IMMIGRATION 101: OPTIONS AFTER THE F-1

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U.S. Immigration: Basic Concepts

- **Non-Immigrant Visa**
- **Lawful Permanent Resident/Immigrant Visa (Green Card)**
- **Citizenship (Naturalization)**
Overview of U.S. Immigration Processes

Nonimmigrant Visa 1-3 yrs. \rightarrow Immigrant Visa LPR / “Green Card” 3-5 yrs. \rightarrow 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

3 yrs. if by marriage to U.S. citizen
5 yrs. for everyone else

**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

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The H-1B Visa: Professionals

<table>
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<tr>
<th>REQUIREMENTS</th>
<th>APPLICATION STEPS</th>
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<th>COSTS</th>
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</thead>
<tbody>
<tr>
<td>1. Job must require BA/BS degree or equiv. as minimum entry-level requirement</td>
<td>1. Determine prevailing wage for position</td>
<td>3-6 months - <strong>Variable!</strong></td>
<td>Granted for 3 years Renewable for 3 years</td>
<td>$460* USCIS filing fee</td>
</tr>
<tr>
<td>2. Applicant must have degree equivalent to U.S. BA/BS, or equiv. experience</td>
<td>2. Post Labor Condition Application (LCA) at employer’s work place</td>
<td>Premium processing: decision in 15 days</td>
<td>Extend beyond 6 years if GC or PERM pending one year before H maxes out.</td>
<td>$500 Antifraud fee</td>
</tr>
<tr>
<td>3. Employer must pay at least prevailing wage for the position in geographic area</td>
<td>3. File LCA with U.S. Dept. of Labor; wait 7 days for certification</td>
<td>H-1B portability: May work as soon as filed if already holding H-1B visa</td>
<td></td>
<td>$750 (25 or fewer EEs)</td>
</tr>
<tr>
<td><strong>NO TEST OF U.S. LABOR MARKET REQUIRED; NO ADVERTISING; NO RECRUITMENT</strong></td>
<td>4. File visa petition with USCIS</td>
<td><strong>WATCH OUT FOR GAPS IN STATUS</strong></td>
<td></td>
<td>or $1,500 ACWIA fee (&gt; 25 EEs)</td>
</tr>
<tr>
<td></td>
<td>5. Change of status with petition if in US US consular processing overseas if out of status or overseas</td>
<td></td>
<td></td>
<td>- Credentials evaluation ($75-500)</td>
</tr>
<tr>
<td></td>
<td>Canadians can apply at U.S. border</td>
<td></td>
<td></td>
<td>- Premium processing ($1,410)</td>
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</table>
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
• 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.
• Granted for up to 3 years at a time; maximum of 6 years in H-1B status
• Employer must pay all costs/fees associated with H-1B petition process – by law, employees/beneficiaries are prohibited from paying these costs, even if they want to
H-1B VISAS – THE NUMERICAL CAP

For Non-Exempt/Private Employers

H-1B VISAS CURRENTLY CAPPED AT 65,000 PER YEAR

- Cap exceptions for colleges, universities and some government research institutions
- Fiscal Year (FY) begins in October;
- Applicants for H-1Bs can apply 6 months in advance, or by April 1.

ADVANCED DEGREE ALLOCATION

- 20,000 visas reserved for Master or higher graduates of U.S. colleges
H-1B VISAS CAPPED AT 85,000 PER YEAR

FY1990  Cap set at 65,000; hit for first time in 1997
FY1998-01 Raised to 115,000, then to 195,000
FY 2004  Fell back to original level of 65,000 visas
FY 2005  Added 20,000 visas for graduates of U.S. graduate schools

INSUFFICIENT H-1B VISAS IN EVERY YEAR SINCE 2004

• Some years: hit the cap AFTER the start of the FY
• Other years: hit the cap between filing & start of the FY
• 2014: 124,000 cases filed for 85,000 visas (68% chance)
• 2015: 174,500 cases filed for 85,000 visas (48% chance)
• 2016: 233,000+ cases for 85,000 visas (36% chance)
• 2017: 199,000 cases for 85,000 visas (43% chance)
H-1Bs Cap Subject vs. Cap Exempt

• Numerical cap
  – H-1B limited to 65,000 visas per year plus 20,000 extra for those who possess Master’s degrees from U.S. institutions
  – NO numerical cap for:
    • University Professors/Personnel - institutions of higher education as defined by Higher Education Act of 1965
    • Organizations related to institutions of higher education

• Fee Exemption
  – H-1B government fees normally
    • $1,500 Workforce Training Fee ($750- for entities under 25 employees)
    • $500 Anti-Fraud fee
    • $460 I-129 Form fee
  – Fee exemption for institutions of higher education
    • No $1500 Workforce Training Fee
    • $500 Anti-Fraud fee still required
    • $460 I-129 Form fee required
H-1B Cap/Fee Exemptions

• Exempt from numerical cap
  – No numerical cap for university professors/personnel – institutions of higher education as defined by Higher Education Act of 1965
  – Non-profit organizations affiliated with institution of higher education
  – Non-profit research organizations
• Fee exemption
  – No ACWIA Workforce Training Fee ($1,500/$750)
H-1B Issues for University Personnel

• Prevailing Wage
  – For university personnel, often governed by collective bargaining agreement
  – If not, determine prevailing wage from USDOL OES system
  – In either case, must get certified LCA

• 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)
H-1B: Most common work visa and often the only work visa for professionals

- Complaints about H-1B: fraud in program, undercuts American wages, etc.
- Visa is essential to innovation: researchers, professors, doctors, computer architects, etc.
- Vehicle for foreign students: F-1 Student Visa - F-1 OPT – H-1B
- Proposed changes: double wage, limit number of H-1Bs, minimum wage of 100K or 130K
- Rescission of prior guidance affording deference to prior approvals

