

Professional Visa Options for International Students & Scholars

Overview

- Recent policy updates
- Temporary & Permanent Visas for Professionals
- Immigration planning tips
- Q & A

Recent Updates

- Immigrant Visa Ban (10014)– rescinded by Biden (Feb. 24, 2021)
- Nonimmigrant Visa Ban (10052) – expired (March 31, 2021)
- COVID Travel Restrictions / New NIE Standards – ended Oct. 25, 2021)
 - Brazil, Schengen/UK/Ireland, China, South Africa, Canada-Mexico & India
- Public Charge Rule – removed
- H-1B & DOL Wage Rules – defeated in court (2020)
 - Master's degree - “Always” - Level 1 raised to 45 percentile Wage Rule
- H-1B Third-Party Placement – liberalized 2020
 - “hire, pay, fire, supervise or otherwise control the work of the employee”
- “Deference” is back! - reinstated 2021
 - Critical in Adjudication of Extensions
 - Same underlying facts, petitioner & beneficiary

General

- All non-U.S. citizens and non-permanent residents require a visa to enter the U.S.
- Employer may sponsor an employee for nonimmigrant visa to authorize work
- Nonimmigrant visas are valid for temporary period (“work visas”)
- Employer may sponsor an employee for permanent residence (“green card”)

Why Hire International Staff?

- International life and work experience
- Multi-lingual communication skills
- Understanding of global cultures, markets, and business practices
- Ability to work internationally
- Fresh perspectives and new problem-solving skills
- Diversity in the workplace

Nonimmigrant Visas

- **H-1B**
- **TN-1/TN-2**
- **E-3**
- **H-1B1**
- **L-1A/B**
- **E-2**
- **B-1/B-2**

H-1B Visas

H-1B Specialty Occupation Visa requirements:

- Must hold bachelor's degree or foreign equivalent in a specific specialty (e.g., Biology, Engineering, Accounting, Economics, Mathematics, etc.)
- Job must require at least bachelor's degree in specialized field to perform the duties of the position (E.g., *Engineer, Computer Scientist, Software Engineer, Graphic Designer, etc.*)
- “Specialty occupation” – requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum for entry into the occupation
- Employer-specific; part-time or full time; 6 year maximum; granted in 3 year increments; at-will employment
- Employer must file Labor Condition Application (LCA) to confirm that it will pay required wages

H-1B Visas - Lottery

- Two Phases:
 - Registration: March
 - Petition Filing: April 1- June 30
 - 2nd Round: August – November
 - 3rd Round: November – February
- 65,000 visas for Bachelor's degree graduates;
- 20,000 visas for US Master's or higher degree graduates;
- Planning & Timing: “March Madness”?

H-1B Visas – Lottery

H-1B “Cap-Gap” Provision

- Extends status and/or employment authorization (OPT or STEM)
- Applies to F-1 students;
- Must *timely* file H-1B petition during cap acceptance period
 - Timely - D/S or 60 day grace period.
- If selected, F-1 status and OPT/STEM extend to September 30.
- If denied/rejected, must leave the U.S., re-enroll in school, or file a change of status within 60 days from date of notification.

H-1B Visas

- Validity period of H-1B visa:
 - 3 years, plus 3-year extension (total 6 years)
 - May extend beyond 6-year maximum if:
 - Green card started more than 1 year before H-1B expiration (will get 1-year extensions)
 - Immigrant visa (I-140) approved, but employee may not file adjustment application (I-485) because subject to visa retrogression (will get 3-year extensions)
- Spouse/children: H-4 visa (no work authorization, except if certain I-140s approved)

H-1B Visas – Exempt Employers

- Entities NOT subject to H-1B cap:
 - Institutions of higher education (universities, colleges, or other degree-granting entities)
 - Must be public & non-profit
 - Non-profit organizations affiliated with institutions of higher education (must have affiliation agreement)
 - Non-profit research organizations
 - Government research organizations

H-1B Visas

- Employer's responsibilities:
 - **Pay all H-1B expenses, including attorney and filing fees (including optional premium processing fee, if “business expense”)**
 - Pay required wage (“prevailing wage”) - you can find this at: <http://www.flcdatcenter.com>
 - Must offer same benefits as to U.S. workers
 - If H-1B worker terminated, must notify USCIS & pay for return transportation home (if worker returns home)

H-1B Visas

- Employer-specific visa (must work for sponsoring employer only) – fraud investigations/audits.
- May work for multiple employers (need concurrent petitions)
- May work full-time or part-time
- May transfer to another employer if transfer petition is filed
- Material changes to employment (salary, duties, location, hours) may require amended petition

H-1B Visas - Fees

- H-1B USCIS filing fees:
 - \$460 – USCIS petition fee
 - \$500 – USCIS fraud prevention/detection fee
 - \$1,500 – USCIS ACWIA/Training fee:
 - Cap-subject employers only
 - \$1,500 for employers with 26 or more employees
 - \$750 for employers with 25 or fewer employees
 - \$2,500 – USCIS Premium Processing Fee
 - Optional – decision in 2 weeks vs. 6-8 months

H-1B Visa – Long-Term Planning

- If reached 6-year H-1B maximum:
 - Recapture time spent abroad (keep travel records);
 - Request 7th-year extension if green card timely filed
 - Qualify for another nonimmigrant visa
 - Go abroad for 1 year (to re-start 6-year clock)
- Because of 6-year limit, must start long-term planning early (**but no later than in 5th year**)

***The H-1B Cap has been met, now
what?***

Alternatives to H-1B visas...

