

Post Graduate Immigration Options and Strategies for International Students

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Structure of U.S. Immigration System

- **Nonimmigrant Visa**
 - Temporary stay/work authorization
 - Specific period of time and specific purpose
- **Immigrant Visa - LPR**
 - Permanent Stay/Work Authorization
 - Employment-based
 - Family-based



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Nonimmigrant Visas

- Temporary work authorization options for graduating students:
 - F-1 Optional Practical Training: STEM Extension
 - H-1B: Specialty Occupation Workers
 - O-1: Aliens with Extraordinary Ability
 - TN: NAFTA Professionals
 - L-1: Intra-Company Transferee

F-1 Optional Practical Training

- OPT: EAD Card issued for one year of post-graduate work
- STEM Extension: additional 17 month extension for graduates with degrees in Science, Technology, Engineering, Mathematics (employers must be enrolled in E-Verify)
- Cap Gap Extension: for students with valid OPT that will expire before October 1st and with cap subject H-1B petition pending
- F-1 60 day grace period; OPT travel restrictions



H-1B – Specialty Occupation Workers

- “Specialty occupation” = Professional Position
- Position requires a minimum of a bachelor’s degree in a specific field as an industry standard
- Equivalent of a U.S. bachelor’s may be permitted – i.e., three years of experience for each year of school
- Employer must pay higher of prevailing or actual wage as determined by DOL



H-1B – Specialty Occupation Workers

- Valid for initial 3 year period, may be extended for additional 3 years
- Additional extensions past 6 years are available if green card process is started before end of 5th year
- Employee can pursue green card (dual intent)
- Employer specific – can only work for approved company
- Annual cap problem – 65,000 visas per fiscal year
 - file April 1st for an October 1st start date



H-1B at Colleges and Universities

- Typically used for teaching, research or staff positions
- Requirements are the same as with private employers
- Prevailing wages: exception to the cross industry requirement, so DOL only includes wages with similar employers
- Institutions of Higher Education are exempt from the annual cap and can file petitions at any time

O-1 Extraordinary Ability

- Intended only for the top few in field of expertise in the world
- Must have:
 - Recipient of major internationally recognized award (e.g., Nobel Prize);
or
 - Provide evidence of at least 3 of the following:
 - Membership in organization that requires outstanding achievement
 - Published in professional/trade publications
 - Judgment of the work of peers in the field
 - Scholarly work of major significance in field
 - Authorship of scholarly work
 - Employment at organization with distinguished reputation
 - Commanding a high salary
- Initially granted for 3 years with indefinite extensions

O-1 at Colleges and Universities

- Same evidentiary requirements as in private sector
- O-1s are often used for teaching and research positions especially those in the arts or who are subject to 212(e)

TN – NAFTA Professionals

- TN status/visa: Canadian & Mexican citizens
 - Granted for 3 year period, renewable indefinitely
 - Available for specific professions as listed on NAFTA Appendix 1603.d.1
 - Engineers, IT, accounting, scientific technicians, economists
 - Research assistant; vocational counselor; scientist; college-, seminary- or university-level teacher
 - No dual intent



TN – NAFTA Professionals

- Foreign national must have specific credentials listed on Appendix 1603.d.1
 - Most often requires bachelor's degree or higher in designated professional field
- Canadian TN procedure: file at port of entry (no USCIS petition or visa stamp required)
- Mexican TN procedure: apply at U.S. Consulate/Embassy in Mexico (no USCIS petition required)



J-1 Exchange Visitors

- Short-term Scholar: academic activity of 6 months or less
- Professor: teaching position such as visiting professor, lecturer or instructor (cannot be used for tenure-track positions)
- Research Scholar: postdoc, researcher
- Specialist: for observing, consulting, or demonstrating special skills

L-1 Intracompany Transferees

- Who qualifies?
 - Intracompany relationship with qualifying entity (parent, subsidiary, affiliate, branch or 50-50 joint venture abroad)
 - Foreign national must have worked abroad for qualifying entity for 1 continuous year within past 3 years
- Two types:
 - L-1A Managers/Executives
 - L-1B Specialized Knowledge Workers (proprietary knowledge)
- No extensions past maximum 5/7 year stay regardless of green card process (dual intent permitted)

Immigrant Visas

- Summary of Process
 - Step 1: PERM application through DOL
 - Step 2: Immigrant Visa Petition (Form I-140) through USCIS
 - Step 3: Adjustment of Status (Form I-485) through USCIS (or consular processing)
- Some immigrant classifications skip Step 1
- Some immigrant classifications combine Steps 2 & 3
- Some nationals have backlogs of 10+ years

Employment-Based Immigrants

- **First Preference: Priority Workers (EB-1)**
 - Extraordinary ability foreign nationals, outstanding researchers and professors, and managerial or executive transferees
 - Can skip Step 1: No PERM required / combine 2 & 3

- **Second Preference (EB-2)**
 - Exceptional ability and advanced degree professionals (master's or higher), and National Interest Waiver
 - Can combine Steps 2 & 3, unless Chinese or Indian (backlog of 6 years)

- **Third Preference (EB-3)**
 - Professional, skilled, and unskilled workers
 - Backlog for every country of varying years



Employment Based Permanent Residence at Colleges and Universities

- Special Handling Labor Certification: specifically for positions with teaching duties can include librarians, coaches, counselors
- Basic Recruitment for positions without teaching duties
- Outstanding Professor or Researcher
- Extraordinary Ability



Family-Based Immigrants

- Spouse, parent or child under 21 of U.S. Citizen
 - Eligible to apply for immigrant visa and to apply for adjustment of status immediately
 - Unlawful stay or unauthorized employment usually not a bar to applying
 - Can apply from within US or at Embassy/Consulate in home country
- Other relative of USC or LPR
 - Backlogs of varying years

Questions? Need Articles/Updates?

If you have specific questions about the information presented today, please contact us at:

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