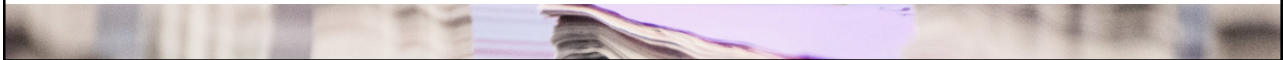


Immigration Seminar For International Postdocs and Graduate Students

Lisa T. Felix, Esq.

Jonathan Madara

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Agenda

- Non-Immigrant Status
- Introduction to Permanent Residency
- Recent Policy Trends Affecting Employment-Based Immigration
- Q&A



Non-Immigrant Visas

- Non-Immigrant Status (NIV)
 - H, F, J, O, etc.
 - Limited duration
 - Specific to employer / institution
 - Specific to purpose (work/study/tourism)
 - May require a showing of non-immigrant intent



Post F/J NIV Options H-1B Visas

- H-1B: 'specialty occupation'
 - Employer petition on your behalf
 - Position that normally requires at least a bachelors degree in a related field
 - Employer must agree to pay 'prevailing wage' as determined by the U.S. Department of Labor

H-1B Visas

- Can be part-time or full-time
- Length of approval is flexible, up to 3 years
- Maximum in H status 6 years total
- Portability
- CAP on number of H-1Bs issued each year

H-1B Issues for Start-Ups

- H-1B individual must be a W-2 employee
- Separate entity from owner/employee
 - Company right of control over employee
 - Is there a Board of Directors?
 - Who has ability to hire/fire

H-1B Issues for Start-Ups *(cont'd)*

- Company must prove
 - Financial ability to pay salary
 - Real job to be done by H-1B
 - Place of business
- Business plan/financial projections
- Prevailing Wage
 - CEO vs. function-descriptive position

H-1B Quota

- What is it and what does it mean?
 - 20,000 for graduates of US advanced degree programs
 - 65,000 for all others
 - Quota is for H-1Bs beginning on October 1 (start of the federal fiscal year).
 - Quota is usually exceeded on the first available filing day (April 1).

Avoiding the H-1B Quota

- Exemption based on employer
 - Universities
 - Non-profits affiliated with universities
 - Increased scrutiny of affiliations
 - Non-profit research organizations
 - Government research organizations

Avoiding the H-1B Quota *(cont'd)*

- Exemption based on employee
 - Previously counted (in last 6 years)
 - Citizen of Singapore/Chile (H-1B1)
 - Concurrent employment between a cap-exempt and a cap-subject employer

H-1B Alternatives: Ls

- L-1: 'intracompany transfer'
 - Must have worked for petitioning company overseas for at least one year in the last three years
 - For execs, managers, or special knowledge
 - Spouse eligible for employment authorization
 - Maximum 7 years in L status
- NOTE: H & L combined – max 7 years

Alternatives: Es

- For trade or investment
- Must be national of treaty country
 - <http://www.travel.state.gov/visa>
- Employing company must be owned at least 50% by treaty country nationals
- No quota and can be extended indefinitely
- Spouse eligible for employment authorization

Alternatives: TN

- Citizen of Canada and Mexico
- Must have employer and job offer
- Profession must be on the NAFTA list
- Applicant must have qualifications as indicated on NAFTA list
- Must evidence non-immigrant intent

Other Alternatives to H-1B

- I visa – journalists for media outside US
- O visa
 - Artists with distinction in field; or
 - Scientists with extraordinary ability
- E-3 – Australians only, similar to H-1B
- Dependent on spouse visa

O-1 Alien of Extraordinary Ability

- Does not 'waive' the J-1 two year home residence requirement. Just postpones it.
- Requires an employer willing to sponsor
- Renewable indefinitely
- Very high standard for "extraordinary ability"
- Factors Considered in Initial Evaluation
 - 1st authored articles/impact factors
 - Citations to 1st authored work
 - Conference presentations
 - Book chapters / review articles
 - Peer reviewer / manuscript reviewer

Permanent Residence

- Authorization to Live & Work Indefinitely in the United States
- "Immigrant Visa"
- The "Green Card"
- Not always 'forever' – may be abandoned or taken away

Typical Path: Nonimmigrant to Immigrant

F-1 – attend school



F-1 OPT (+ STEM extension when possible)



J-1 Research Scholar



H-1B max 6 years total

Nonimmigrant to Immigrant

4th Year H-1B status – start thinking about LPR



Maintain NIV status until LPR



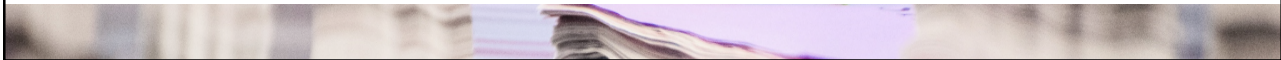
6 years in H-1B, other options?



