations Related to COVID-19

- **Geographic/physical presence restrictions**
  - **China** (January 31, 2020)
  - **Iran** (February 29, 2020)
  - **Schengen Area of Europe** (March 11, 2020): Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.
  - **United Kingdom & Ireland** (March 14, 2020)
  - **Brazil** (May 24, 2020)

- **Policy-based restrictions/Visa restrictions**
  - Presidential Proclamation 10014 (April 22, 2020): Suspending the entry of certain immigrants
  - Presidential Proclamation 10052 (June 22, 2020): Suspending the entry of certain nonimmigrants
There have been five separate Presidential Proclamations barring entry to the U.S. by anyone who has been physically present in a specific area hit by COVID-19.

All of these Proclamations are set to expire on December 31, 2020, unless continued by the President.

Individuals are subject to these restrictions if they have been physically present within one of the affected areas within the 14-day window immediately preceding entry to the United States.

- In effect, this prohibits travel to the U.S. directly from any affected country

Workaround: travel to a third country for 14 days prior to entering the United States.
The following people are exempt from geographic/physical presence Proclamations:

- United States Citizens
- Lawful Permanent Residents (LPRs)
- Spouses of U.S. Citizens & LPRs
- Parents or legal guardians of U.S. Citizens or LPRs who are unmarried & under the age of 21.
- Siblings of U.S. Citizens and LPRs, provided both are unmarried and under the age of 21.
- Children, foster children, and wards of U.S. citizens or LPRs, including prospective adoptees.
The Proclamations also all contain a “National Interest Exception” that is not defined in the Proclamations themselves. The Department of State standard for NIEs has continued to evolve.

Currently, the following classes of people are eligible for an NIE to the Schengen Area, U.K., and Ireland Proclamations:

- Students traveling with valid F-1 and M-1 visas (blanket exception)
- Students applying for new F-1 and M-1 visas (automatically considered for NIE upon applying)
- B-1s (including ESTA), E-1/ E-2, J-1 Academics and Students with a valid visa or ESTA or seeking a new visa may apply for NIE at consulate.
- Those traveling for humanitarian reasons, for public health response, or national security in any visa classification

If an exception is granted, the recipient must travel to the US within 30 days in order to utilize the NIE; otherwise, a new request must be submitted.

There are no similar NIE guidelines established for the China, Iran & Brazil Proclamations.
“National Interest” exception – very ad hoc right now, but more guidance is being released frequently

- Some consulates’ websites have laid out very specific categories that may qualify for National Interest Exceptions to the Schengen/UK/Ireland bans
  - Vienna, Austria and Frankfurt, Germany say the following:
  - Public Health: Travel as a public health or healthcare professional or researcher to alleviate the effects of the COVID-19 pandemic, or to continue ongoing research in an area with substantial public health benefit (e.g. cancer or disease research).
  - Students: All students, and their dependents, traveling to the United States on an F or M visa to pursue a full course of study or on a J visa to participate in an exchange program as a bona fide student.
  - Academics: All exchange visitors and their dependents traveling to the United States on J visas in the following categories: Professors, Research Scholars, Short Term Scholars, or Specialists.
  - Investors: Travel in connection with investment or trade in the U.S. economy that generates a substantial economic impact, including investors and treaty-traders on E visas and the senior-level employees who provide strategic direction or expertise essential to the success of the investment, and their dependents.
  - Economic: Temporary travel that provides a substantial economic benefit to the U.S. economy, including:
    - Technical experts and specialists to install, service, maintain, or receive training for vessels, machinery and other specialized equipment used by U.S. and foreign firms with a substantial investment in the United States. Travel is temporary in nature and for a defined period of time.
    - Senior-level managers and executives, and their dependents, who provide strategic direction necessary for the success of the company or venture.
    - Professional athletes, dependents, and essential staff who enter the United States to participate in major sporting events, which bolster the U.S. economy
Policy-Based Restrictions: Immigrant Visa Proclamation (April 22, 2020)

- Suspends issuance of immigrant visas to those seeking US permanent residency from abroad
- Does NOT impact availability of “adjustment of status” process within the United States
- Exceptions:
  - Spouses of US citizens
  - Minor children (under 21) of US citizens
  - Law enforcement, armed forces, “national interest”
  - Physicians, Nurses, or other Healthcare Professionals
  - Those seeking to perform research related to COVID-19 or to perform work essential to combating the spread of COVID-19
- Currently multiple pending lawsuits challenging this proclamation, including a recent order preventing the government from enforcing this as against Diversity Visa lottery winners
Nonimmigrant Visa Proclamation (June 22, 2020)

- Suspends issuance of certain non-immigrant visas to most applicants, through the end of 2020
- Does NOT impact eligibility for change/extension of status within the United States
- Affected visa categories:
  - H-1B and H-4
  - L-1A, L-1B, and L-2
  - H-2B
  - Some J-1 categories (intern, trainee, teacher, camp counselor, au pair, summer work/travel)
- Applies to anyone who:
  - Is outside of the U.S. on the effective date (June 24, 2020);
  - Does not have a valid nonimmigrant visa (in the categories above) on the effective date; and
  - Does not have another official travel document other than a visa (advance parole document) issue on or after the effective date
  - (Department of State guidance suggests otherwise – may apply to individuals in US, with visa, on effective date, if they require a new visa after the effective date)
Nonimmigrant Visa Proclamation (Con’t)

- **Exemptions:**
  - Spouses and children of US citizens
  - Those seeking to enter the US to provide temporary labor/services essential to the U.S. food supply chain
  - Those whose entry would be in the “national interest,” defined as:
    - Critical to defense, law enforcement, diplomacy, or national security of U.S.
    - Involved with the provision of medical care to hospitalized COVID-19 patients
    - Involved in medical research at U.S. facilities to help efforts to combat COVID-19
    - “Necessary to facilitate the immediate and continued economic recovery of the United States”
  - As of 7/16/2020: Spouses/children of H, J, L visa holders who are not subject to Proclamations and/or where the principal applicant is currently in the U.S. are entitled to a National Interest Exception
  - Applicants must schedule a visa appointment, and a decision will be made on the exception at the time of interview
  - Alternatively, U.S. Customs & Border Protection may grant a National Interest Exception in advance of entry to the United States. Each port of entry has its own procedures for granting these.
  - Special circumstances for Canadians – confirmed to be **not** subject to the nonimmigrant visa ban, as they can enter the U.S. without a “visa”
  - Currently multiple pending lawsuits challenging this Proclamation
Useful Resources

- Immigration and Customs Enforcement (www.ice.gov)
- NAFSA: Association of International Educators (www.nafsa.org)
- U.S. Citizenship and Immigration Services (www.uscis.gov)
- VIS Office
- Immigration Attorney
The information in this presentation is intended as general background information on immigration law and employment eligibility issues. It is not to be considered as legal advice with regard to any specific immigration issue. Immigration law changes often and information becomes rapidly outdated. Please consult your immigration counsel before taking action on immigration matters.