Immigration Options for Foreign Students

John Medeiros
Attorney
Myers Thompson P.A.
400 1st Avenue North, Suite 520
Minneapolis, MN 55401
(612) 349-3062
jmedeiros@myersthompson.com

Terminology

- Nonimmigrant
- Immigrant
- Visa
- Visa status
- I-94 Electronic Record
- I-9, Employment Eligibility Verification Form

Agency Overview: Who Does What?

- Adjudicates employment petitions (temporary and permanent)
- Adjudicates individual visa applications through Embassies/Consulates (temporary and permanent)
- Adjudicates Labor Condition Applications (for temporary H-1B petitions) and Labor Certification Applications (for permanent petitions)
**Immigration Options for Foreign Students**

**Nonimmigrant (Temporary) Options**

- F-1 Students (Optional Practical Training)
- J-1 Exchange Visitor
- H-1B visas for workers in “specialty occupations”
- L-1 visas
- O-1 visas for aliens of extraordinary ability
- Country specific options/treaty agreements:
  - Mexico / Canada – TN
  - Australia – E-3
  - H-1B1 – Chile and Singapore

**Select Nonimmigrant Options**

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**F-1 Students (Optional Practical Training)**

- 12 months per higher degree
- Work must be related to field of study
- 17 month extension for STEM degrees, e-verify (may change to 24)*
- Automatic extension to SEP 30 if H-1B is accepted by USCIS for processing

* NOTE: On October 19, 2015, a Notice of Proposed Rulemaking was published in the Federal Register. The purpose of the NOPR is to comply with a recent court decision that vacated the previous rule. Changes would include increasing the STEM extension to 24 months and requiring employers to develop a formal Mentoring and Training Plan. Final regulations have yet to be released.
Travel During Optional Practical Training

- Once petition and change of status is approved, may travel and be admitted to resume employment
- Unclear if employment must be with same employer
- Present EAD, endorsed I-20, and valid F-1 visa
- Reports of denial of entry once H-1B is filed because SEVIS is updated to reflect H-1B filing
- Student who obtained cap-gap extension of OPT may not be readmitted if EAD is expired before October 1.
- Summary: very risky!

J-1 Visas

- Students – Academic Training (18 months; 36 for post doc work)
- Scholar categories – non-tenure track positions
- Two Year home residence requirement
  - No H visa or permanent residence
  - Government financing, skills list, physicians
  - Many not subject to rule
  - Waivers sometimes available

H-1B Visas

- Foreign worker must have at least Bachelor’s degree
- Position must require at least Bachelor’s degree
- Six-year maximum allotted time, no more than 3 years in one petition
- Dual intent allowed
H-1B Expenses

- Petition = $325
- Fraud Fee (initial application) = $500
- Worker Training Fee = $1,500 ($750 for employers with 25 or less workers) *some employers do not pay this
- Premium Processing fee = $1,225
- Attorney fees

H-1B Annual Cap

- 65,000 “new” H-1Bs under current law
  - US advanced degree = 20,000 exemption
  - Chile & Singapore Free Trade Acts
- File up to 180 days in advance (April 1)
- Fiscal year runs from October 1 to September 30

H-1B Cap Exemptions

EMPLOYER:
- Colleges and universities
- Non-profit research institutions
- Government research institutions
- Non-profit organizations affiliated with colleges/universities
H-1B Cap Exemptions

BENEFICIARY:

- J-1 physician who received state health office-based waiver
- Previously counted toward the cap in past six (6) years and not left the country for more than one year after attaining status

H-1B Considerations

- Changes of employment with same or different employer
- Benching
- Early termination and cost of transportation home
- Lost job = lost status
- Dual intent

L-1 Visas

- Intracompany Transferee
- Qualifying relationship between U.S. company and company abroad
- 1 year of employment abroad in specialized knowledge, managerial or executive position
- U.S. position:
  - L-1A (managers/execs) = 7 years (3, 2, 2)
  - L-1B (specialized knowledge) = 5 years (3, 2)
O-1 Visas
- Aliens of “extraordinary ability” (having risen to top of field)
  - Prizes/Awards
  - Judging work of others
  - Selective professional memberships
  - Publication of scholarly books/articles
  - Critical employment with prestigious organizations
  - Publications about work
  - High salary relative to others

Country Specific: TN Visas
- Under North American Free Trade Agreement (NAFTA)
  - Canadian and Mexican citizens only
  - Valid up to three years
  - List of professional occupations
  - Does not allow for dual intent

Country Specific: H-1B1
- Citizens of Singapore (5,400) or Chile (1,400) only
  - Same eligibility requirements as H-1B
  - No limitation regarding one year extensions, but H-1B1 time counts toward H-1B durational limit
  - Does not allow for dual intent
Country Specific: E-3 Visas

- Australian citizens only
- Specialty Occupation – like H-1B
- Apply at US consulate with LCA and Job Offer letter
- 10,500 annual cap
- Does not allow for dual intent

