

# Work Visa Options After Graduation



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# Government Agencies Involved

- Department of Homeland Security
  - **US Citizenship & Immigration Services (USCIS)** – Services and benefits (family and employment); naturalization; special status programs
  - **US Immigration & Customs Enforcement (ICE)** – Interior investigations and enforcement, including SEVIS enforcement; smuggling; document fraud; raids
  - **US Customs & Border Protection (CBP)** – Inspections at ports of entry; Customs functions; border patrol
- Department of State – Issues visas to enter the US
- Department of Labor – PERM Labor Certification and H-1B Labor Condition Application (LCA)



# Common Visa Options



- OPT STEM Extension
- H-1B Temporary Worker
- H-1B Chile, Singapore
- E-3 Temporary Worker (Australians)
- L-1 Intracompany Transferee
- H-3 Trainee
- J-1 Exchange Visitor
- TN Trade NAFTA Worker
- O-1 Extraordinary Ability Alien
- E-1/E-2 Treaty Trader/Investor
- Immigrant Visa Petition



# F-1 OPT STEM Extension

## 17-month extension

Can extend OPT from 12 to 29 months if F-1 student:

- Latest degree must be in Science, Technology, Engineering or Mathematics (DHS STEM Designated Program List);
- Work in position directly related to degree;
- Be employed by or have accepted offer of employment from employer enrolled in E-Verify; and
- Maintain F-1 status.

# F-1 OPT STEM Extension

- Must file Form I-765 with fee before current OPT expires
- May continue working for 180 days while I-765 pending
- Can work for multiple employers as long as all are enrolled in E-Verify
- Must work in paid position at least 20 hrs. per week
- Reporting requirements
- Limited to 120 days of unemployment

# H-1B Temporary Worker

- Limited to foreign nationals coming to work in a “Specialty Occupation.”
- The foreign national must generally have at least a Bachelor’s degree in a relevant field, or work experience that is equivalent to a Bachelor’s degree.



# Fiscal Year 2011 H-1B Cap

- April 1, 2010 filing date for the new FY2011 H-1B numbers. Petitions are approved with an October 1, 2010 start date.
- Only new H-1B petitions are subject to the H-1B cap.
- Only 65,000 visas available in regular cap and 20,000 in U.S. Master's cap
- 20,000 additional H-1Bs are set aside for beneficiaries with Master's or higher degree from a U.S. university (foreign degrees are not acceptable).
- As of 10/15/2010, 42,800 Regular and 15,700 Masters



# H-1B Issues

- Work only for US sponsoring employer
- Changing Employers / Portability
  - Current H-1B worker is allowed to begin work for new employer upon filing of H-1B change of employer petition
  - Form I-797 receipt notice – takes 1-2 weeks
  - Need proof of maintenance of valid H-1B employment prior to filing
- 6 years max – unless permanent residence process started
- Dual intent permitted
- H-4 Spouses – no work authorization
- New LCA procedures – allot extra time
- **Amended H-1B & LCA** - if material change in employment
- Required to notify USCIS if employment terminates. Should also withdraw LCA to ensure salary obligations terminate.
- Must pay reasonable costs of return transportation if dismissed early





# H-1B Processing Times & Filing Fees

## Processing Times

Regular – 4 to 6 months

Premium – 15 days or less (requires \$1,000 filing fee)

## Filing Fees

- \$320 (H-1B) / \$300 (H-4) application fees
- \$500 Fraud Prevention & Detection Fee – exception: H-1B extension for same employer
- \$1,500 ACWIA Training and Scholarship Fee (\$750 reduced fee for 25 or fewer employees)

Exception: H-1B exempt employers; second extension with same employer; amended petition with no extension.

- From 8/13/2010 to 9/30/2014, Employers with more than 50 employees and more than 50% of its employees in H-1B or L status must pay \$2,000 additional fee.