Possible changes to OPT/STEM extension: Executive order on “Buy American/Hire American” calls for reforming practical training programs

- F-1 students entitled to 12 months of post-completion Optional Practical Training (OPT) plus STEM extension: additional 24 months
- Executive Orders indicate that STEM extension could be eliminated, along with H-4 work authorization – proposed regulations are coming
- Reports that rescission currently in the works at DHS – it’s a matter of when (affects 45,000 F-1 students)
Alternatives to the H-1B

- TN (Trade NAFTA) for Canadians and Mexicans in specified professions (including faculty members)
- 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.
J-1 Cultural Exchange Visas

INTENDED AS A ‘CULTURAL EXCHANGE’ OPPORTUNITY

• Administration through US 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 Visas: Exchange Visitors

<table>
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<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 for change of status</td>
<td>Research scholars: 3 years</td>
<td>Visa application fees at consulate or $300 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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<td></td>
<td></td>
<td></td>
<td>Specialists: 1 year</td>
<td></td>
</tr>
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TWO-YEAR HOME RESIDENCY 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
- Usually Asia, Africa & South America
- “Home country” = country of citizenship or last residence at time of J grant

WAIVER OF HOME RESIDENCY REQUIREMENT BY DOS POSSIBLE

- 4 statutory grounds for waiver application; decision is ALWAYS discretionary
- Some waivers NEVER granted: Fulbright, AID
- Medical graduates: special alternatives, service in medically-underserved areas
**TN Visas : Trade NAFTA**

(United States-Mexico-Canada Agreement [USMCA]: new trade deal replacing NAFTA; not expected to have any impact on NAFTA’s immigration/visa provisions)

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

**COSTS**

USCIS Filing Fees: $56+$6 per I-94
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
    - PW 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-1A Visas

Individuals with Extraordinary Ability or Achievement

• Science, Education, Business or Athletics
• National or International Acclaim
  – Letters of support
  – Publication
  – High salary
  – Media, citations, press
  – Judge work
  – Awards, critical acclaim
  – Selective professional memberships
• Available to J-1 holders who are subject to home residence requirement
OVERVIEW: GREEN CARD PROCESS

Most Employment Based (EB) start here

→

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

PERM LABOR CERTIFICATION
Form ETA 9089

6+months

VISA PETITION
Form I-130 / 140

5-14 months

ADJUSTMENT OF STATUS
Form I-485

5 - 12+ months

CONSULAR PROCESSING

Filed w/ visa petition if visa number current

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

GC ISSUED
Form I-551

Most Employment Based (EB) start here

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LIMITS ON NUMBER OF GREEN CARDS PER YEAR

- Each type of green card (preference category) have numerical limits: numbers vary by year and by usage
  - Approximately 140,000 EB-based GCs in all categories
  - Approximately 226,000 FB-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.
Annual employment-based immigration: 140,000

Employment-based immigrant visa cases with priority dates before the stated dates are eligible for final action:

<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>
</tr>
</thead>
<tbody>
<tr>
<td>EB-1</td>
<td>01JUN18</td>
<td>01OCT17</td>
<td>01JUN18</td>
<td>01OCT17</td>
<td>01JUN18</td>
<td>01JUN18</td>
</tr>
<tr>
<td>EB-2</td>
<td>C</td>
<td>15JUN15</td>
<td>C</td>
<td>22MAY09</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>EB-3 -BA</td>
<td>C</td>
<td>08AUG15</td>
<td>C</td>
<td>01OCT09</td>
<td>C</td>
<td>01JUL17</td>
</tr>
<tr>
<td>EB-3 - other</td>
<td>C</td>
<td>01JUN08</td>
<td>C</td>
<td>01OCT09</td>
<td>C</td>
<td>01JUL17</td>
</tr>
<tr>
<td>EB-4</td>
<td>C</td>
<td>C</td>
<td>01MAY16</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Relig. Workers</td>
<td>C</td>
<td>C</td>
<td>01MAY16</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>EB-5</td>
<td>C</td>
<td>01OCT14</td>
<td>C</td>
<td>C</td>
<td>C</td>
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</tbody>
</table>
Core Issue: Cannot file adjustment of status until priority date is current

- Labor certification and I-140 can be filed without regard to priority date
- Cannot file adjustment of status or consular process an immigrant visa unless a priority date is current.

Deprives applicants of AOS-related benefits

- 2003: USCIS began to allow concurrent filing of I-140 and AOS
- Allowed dependents to obtain EADs earlier in process
- Eliminated need for H-1B visa renewals; visa stamp processing, etc.
- Minor children can “age out”, i.e., turn 21 & fall off parents’ applications
MOST COMMON EMPLOYMENT-BASED GREEN CARD PROCESS:

• Application by employer to USDOL to certify individual and position after statutorily mandated recruitment campaign

• Nearly all positions qualify, but substantial waiting periods for non-professional positions/short or no waiting for positions with higher requirements (Master’s or Bachelor’s degree plus five years experience is EB-2)

• Process requires significant employer involvement, including payment of legal fees as of July 2007
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

Requirements simplified for University Professors under “Special Handling”
- Only 1 national journal advertisement required
- “Most qualified” standard as opposed to minimally qualified
OTHER EMPLOYMENT BASED GREEN CARD OPTIONS

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

*All of the above are exempt from the labor certification requirement*
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.
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
USEFUL RESOURCES

Immigration and Customs Enforcement ([www.ice.gov](http://www.ice.gov))

NAFSA: Association of International Educators ([www.nafsa.org](http://www.nafsa.org))

U.S. Citizenship and Immigration Services ([www.uscis.gov](http://www.uscis.gov))

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.

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