Immigration Options for Foreign Students

Immigrant (Permanent) Options

Permanent Residence

- Legal ability to permanently live in United States
- Employment in the occupation of your choice without prior approval from USCIS or the DOL
- Travel that does not require a visa to return
- Ability to obtain U.S. citizenship
Selected Immigrant (Permanent) Options

- Employer-sponsored immigration
- Family-based immigration*
- Diversity Visa Program*
- Asylum/Refugee *

* For the purposes of this presentation, we will not discuss these options

Employment-Based Immigration

Group 1: Priority Workers, Aliens with Extraordinary Ability

- Aliens with extraordinary ability in sciences, arts, education, business or athletics demonstrated by sustained national or international acclaim.
- Evidence of a major, one-time achievement (i.e., Nobel Prize),

OR...

Employment-Based Immigration

Meet at least THREE of the following:

- Lesser awards/prizes with national/international recognition (academic awards to students are generally ignored)
- Membership in organization (membership based on achievement)
- Published material about the individual in professional publications
- Service involving judging work of others in the field
- Original scholarly contributions of major significance
- Authorship of scholarly articles in the field
- High salary relative to others in the field
- Comparable evidence if relevant
Employment-Based Immigration

Group 1: Outstanding Professors & Researchers

• Recognized internationally as “outstanding” in a particular field
• Three years teaching or research experience
• Requires tenured-track or comparable research position at university or private employer that employs at least three (3) persons in full-time research activities

Employment-Based Immigration

Meet at least TWO of the following:

• Major prizes or awards in the field
• Membership in selective organizations requiring achievement
• Published material about the applicant’s work
• Service involving judging work of others in the field
• Original scholarly contributions to the field
• Authorship of scholarly books/articles in the field

Employment-Based Immigration

PROBLEMS/PITFALLS

• One piece of evidence in more than one category
• USCIS seems to place emphasis on post-degree achievements
• Recommendation letters that make the applicant appear diminished
• Letters from people who are not objective (employer, advisors, friends)
• Graduate Assistantship is not a major prize
• Membership requires more than paying annual dues
• USCIS seems to place a different standard in this definition than it places on the O-1 classification, which uses the same definition
Employment-Based Immigration

Group 1 – Multinational Managers & Executives

- Employed abroad at least 1 year (in the last three years) in a managerial/executive position by qualifying entity related to US company.
- Seeks to enter United States to render services for US company that are managerial or executive in nature.
- Manages/Directs organization, people and/or critical function in company

Group 2 – Professionals with Advanced Degrees

- Advanced degree is anything above Bachelor’s degree (Master’s, Ph.D., MD, etc.)
- Foreign equivalents must be a SINGLE degree (not a combination of education, training or experience)
- Advanced degree is also a Bachelor’s degree plus at least 5 years of progressively responsible experience

Group 2 -- National Interest Waivers

- Criteria:
  - Work in the field is of “substantial intrinsic merit”
  - Benefit of the proposed activity will be national in scope
  - National interest supersedes the national interest of the labor certification process (which is to protect the U.S. worker)
- Sciences, arts, professions or business fields
- Waives labor certification requirement and job offer
Employment-Based Immigration

Group 3 – Professionals, Skilled Workers, Other Workers

- Professional = Bachelor’s degree (or foreign equivalent degree or combination of education, training and/or experience)
- Skilled Worker = Full-time permanent job requiring at least two years training or work experience.
- Other Workers = Those with less than two years of training and/or work experience

Step One: Labor Certification (PERM)

- Process designed to protect the U.S. worker
- Employer must show it is unable to find a qualified, willing and able U.S. worker (definition changes for universities, where they must show that the alien is the best suited candidate for the position)
- Group 1 exempt from this process, as well as Group 2 National Interest
- Requires the employer to undergo extensive recruitment for professional positions
- Factors that affect the PERM process: wages, labor market conditions, visa backlogs, employee performance
- 1 year H-1B extension if 365 days have passed since filing of LC

Step Two: Immigrant Visa Petition (I-140)

- Employer is petitioner except with EB-1 extraordinary ability petition and EB-2 national interest waiver
- Stage where employer shows alien qualifies for the certified position
- Does NOT grant status to the alien; simply classifies the alien in a qualifying category
- Category is determined by what the position requires, not the alien’s qualifications
- 1 year H-1B extension if 365 days have passed since filing of I-140
- 3 years H-1B extension if I-140 is approved and visa is backlogged
**Employment-Based Immigration**

**Step Three: Adjustment of Status (USCIS) or Consular Processing (DOS)**

- Requires that a permanent visa is available at the time of applying
- Availability of visas updated each month by the Department of State and printed in the Visa Bulletin (http://travel.state.gov/content/visas/en/law-and-policy/bulletin.html)
- Currently, 2nd preference backlogs for India and China, and 3rd preference backlogs for everyone
- Adjustment of status allows family members to apply for work and travel authorization

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### Visa Bulletin for March 2016

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**Questions?**

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