# Employer-Employee Relationship

## Who is an employee?

- Traditional Employment
- Temporary/Occasional Off-Site Employment
- Long Term Placement at a Third-Party Work Site

## Third-Party Placement “Job Shop”

### Right to control/actual control?

- Supervision?
- Evidence of ER/EE Relationship:
  - Signed employment agreement detailing terms & conditions of employment
    - Hire, pay, and have ability to fire the Beneficiary
    - Performance review, employee benefits, etc.
  - Provision of tools or instrumentalities needed to perform job duties.
  - Use of proprietary information



# Site Visits

- DHS has recently made a highly publicized commitment to increase enforcement of the H-1B and L-1 programs
- As of May 1, 2009, USCIS Fraud Detection & National Security Unit signed contracts with third party Site Inspectors (SI) valued at \$250,000,000 to conduct unannounced administrative site visits (ASV)
- Main goal is to check for technical violations and fraud



# F-1 OPT Cap Gap Rule

- Work authorization is automatically extended to cover gap until Oct. 1<sup>st</sup> if student was on OPT when H-1B change of status petition accepted by USCIS with Oct. 1<sup>st</sup> start date.
- Applies to all qualified students
- Automatic extension terminates after Oct. 1<sup>st</sup> or when USCIS rejects, denies, or revokes the H-1B petition, whichever is earlier.
- Cannot travel abroad during cap-gap.
- Cannot violate any terms/conditions of F-1 status.



# H-1B1 under Chile & Singapore Free Trade Agreements



- The Beneficiary must be a citizen of Chile or Singapore.
- The basic requirements are the same as for any H-1B, except non-immigrant intent required.
- Visa numbers usually remain available throughout the fiscal year.
- H-1B1 visas are valid in one-year increments.
- No petition required – may be obtained directly at U.S. consular post.



# E-3 Treaty Visa for Australians



- The E-3 Visa Program for Australian Nationals is a great alternative to the H-1B.
- Requirements are the same as the H-1B, but non-immigrant intent required.
- The E-3 visa classification provides Australian professionals working in specialty occupations an anticipated 10,500 visa numbers per fiscal year.
- Application is made directly at U.S. Consulate or Embassy or through USCIS.



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# L-1 Intracompany Transferee



- Must have worked abroad for parent, subsidiary, affiliate, or branch for one continuous year out of the three years immediately preceding application.
- Maximum time for executive or manager is 7 years.
- Maximum time for specialized knowledge is 5 years.
- Time in L-1 status counts toward the 6-year H-1B maximum.



# Blanket L-1 Petition

- Company's U.S. office doing business for 1+ years
- Company has 3 or more domestic and foreign offices
- Company, affiliates and subsidiaries have 1 of the following:
  - Obtained 10 individual L-1 approvals over last 12 months, OR
  - Total annual U.S. sales of \$25 million, OR
  - U.S. workforce of 1,000 employees





# Approved Blanket L-1 Petition

- Qualified executives, managers and specialized knowledge professionals may enter the U.S. in L-1 status without filing individual petition with USCIS.
- Same time limits as individual L-1s.
- May extend through USCIS or U.S. consular post.



# H-3 Trainee

- The specific training must be unavailable in the beneficiary's home country.
- The training should benefit the Trainee in pursuing a career abroad.
- Any productive employment must be incidental to the training.
- Trainee should not be placed in a position in which citizens and resident workers are regularly employed.
- H-3 visa may be valid for up to 2 years.



# Who Qualifies for a TN?

- The Beneficiary must be a citizen of Canada or Mexico.
- The position must also fit into one of the 60+ professional occupation categories enumerated in NAFTA.
- TN status is valid for up to 3 years at a time, but can be renewed indefinitely (although with practical limitations).



# TN Designated Occupations

- Engineer
- Registered Nurse\*
- Scientific Technician\*
- Management Consultant\*
- Economist
- Accountant
- Architect
- Computer System Analyst
- Graphic Designer



\* Does not require a bachelor's degree or *licenciatura*



# O-1 Alien of Extraordinary Ability



- O-1 category is for individuals who have risen to the top of his/her field.
- Individual must demonstrate sustained national or international acclaim in the arts, sciences, education, business or athletics.
- Achievements can be documented by publications, receipt of awards, original scientific or scholarly contributions.
- O-1 is initially valid for up to three years and may be extended in one-year increments.



