



# Immigration Seminar for International Postdocs and Graduate Students

*Andrew J. Zeltner, Esq.*

*Jordan J. Gonzalez, Esq.*

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**Andrew Zeltner**  
**Senior Associate**

Andrew J. Zeltner is an Associate in the Firm's Philadelphia office. Mr. Zeltner handles a wide array of corporate immigration matters including those involving the processing of permanent resident applications (green cards) on behalf of multinational corporate and individual clients, including labor certification applications, immigrant visa petitions and adjustment of status applications.

He has significant experience providing employment-based U.S. immigration services for large corporate clients, including applications for B-1 OCS, E-1/E-2, H-1B, H-3, J-1, L-1, O-1, TN, labor certifications, multinational manager and executive immigrant petitions, outstanding researchers, extraordinary ability aliens, and national interest waivers. He has provided extensive advice to human resources professionals and corporate counsel regarding immigration compliance matters including I-9 and LCA compliance issues.

Mr. Zeltner received a Bachelor of Arts degree in Politics (cum laude) from The Catholic University of America. He earned his J.D. (cum laude) from Quinnipiac University School of Law. While in law school, Mr. Zeltner served as Opinions Editor of the Quinnipiac Probate Law Journal.

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Jordan J. Gonzalez  
Associate

Jordan J. Gonzalez is an Associate at the Firm. Jordan hails from a bilingual, binational, and bicultural household.



As such, he understands the unique role immigration plays in strengthening the future of businesses, families, and the larger nation as a whole. Jordan has extensive experience providing legal advice to corporate clients, including applications for H-2A/B, H-1B, TN, L-1, O-1, J-1, labor certifications, multinational manager and executive immigrant petitions, national interest waivers, as well as I-9 and LCA compliance.

Jordan received a Bachelor of Arts degree in Political Science (magna cum laude) from the University of Texas – Pan American and earned his J.D. from the University of Houston, where he engaged in such activities including interning with Mexico's Ministry of Foreign Affairs, the Texas Innocence Network, and the American Civil Liberties Union (ACLU), as well as participating in the University's immigration clinic.

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## Agenda

- Non-Immigrant Status
- H-1B Requirements
- H-1B Alternatives
- Introduction to Permanent Residency
- Q&As

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## Non-Immigrant Status

- 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
  - Can only hold status in one classification at a time (i.e. – cannot have a J and an H)



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## Post F/J NIV Options H-1B Visas

- H-1B: 'specialty occupation'
  - Employer petition on your behalf
  - Legal/filing fees to be paid by employer
  - Position that normally requires at least a bachelors degree in a related field
  - Employer must agree to pay 'prevailing wage'

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## H-1B Visas

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- Part-time or full-time
- Length of approval
- Extensions
- Portability
- Maximum in H status 6 years total
- CAP on number of H-1Bs issued each year (for certain employers)

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## H-1B Quota

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- What is it and what does it mean?
  - 20,000 for US awarded advanced degrees
  - 65,000 for bachelor's degree positions.
    - Since FY 2014, gone on April 1-5 (Lottery)

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## Avoiding H-1B Quota

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

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## Avoiding H-1B Quota

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*(cont'd)*

- Exemption based on employee
  - Previously counted
  - Singapore/Chile
  - Concurrent employment

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## H-1B Issues for Start-Ups

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- Must have employer tax I.D. number
- Company owned by H-1B employee?
  - Must be 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

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

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- 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

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## H-1B Alternatives: Ls

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- 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

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## Alternatives: Es

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- 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

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## Alternatives: TN

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- Citizens 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

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## Alternatives

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- I visa – journalists for media outside US
- E-3 – Australians only, similar to H-1B
- Dependent on spouse visa
- O visa
  - Artists with distinction in field; or
  - Scientists with extraordinary ability
  - Available when individual is subject to J-1 2 year home residence requirement

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## J-1 Two-Year Home Residence Requirement

- Two year foreign residence requirement applies to some (not all) J Exchange Visitors
- Before a J Exchange Visitor who is subject to 212(e) may obtain certain immigration benefits, he/she
  - Must reside in home country or country of last permanent residence for aggregate of at least 2 years following termination of exchange visitor status; OR
  - US Citizenship and Immigration Services must waive the foreign residence requirement
- Contributes to the notion of international "exchange"
- Helps prevent "Brain drain"

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## Who Is Subject to 212(e)?

- Only subject if:
  - Exchange Visitor Skills List
  - Government financing (home country or US funding)
  - Graduate medical education training
- Exchange Visitor remains subject until he/she fulfills the requirement or obtains a waiver.
- J-2 is subject to 212(e) if the J-1 is subject.

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## What Can't You Do If Subject?

