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• Immigrant Visa Ban (10014) – rescinded by Biden (Feb. 24, 2021)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
    - 2\textsuperscript{nd} Round: August – November
    - 3\textsuperscript{rd} 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.flcdatacenter.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):

<table>
<thead>
<tr>
<th>Visa Category</th>
<th>All countries Except Listed</th>
<th>China</th>
<th>India</th>
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<tbody>
<tr>
<td>EB-1</td>
<td>C</td>
<td>C</td>
<td>C</td>
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<tr>
<td>EB-2</td>
<td>C</td>
<td>01 Mar 2019</td>
<td>01 May 2013</td>
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<tr>
<td>EB-3</td>
<td>C</td>
<td>22 Mar 2018</td>
<td>15 Jan 2012</td>
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- 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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