# E-1/E-2 Treaty Visas

- An appropriate treaty with the country of origin must be in place.
- The sponsoring entity must be at least 51% foreign-owned by a company with the citizenship of the treaty country.
- The foreign national employee must share the same citizenship as the company.



# B-1 Visitor for Business

- To visit the US for a short period of time to engage in legitimate business activities
- Must apply for B visa at US Consulate
- Completely within the Consular Officer's discretion
- May not engage in employment in US and may not be paid any US salary. This is **NOT** a work visa.
- Non-immigrant intent required
- Time period in US determined by CBP Officer – 1 week to 6 months
- Extensions available through USCIS



# Visa Waiver

## WB (Business) / WT (Tourism)

- Available to persons from certain countries coming for B-1/B-2 purposes
- CBP issues green I-94W card instead of white I-94 card
- NEW: Must comply with ESTA ahead of visit
- **ADVANTAGE** – No need to apply for B-1/B-2 visitor visa at US Consulate
- **DISADVANTAGES**
  - 90 day limit on stay
  - No extensions or change of status
  - No adjustment of status (generally)





# Participating Visa Waiver Countries

Andorra	Australia	Austria	Belgium	Brunei
Czech Republic	Denmark	Estonia	Finland	France
Germany	Hungary	Iceland	Ireland	Italy
Japan	Latvia	Liechtenstein	Lithuania	Luxembourg
Malta	Monaco	The Netherlands	New Zealand	Norway
Portugal	San Marino	Singapore	Slovakia	Slovenia
South Korea	Spain	Sweden	Switzerland	United Kingdom



# From Hire to First Day – Understanding the process

- Step 1: USCIS petition normally required
  - Change of Status – for individuals in the U.S. in valid, unexpired nonimmigrant status
  - Consular Processing – for individuals outside the U.S. or not maintaining status
- Step 2: Consular Processing – delays are routine!
- Step 3: Individual starts work – must have valid, unexpired passport and I-94 card in work authorized status





# Visa and I-94 Samples



DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection

OMB No. 1651-0111

Departure Record

Admission Number  
797661069

21 LL  
17 Oct 2011

18. Family Name

19. First (Given) Name

20. Birth Date (DD/MM/YY)

21. Country of Citizenship  
BELGIVIM

See Other Side

CBP Form I-94 (05/08)

STAPLE HERE

The foreign national should provide a clear copy of their new visa and most recent I-94 card to our office after each trip abroad so that we can accurately monitor their expiration dates.



# Planning for the Future

- In most cases, it is possible for a company to pursue lawful permanent residency on behalf of its foreign national employee.
- Also known as “green card.”
- Candidates have sophisticated knowledge of this process and will evaluate company permanent residency policies as any other benefit.