TN Visas

- **TN (Trade NAFTA - USMCA) Visa requirements:**
 - Applicant must be citizen of Canada or Mexico
 - USMCA “professions” listed in TN Appendix 1603.D.1 of NAFTA.
([NAFTA Occupations](#))
 - May work full-time or part-time for U.S. employer (self employment NOT permitted)
 - Applicant must meet occupational qualifications listed in NAFTA
(*Graphic Designers, Engineers, Management Consultant, Computer Systems Analyst, etc.*)
 - Graphic Designer: BA or AA + 3 years of experience

TN Visas

- TN visa valid for 3 years (may be extended indefinitely)
- Applicant must maintain nonimmigrant intent
- May apply at border (for Canadians) or at consulate (for Mexicans)
- Extensions may be filed with USCIS
- Spouse/children: TD visa (no work authorization)
- *Changes under Trump Administration?*

E-3 Visas

- E-3 Treaty Visa requirements:
 - Beneficiary must be Australian citizen
 - “Specialty Occupation” visa (similar to H-1B)
 - requires LCA/prevailing wage.
 - Valid for 2 years with indefinite extensions
 - May apply at Consulate or request USCIS extensions
- Spouse/children: E-3 Dependent visa (may apply for work authorization)

L-1 Visas

L-1A Multinational Executive/Manager Visa or L-1B Specialized Knowledge (for related companies abroad)

- One-year abroad at parent, affiliate or subsidiary as an executive, manager or specialized knowledge individual
- Must be coming to U.S. to fill executive, managerial or specialized knowledge position
- Based on corporate relationship of foreign entity and U.S. entity (parent, subsidiary, affiliate, etc.)

L-1 Visas

- National of any country - No quota
- Length of visa
 - Start up 1 year
 - Established business 3 years
 - Maximum length 7 years
- “New office” L for new companies – only good for 1 year. Good option for start-up. Must show continued revenue/business to renew.
- Spouses and children receive L-2 visa and spouses may apply for work permit – unrestricted employment
- Good basis for EB-13 green card

E-1/E-2 Visas

- **General requirements:**

- Requisite treaty between U.S. & country of citizenship – must check to see if you are eligible, based on current [List of Treaty Countries](#):
- Enterprise and Individual must share “treaty nationality”
- Spouses and children receive E-1/E-2 dependent visas & spouses can apply for work permit – unrestricted employment

- **E-1 Treaty Trader**

- 50% trade must be between Treaty Country and U.S.
- Import-export

E-2 Visas

- **E-2 Treaty Investor:**
 - Must make “substantial investment “ in U.S. company
 - Must be executive, manager or essential employee -- must have nationality of treaty country. (*E.g. Company in U.S. is 50% Korean owned; can hire Korean national employee/manager under E visa*)
- Visa granted for up to 5 years; may extend indefinitely
- Allows for self-employment
- Spouse/children: E-2 Dependent Visa (may apply for work authorization)
- Must intend to depart U.S. – when visa ends

Immigrant Visas or “Green Cards”

- Immigrant Visa - path to permanent residence (two- or three-step process)
- Options depend on job, employee's qualifications, employer's involvement
- Each case is analyzed individually to determine the best strategy

Immigrant Visas – Employment Based Green Cards

- **EB-2 (Second Preference)**
 - PERM for Advanced Degree Holders
 - Masters or higher degree or foreign equivalent
 - BA/BS plus five (5) years progressive experience
 - Schedule A, Group II Alien of Exceptional Ability in Arts, Sciences or Performing Arts
 - National Interest Waiver (NIW) – you are working in a field that is in the “national interest”
- **EB-3 (Third Preference) – PERM**
 - Professionals with BA/BS degree or foreign equivalent
 - Skilled Workers with 2 years experience
 - Other Workers

Immigrant Visas – EB-2

- **EB-2 Category often to subject to retrogression**
- **Advanced Degree Professionals:**
 - “Skilled labor” under INA 212(a)(5)(A)
 - Labor market test required – must obtain “labor certification” from DOL
 - Requires US Employer sponsorship (no self-sponsorship)
 - “Advanced degree” means degree “above that of baccalaureate” (e.g., Master’s or Ph.D.)
 - Master’s degree is equivalent to Bachelor’s degree + 5 years of post-baccalaureate, progressive experience