Eligible to file adjustment of status

How Do I Apply?

- Family
- Investment
- Asylum
- Employment
- DV Lottery



Permanent Residence Quotas

- Annual Limit on Final Approval of Permanent Residency
- Per Country Limit – 7%
- Allocated by:
 - Priority Date – place in line
 - Preference Category



Permanent Residence Quotas *(cont'd)*

- Employment Based Preference Categories:
 - First Preference (EB-1)
 - Extraordinary Ability
 - Outstanding Researcher
 - Multinational Manager or Executive
 - Second Preference (EB-2)
 - National Interest Waiver
 - Labor Certification for Advanced Degreed Professionals (or those with at least 5 years exp.)

Permanent Residence Quotas *(cont'd)*

- Third Preference (EB-3)
 - Skilled Worker (2+ years experience)
 - Bachelor's Degree
- Fifth Preference (EB-5)
 - \$1 Million Investment in the U.S. that creates at least 10 U.S. jobs

Permanent Residency Quotas, Where Are We Now?

Visa Bulletin for Aug 2018

| Employment Based | All Charge-ability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPPINES |
|--|--|---------------------|-----------|-----------|-------------|
| 1 st | 01 MAY 16 | 01 JAN 12 | 01 JAN 12 | 01 MAY 16 | 01 MAY 16 |
| 2 nd | C | 01 MAR 15 | 15 MAR 09 | C | C |
| 3 rd | C | 01 JUN 14 | 01 JAN 09 | C | 01 JUN 17 |
| 5 th Targeted Employment Areas/Regional Centers and Pilot Programs | C | 01 AUG 14 | C | C | C |

Considerations in Employment Based Applications

- Employer-sponsored or self-sponsored
- Filing multiple under different categories?
- Multi-Step Process
 - Do you need the Department of Labor's Certification?
 - Qualify for permanent residence: USCIS: I-140
 - Adjust status to permanent resident: USCIS: I-485 (This step is controlled by the quota system. Your priority date must be "current" to apply.)

Permanent Resident Status

Self-Sponsored

- **Extraordinary ability**
 - EB-1
 - Standard
 - National or international reputation
 - “One of few at the top of peers”
 - Key is defining field of expertise specifically
 - Extensive documentation required
 - Reference letters critical

Permanent Resident Status

Self-Sponsored

(cont'd)

- **National Interest Waiver (EB-2)**
 - Standard
 - Exceptional ability or advanced degree
 - National priority
 - National impact
 - Well positioned to achieve the “proposed endeavor”
 - Extensive documentation required
 - Reference letters critical

Permanent Resident Status

Employer-Sponsored

- Outstanding Professor/Researcher
 - EB-1
 - "Permanent position"
 - Similar standards to extraordinary ability
 - Sponsored by a college or university – OR – an organization with a clear research function (at least 3 full time research positions)

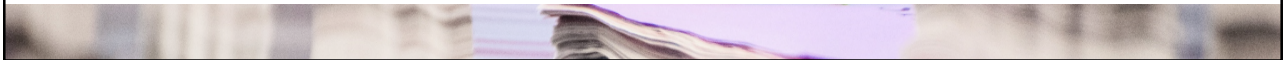
Permanent Resident Status

Employer-Sponsored *(cont'd)*

- Labor Certification Application (PERM)
 - Recruitment for a qualified U.S. worker first
 - Prevailing wage
 - Legal issues
 - Timing

Recent Policy Trends and Rules

- “De novo” review of petitions
- Buy American, Hire American Executive Order
- Challenges (RFEs, NOIDs) to H-1Bs, other employment-based visas, and permanent residence are up 45%
- Changes to interpretation of certain evidence
- Unauthorized presence for F-1s and J-1s



Questions?





For Further Information

Lisa T. Felix, Esq.

lfelix@klaskolaw.com

Jonathan Madara

jmadara@klaskolaw.com

215.825.8600

Klasko Immigration Law Partners, LLP

Philadelphia • New York



Lisa T. Felix
Senior Associate

Lisa Felix represents corporate and educational clients who seek to hire or transfer foreign employees, as well as foreign individuals seeking employment in the United States. She advises employers on immigration compliance, responding to government investigations, and immigration strategy and planning.

Before practicing as an attorney, Lisa worked extensively in higher education, providing immigration services to students, faculty, researchers, and administrators at the University of Pennsylvania, the State University of New York at Buffalo, and at Southern Illinois University–Carbondale’s branch campus in Niigata, Japan.

Lisa is an active member of the American Immigration Lawyers Association, where she has served as co-chair of the AILA Philadelphia Chapter's Pro Bono Committee, and on the organizing committee of the chapter's annual conference. Lisa is a returning member of NAFSA: Association of International Educators.

Lisa is a 2005 graduate of Temple University's Beasley School of Law.




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