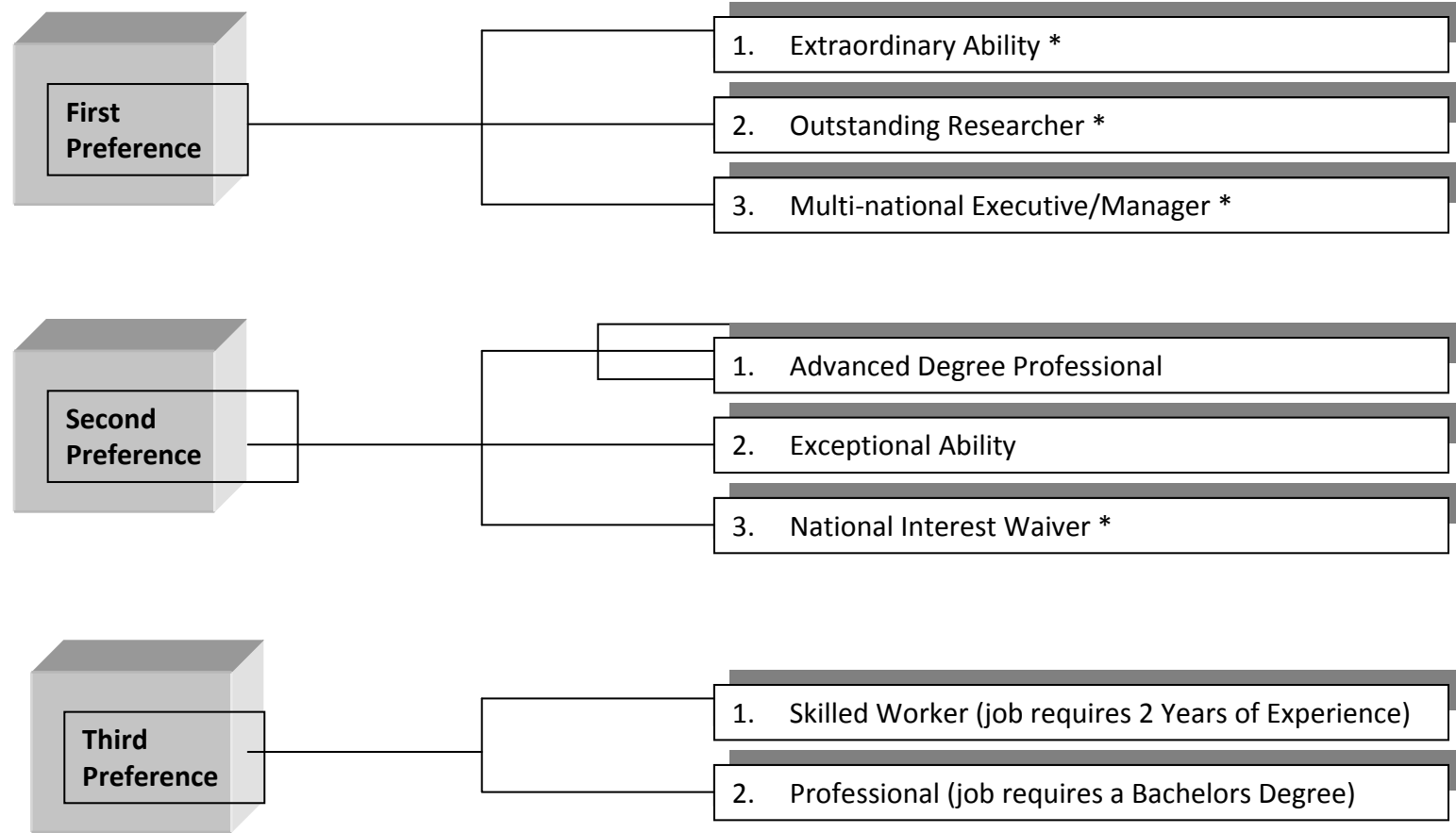
# “Green Card”: Basic Paths to Lawful Permanent Residence

- **Employment-based Immigration through employment – The Spectrum:**
  - Labor Certification
  - Multinational Executives/Managers
  - National Interest Waivers
  - Extraordinary Ability Petitions
  - Outstanding Researchers
- **Other petitions for permanent residency not obtained through employment:**
  - Family-based Immigration
    - Usually based on marriage to USC or having very close family member who is a USC.



# Employment-Based Preference Categories

\*No Labor Certification Required



# Immigrant Preference Category

- 5 Employment-Based Preference Categories
- 140,000 per year total permitted
- First: Priority Workers: 28.6% (40,040)
- Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% (40,040)
- Third: Skilled Workers, Professionals, and Other Workers: 28.6% (40,040)
- Fourth: Certain Special Immigrants: 7.1% (9,940)
- Fifth: Employment Creation: 7.1% (9,940)





# What is Visa Retrogression?



- Visa retrogression occurs when the total number of visa applications exceeds the quota available. When the limit is exceeded in a particular category and for a particular nationality then a wait list is created.
- Applicants are placed on this wait list according to the date of their case filing. This date is called a “Priority Date.”



# Questions



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