



After Graduation: Visa and Permanent Residence Options for International Students and Exchange Visitors

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Agenda

- Current immigration “climate”
- OPT and STEM
- Overview of H-1B
- H-1B for Startups
- Alternatives to H-1B
- Permanent residence
- Q&A

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The Current Immigration Climate

- A new administration, a new day
 - Multiple Trump era policies rescinded
- Recovering economy
 - H-1B quota issues
 - Sectors that are still experiencing consistent hiring
- Legislative proposals and regulatory policies in the pipeline
 - Department of Labor wage regulation
 - H-1B Cap Program regulation
- COVID-19 effects on visa processing times
 - Consular Closures 2020 – 2021
 - Reduced USCIS operations
 - Travel Bans

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Post Graduation Employment Options: OPT+STEM and Academic Training

- F-1 students: Post-completion Optional Practical Training (OPT) + STEM extension for certain majors
- J-1 students: Academic Training
- Advice from attorneys:
 - Work closely with your OISS advisors
 - Pay attention to deadlines and correct processes
 - Use your OPT/AT to the max, but plan ahead for the long term

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Post-Graduation and Post-OPT Employment Visa Options



- The “alphabet soup”:
 - **H-1B**
 - L-1A/B
 - O-1
 - E-3 (Australia)
 - E-1/E-2
 - TN (Mexico and Canada)
 - H-1B1 (Singapore and Chile)
 - J-1
 - H-3

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Typical Path: Nonimmigrant to Immigrant



- F-1 Attend school
- F-1 Work on OPT and STEM
 - Submit H-1B(s?) for cap-subject employment
- Work on H-1B – Max is 6 years
- In year #4 – Begin Permanent Residence
- Employer files “Immigrant Petition”
- File “Adjustment of Status”
- Maintain Nonimmigrant Status until PR

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H-1B Visas

- In general:
 - Must be sponsored by a US Employer
 - Must be for a specialty occupation (i.e. role must require a bachelor's or higher degree);
 - Degree must be related to the work being done
 - Employer specific, job specific, and location specific
 - Employer must pay the "prevailing wage" for the geographic area of employment
- Procedure and processing time
 - File Labor Condition Application with DOL
 - File H-1B petition with CIS
 - Change of status or consular visa issuance
 - Processing time
 - 4 to 6 months or more
 - Premium processing to expedite

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H-1B Visas

(cont'd)

- Length of approval and extensions
 - 3 year initial approval and 3 year extension
 - 6 year maximum – any combination of employers
 - Extensions beyond 6 years
 - Recapture time out of U.S.
 - More time allowed if your green card application has progressed far enough:
 - 1 year extension if file labor certification application or immigrant petition one year before expiration
 - 3 year extension if immigrant petition approved and quota backlog

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H-1B Visas

(cont'd)

- Employer specific, job specific, and location specific
 - File an amendment or new petition if anything changes

- 60 day grace period if you resign or are terminated

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H-1B Quota

- What is it, and what does it mean?
 - 65,000 visas for regular filings + 20,000 for those who hold US advanced degrees
- Timing – Based on the Federal fiscal year (starts October 1)
 - Pre-registration period
 - Window timing varies (e.g. 2020 window was March 1, 2020 – March 20, 2020 and for 2021. March 9, 2021 – March 25, 2021)
 - Pre-registration is not a filing; simply evidences the intent of an employer to file a petition if they are selected in the lottery
 - Lottery drawn by April 1st of each year
 - Petition submissions – USCIS provides a 90-day filing window for selected registrations
 - Can there be more than one drawing of registrations?

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Travel and Status Issues

- Travel after H-1B Petition is filed
 - Use your F visa to come back to use OPT?
 - What about your pending H? What happens to petition?
 - Coordinate with your school and your employer
 - Consider delaying travel
- Maintaining status until **October 1**
 - “Cap gap” relief
 - OPT must be valid at time H-1B petition is filed
 - Extends only until September 30

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Quota-Exempt Employment

- Who is ***not*** subject to the quota?
 - Universities
 - Nonprofit institutions affiliated with universities
 - Nonprofit or government research organization
 - Employed “at” university
 - Concurrent employment
 - Previous recent H-1B status (within the past 6 years)

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Strategies to Enhance Chances of Getting H-1B

- File properly and follow pre-registration procedures and timelines
- File multiple years (while on STEM OPT, working abroad, etc.)
- Use a previously-obtained degree if still in graduate school
- Start your own business
 - Can your own business sponsor you as an H-1B employee?

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H-1B Issues for Start-Up Business

- Must establish company with employer tax I.D. number
- Can company be owned by the H-1B employee?
 - Must be W-2 employee
 - Company separate entity from owner/employee
 - Company right of control over employee
- Company must prove
 - Financial ability to pay salary
 - Profits and/or capitalization
 - Real job to be done by H-1B
 - Place of business
- Importance of business plan/financial projections
- Other employees helpful – not required
- Prevailing Wage
 - CEO vs. function-descriptive position
- “Specialty Occupation”
 - Use of concepts learned in courses

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My H-1B Was Not Selected, Now What?

- Go Back to School (F-1)
 - Same degree level vs. next degree level
- Work overseas for an affiliate of your U.S. employer
 - The L-1A/L-1B path
- Look at spouse's status
 - Spouse of J, E and L can work
- Country-Specific Options
 - TN-1, E-3, H-1B1
- Extraordinary Ability O-1
- Investments and Trade: E-1/E-2

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J-1 Visas

- Used frequently by universities and research organizations
- Must be an "Academic" position, such as postdoctoral researcher or comparable. Staff/administrative positions not allowed
- Usually the category is "Research Scholar"
 - Available for 5 years

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Permanent Resident Status

- Family
- Employment
- Investment
- Asylum
- Lottery

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Family

- Spouse of U.S. citizen
 - No quota wait
- All other relationships
 - Long quota wait
 - No interim benefits

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- Submit H-1B(s?) for cap-subject employment
- Work on H-1B – Max is 6 years
- In year #4 – Begin Permanent Residence
- Green card processing is 2 main steps
 - Employer files “Immigrant Petition
 - When can you file Adjustment of Status?
- Maintain Nonimmigrant Status until PR

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Employment Based PR has 2 Main Steps

- Immigrant Petition
 - Based on type of job and qualifications
 - Establishes your “preference category” F-1 Attend school, work on OPT and STEM
- Adjustment of Status
 - Eligibility to file is subject to a quota system
 - Maintain Nonimmigrant Status until PR

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Permanent Resident Status Employment

- **AOS quota system is based on**

(cont'd)

- Priority Level / "preference category"
- Country of birth
- Federal fiscal year
- Filing date is "priority date"
- See the Visa Bulletin

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Questions?



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