



Visa Options Beyond OPT

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Myriam Jaidi
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Myriam Jaidi is a Senior Counsel and assists clients with all types of immigration matters.



Myriam has represented professionals, companies, non-profits, and individuals on a broad range of cases including permanent residence cases (based on labor certification, extraordinary ability and multinational transfers), nonimmigrant matters (B, E, F, H-1B, J, L, O, TN, etc.), family-based sponsorship, and citizenship matters. She is also experienced with defending individuals facing removal and successfully litigating before the Immigration Court and the Board of Immigration Appeals.

Myriam has helped clients navigate the complexities of consular processing (including National Interest Exceptions and other travel ban issues during the coronavirus pandemic) and has assisted individuals with humanitarian forms of relief, including Deferred Action for Childhood Arrivals (DACA), T visas for trafficking victims, U visas for crime victims, Violence Against Women Act (VAWA) relief for battered spouses, parents and children, as well as asylum, withholding of removal, waivers and requests for prosecutorial discretion.

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Agenda

- H-1B Visas
- Startups and H-1Bs
- H-1B Quota and Options for Dealing with H-1B Quota
- Quota-Exempt Employment
- Strategies to Maximize Chances of Getting H-1B
- Recent Challenges with H-1B
- Other Visa Options
- Permanent Residence – Non-employment
- Permanent Residence – Employment
- Entrepreneurs
- Q & A Session

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Non-Immigrant Visas

- Non-Immigrant Status (NIV)
 - H, J, E, L, O, etc.
 - Limited duration
 - Specific to employer
 - Specific to job
 - May require a showing of non-immigrant intent



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H-1B Visas

- H-1B: 'specialty occupation'
 - Employer petitions on your behalf
 - Legal/filing fees – tricky issue. Intended to be paid by employer
 - Position that normally requires at least a bachelor's degree in a related field
 - Employer must agree to pay 'prevailing wage'

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H-1B Visas *(cont'd)*

- Part-time or full-time
- Length of approval
- Extensions
- Maximum in H status 6 years total
- "AC21" extensions
- Portability
- CAP on number of H-1Bs issued each year

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H-1B Quota

- What is it, and what does it mean?
 - 65,000 visas
- Separate quota for US-educated advanced degree holders
 - 20,000 visas

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

- Separate options for Canada, Mexico, Australia, Chile and Singapore
 - TN-1, E-3, H-1B1
- Prospects for change
- Timing
 - February Registration, March Selection, Filing April-June
 - October 1 start date

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Avoiding H-1B Quota

- Exemption based on **employer**
 - Universities
 - Non-profits affiliated with universities (Employed “at” vs. employed “by”)
 - Increased scrutiny of affiliations
 - Non-profit research organizations
 - Government research organizations

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

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

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Strategies to Maximize Chances of Getting H-1B

- Submit for lottery multiple years
- File properly – must qualify when petition filed
- Obtain a U.S. master's degree
- Use previously-obtained degree/experience
- Start your own company to sponsor

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H-1B Issues for Startups

- 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 Startups *(cont'd)*

- Company must prove
 - Financial ability to pay salary (profits/capitalization)
 - Real job to be done by H-1B
 - Place of business
- Business plan/financial projections
- 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?

- Going back to school (F-1)
 - Same degree level vs. next degree level
- Working overseas for U.S. employer
 - The L-1A/L-1B path
- Looking 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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Permanent Residence

- Authorization to live & work indefinitely in the U.S.
- “Immigrant Visa”
- The “Green Card” or “Form I-551”
- Not always ‘forever’ – may be abandoned or taken away
- How to qualify:
 - Family
 - Investment
 - Asylum
 - Employment
 - Diversity lottery

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Nonimmigrant to Immigrant

F-1 – attend school, OPT (or J-1 for Postdocs)



H-1B/L-1 – continue working;
max 6 years total in H-1B



Early as Possible – start thinking about LPR



Maintain nonimmigrant status until eligible to file Adjustment
of Status

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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 Resident Status Employment

- Employer-sponsored or self-sponsored
- Labor certification – default process
- Categories which don't require labor certification:
 - Extraordinary ability/outstanding professor and researcher
 - National interest/exceptional
- Multiple petitions = OK

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Permanent Resident Status Employment

(cont'd)

- Self-Sponsored
 - Extraordinary ability
 - EB-1 (First Preference)
 - Extensive documentation required
 - Reference letters critical
 - Standard is: "One of the small percentage at the top of the field"
 - National or international recognition
 - Same standard as O-1

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Permanent Resident Status Employment

(cont'd)

- Employer-Sponsored
 - Outstanding Professor/Researcher
 - EB-1
 - Extensive documentation required
 - Reference letters critical
 - Standard is: "internationally recognized as outstanding"
 - Requires a qualifying job offer
 - Requires 3 years of experience

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Permanent Resident Status Employment

(cont'd)

- National Interest Waiver
 - EB-2
 - Standard
 - Exceptional ability or advanced degree
 - National priority
 - Examples: increasing employment; increasing exports; new technology
 - Entrepreneurship recognized as national interest
- Extensive documentation required
- Reference letters critical

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Permanent Resident Status Employment

(cont'd)

- Labor Certification Application (PERM)
 - EB-2 or EB-3
 - Employer must:
 - Pay attorney fees and advertising costs
 - Define "minimum requirements"
 - Engage in required recruitment
 - Interview U.S. worker applicants
 - Prove unavailability of qualified, interested, and available U.S. worker
 - Pay prevailing wage
 - Not available to owner of business

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Permanent Resident Status Employment

(cont'd)

- Timing
 - Electronic filing
 - Possibility of audit
 - First of three steps

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Permanent Resident Status Investment (EB-5)

- Amount of investment
 - \$1,050,000 or
 - \$800,000 in "targeted employment area"
- Two possibilities
 - Individual investment
 - Requires 10 full time US citizen or permanent resident employees
 - Regional center investment
 - Indirect employment creation ok
 - 90-95% of all EB-5 applications
- Lawful source of funds
 - Extensive documentation required
 - Can be gift
 - Must prove gifter's source of funds

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International Entrepreneur Parole Program

- Obama -> Trump -> Biden
- Initial Eligibility Requirements
 - Established a U.S. startup business within five years before the application for parole
 - Ownership interest of at least 10%
 - Active role in the operations of the business – not merely an investor
 - Capital investment of at least \$250,000 from qualified U.S. investors
 - Or at least \$100,000 in grants or awards from qualifying U.S. federal, state, or local government entities
 - Investor must have invested at least \$600,000 in startups over last 5 years
 - at least two of the startups must have created at least 5 qualified jobs
 - OR generated at least \$500,000 in revenue with average annualized growth of at least 20%
- If only partially meet the funding requirements can attempt to provide additional compelling evidence of the startup's substantial potential for rapid growth.

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Questions?



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For Further Information



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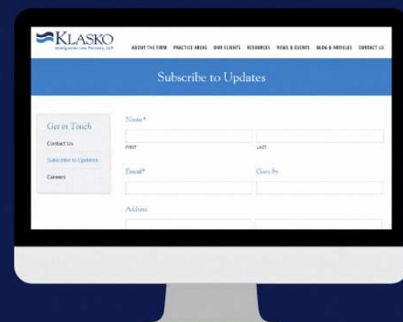
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