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- Not eligible for immigrant visa or adjustment of status to lawful permanent resident
- Not eligible for H, L or K nonimmigrant visa stamp
- Not eligible to change nonimmigrant status within the U.S. from J to any other nonimmigrant category except:
  - A (diplomatic),
  - G (international organization), or
  - U (victims of qualifying criminal activity) status

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## J-1 Waiver Types

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- No objection statement
- Exceptional hardship to qualifying relatives
- Persecution
- Interested government agency

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## No Objection Statement

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- Quickest and easiest waiver for those subject based on skills list or government funding.
- May require extra steps when funding is from U.S. government or international organization (HFSP- Human Frontier Science Program, EMBO- European Molecular Biology Organization, etc.)
- Not available to all J-1
- Attitudes of different countries
- Can EV apply for a waiver from outside the U.S.?

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## Permanent Residence

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- Authorization to Live & Work Indefinitely in the United States
- "Immigrant Visa"
- The "Green Card" or "Form I-551"
- Not always 'forever' – may be abandoned or taken away

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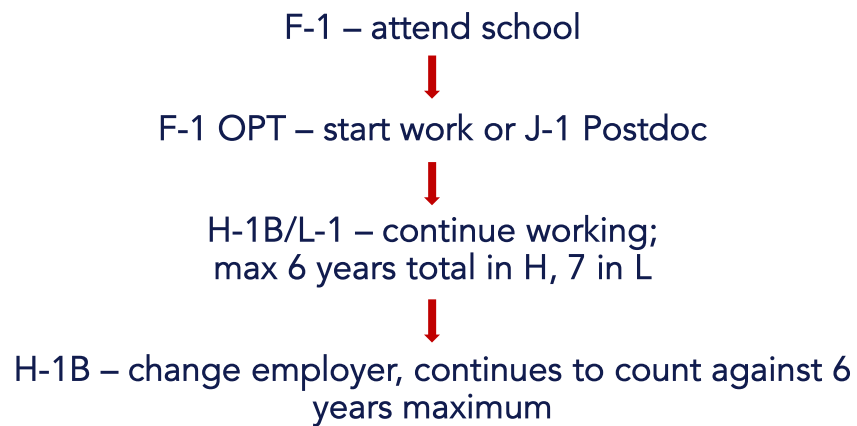
## Immigrant vs. Non-Immigrant

- Non-Immigrant Visa (NIV)
  - H, F, J, O, etc.
  - Limited duration
  - Specific to employer/institution and purpose
  - vs.
- Immigrant Visa
  - Green Card/Permanent Residency

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## Nonimmigrant to Immigrant



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## Nonimmigrant to Immigrant

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H-1B – change employer, requires new petition may start working under ‘H-1B portability’



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?

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## How Do I Apply?

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- Family
- Investment
- Asylum
- Employment
- DV Lottery



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## Permanent Residence Quotas

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



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## Permanent Residence Quotas *(cont'd)*

- Employment Based Preference Categories:
  - First Preference (EB-1)
    - Extraordinary Ability
    - Outstanding Researcher
    - Multinational Executive
  - Second Preference (EB-2)
    - National Interest Waiver for Advanced Degreed Professionals
    - Labor Certification

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## National Interest Waiver (cont'd)

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- EB-2
- New standard/precedent decision favorable to entrepreneurs: *Matter of Dhanasar* (12/27/16)
  - Exceptional ability or advanced degree
  - Substantial merit and national importance
  - Well positioned to advance endeavor
  - On balance beneficial to US to waive labor certification/job offer required
- Extensive documentation required
- Reference letters critical

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## Permanent Residence Quotas (cont'd)

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- 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

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## *Final Action Date* Visa Bulletin for November 2019

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	01JUN18	01FEB17	01JUN18	01JAN15	01JUN18	01JUN18	01JUN18
2nd	C	15MAR15	C	13MAY09	C	C	C
3rd	C	01NOV15	C	01JAN09	C	01FEB18	C
Other Workers	C	01FEB08	C	01JAN09	C	01FEB18	C
4th	C	C	01JUL16	C	22JUL17	C	C
Certain Religious Workers	C	C	01JUL16	C	22JUL17	C	C
5th Non-Regional Center (C5 and T5)	C	01NOV14	C	08DEC17	C	C	15NOV16
5th Regional Center (I5 and R5)	C	01NOV14	C	08DEC17	C	C	15NOV16

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## Considerations in Employment-Based Applications

- Employer-sponsored or self-sponsored
- Labor certification or extraordinary/NIW
- Filing multiple under different categories?
- Multi-Step Process
  - Department of Labor?
  - USCIS: I-140
  - USCIS: I-485
- Non-Immigrant Status?

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# Questions?

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# For Further Information

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**Andrew J. Zeltner**  
azeltner@klaskolaw.com  
215-825-8679



**Jordan J. Gonzalez**  
jgonzalez@klaskolaw.com  
215-825-2410

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