Immigrant Visas – EB-3

- EB-3 category subject to visa retrogression
- May file I-485 concurrently if visa number available
- Priority Date (PD) established when PERM filed
- Premium processing available
- “Other” workers limited to 10,000 visas

Immigrant Visas

- USCIS filing fees:
 - I-140: \$700
 - Premium processing (if available): \$1,440
 - I-485: \$1,225 per applicant
- Processing periods:
 - I-140: 6 – 12 months (15 business days if premium)
 - I-485: 9 – 14 months

Immigrant Visas - PERM

- PERM Labor Certification process:
 - Test of local labor market for *available* U.S. workers, *able, willing and qualified* for the job
 - Recruitment conducted before applying to DOL
 - If no able, willing and qualified U.S. workers, may file to receive DOL certification of PERM
 - Labor certification may not be filed/may be denied if minimally qualified U.S. worker applies

Immigrant Visas - PERM

- Recruitment for “professional” positions:
 - Takes at least 2+ months
 - Two print ads in Sunday paper (may post ad in professional journal instead of 1 Sunday ad)
 - 30-day Job Order with State Workforce Agency
 - Employer must post [Internal Notice](#) for 10 business days or provide to CBA
 - Three (3) additional venues from DOL list:

Immigrant Visas - PERM

- Three (3) additional venues, including:
 - Job fairs
 - Employer's website
 - Job search website other than the employer's
 - On-campus recruiting
 - Trade or professional organizations
 - Private employment firms
 - Employee referral program with incentives
 - Campus placement offices
 - Local or ethnic newspapers
 - Radio and television advertising

Immigrant Visas – PERM

- All recruitment must be done 30-180 days prior to filing with DOL
- All potentially qualified U.S. applicants must be interviewed to determine if qualified
- U.S. applicants: U.S. citizens, permanent residents, refugees or asylees
- Non-U.S. applicants – e.g., H-1B or TN visa holders - do not have to be considered

Immigrant Visas - PERM

- 30 days after recruitment completed, may file application with DOL
- Application filed electronically
- DOL may audit the case (request hard copies of recruitment)
- Employer must maintain DOL Compliance File for 5 years from date of filing PERM

Immigrant Visas – PERM

- After PERM approved, may file immigrant visa petition (I-140)
- Employer must show ability to pay worker's wage (annual report, tax return, audited financial statements, and/or confirmation letter if 100 employees or more)
- Employee must document meeting job requirements (education, training, experience)

Visa Bulletin

- Visa Bulletin issued by Department of State:
 - Issued monthly
- [March 2022](#) (Final Action Dates):

Visa Category	All countries Except Listed	China	India
EB-1	C	C	C
EB-2	C	01 Mar 2019	01 May 2013
EB-3	C	22 Mar 2018	15 Jan 2012

- Visa issuance authorized for applicants *with PD earlier than listed date*

Visa Bulletin

- Applicants with priority dates earlier than the application date in the chart may file for adjustment of status (I-485)
- If a category is “C” (Current), all applicants may file for adjustment of status regardless of priority date
- **Final Action Dates** in the visa bulletin may come to a standstill or retrogress in the case of high demand
- **Filing Dates** maybe more advanced than **Final Action Dates** allowing individuals to file I-485 applications for adjustment of status to obtain travel (AP) and employment (EAD) permits; but I-485 cannot be approved until **Final Action Dates** are current
- **USCIS announces which dates to use each month**

Visa Bulletin

- Department of State (DOS) determines movement of visa priority dates and visa availability
- But USCIS determines which dates to apply to accept I-485s
- Movement is expected to slow down or stop in the coming months
- Overall progress has been slower than expected
- Priority date movement depends on use of immigrant visas
- Consider establishing a priority date in EB-2 category while working on credentials for EB-1

Immigration Planning Tips

- Understand the big picture – how do temporary and permanent visas interact?
- Is my Employer Cap-exempt?
- How do I switch to a Cap-subject Employer?
- How do I extend my H-1B past 6 years?
- I am Canadian in H-1B status – can I switch to TN?
- I am on TN or E-3 – can I pursue Permanent Residence?
- I have a Master's and worked for Employer A for 3 years (no prior experience) – can Employer A sponsor me for PERM?
- What is the most common way to extend my H-1B status past 6 years?

Immigration Planning

- Also:
 - Know how long processes take
 - Establish a timeline
 - Determine your immigration, professional and personal goals
 - Know your priorities
 - Make a plan with your advisor/attorney
 - Have a contingency plan
 - Applying for permanent residence too early may result in a denial
 - Applying for permanent residence too late may result in a gap in status
 - Plan your immigration options in advance

Thank you for attending

Questions?

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