Work Visa and Green Card Options for International Students (FSU)

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This presentation does not constitute direct legal advice and is for informational purposes only. The information provided should never replace informed counsel when specific immigration-related guidance is needed.
General

• All non-U.S. citizens and non-permanent residents require a visa to enter the U.S.
• Employer may sponsor an employee for nonimmigrant visa to authorize work
• Nonimmigrant visas are valid for temporary period ("work visas")
• Employer may sponsor an employee for permanent residence ("green card")
General

• Definitions of “status” and “visa”
• Visas are issued at U.S. Embassies and Consulates abroad and are required to enter the US (Exceptions: VWP / Canadians)
• Status is your immigration status while in the U.S. which is governed by Form I-94.
New! Entrepreneur Parole Rule – effective 07/15/2017

• Available to start-up companies formed within the last five years.
• The entrepreneur must own at least 10% of the start-up.
• The entrepreneur must have a “qualified investor” who invests at least $250,000 in the start-up OR get a grant or award of at least $100,000 from a government agency OR show he or she can partially meet one of the first two and can present other compelling evidence showing a substantial potential for rapid growth and job creation.
• A qualified investor must have invested a total of at least $600,000 in start-ups over the last five years and at least two of the start-ups created at least five qualified jobs OR generated at least $500,000 in revenue with average annualized revenue growth of 20% or more.
• The entrepreneur must be playing a central and active role in the start-up.
• Parole is granted for up to 30 months and can be extended for up to 30 more months.
Recent Updates

**Paperless I-94 cards!** CBP has fully implemented a paperless I-94 system.

- Instead of using a paper Form I-94 Arrival/Departure Record, CBP collects travelers’ information in advance by accessing their electronic travel information (e.g., flight manifests). Only at airports and sea ports – still paper I-94 at land border ports of entry (e.g., Canada/Mexico).

- In order to prove status to employers for I-9 employment verification, schools for enrollment verification, and/or state and federal government agencies, **you must access, print and retain your electronic Arrival/Departure Record online at www.cbp.gov/I94.**

- **GREEN CARD LOTTERY REGISTRATION PERIOD IS CLOSED.**
Recent Updates

• Changes to Visa Waiver Program (VWP):
  – VWP permits visa-free travel for eligible citizens of 38 countries (*Western Europe, Japan, Australia, S. Korea, Taiwan, etc.*)
  – On 12/18/2015, Congress enacted HR 158 “Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015”
  – Act imposes restrictions on VWP travel for certain individuals
Recent Updates

• New restrictions:
  – Act prohibits certain individuals from traveling to U.S. without a visa on VWP:
    • Nationals of VWP countries who have traveled to Iran, Iraq, Syria, or Sudan (except South Sudan) after March 1, 2011 (unless for military service or government duties)
    • Nationals of VWP countries who are also dual citizens of Iran, Iraq, Syria, or Sudan
  – These travelers must apply for U.S. visas before travel to U.S.
Recent Updates

• Executive Order (EO) issued on 01/27/17 barring nationals from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen from entering the U.S. for a period of 90 days; suspending admission of all refugees for a period of 120 days; and suspending admission of Syrian refugees indefinitely.

• 9th Cir. Court of Appeals upheld nationwide TRO on the travel ban. CBP is not currently enforcing the travel ban as portions of it have been deemed unconstitutional.

• If you are a national of (or born in) Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen and are:
  – In the U.S., we recommend: Refraining from travelling outside the United States.
  – Outside of the U.S., we recommend: Returning to the United States as soon as possible.
CPT and OPT

• On-campus employment (20 hrs/week) – approved through International Student Office (ISO).

• Curricular Practical Training (CPT) – *please check with ISO re: procedures.*
  • Allows work/study, internship, or any other type of internship offered by sponsoring employers through cooperative agreements with the school. Must be a part of an established curriculum.

• Optional Practical Training (OPT) – 1 year *please check with ISO re: procedures*
  • Training must be in major field of study
  • Must wait for EAD card to start working
  • Make sure Form I-20 is endorsed for employment
NEW OPT STEM Extension

24-Month Extension of OPT (total of 36 months) - EFFECTIVE MAY 10, 2016 NEW RULES – 24 months instead of 17 months. Check with ISO for procedures!!!

• STEM degree graduates only (Science, Technology, Engineering, Mathematics) – check Form I-20 for code.
• ICE list of designated STEM degree programs to include other related fields so make sure you check the list at: www.ice.gov/sevis.
• Training position must directly relate to degree major
• Employer must be registered with E-Verify
• Check the DHS website for add’l information: https://studyinthestates.dhs.gov/stem-opt-hub.
After OPT: **What are the Options?**

**H-1B Specialty Occupation Visa requirements:**

- Must hold *bachelor’s degree or foreign equivalent* in a specific specialty (e.g., Engineering, Accounting, Economics, etc.)
- Job must **require** at least bachelor’s degree in specialized field to perform the duties of the position (E.g. *Financial Analyst, Accountant, Engineer, Account Executive, Operations Analyst, Computer Scientist, Software Engineer, Graphic Designer*, etc.)

- “Specialty occupation” – requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor’s or higher degree in the specific specialty as a minimum for entry into the occupation
- Employer-specific; part-time or full time; 6 year maximum; granted in 3 year increments; At-will employment
Nonimmigrant Visas (H-1B)

• The H-1B Quota
• Fiscal Year (FY) October 1 to September 30
• H-1B Quota/Cap – *private employers only*
  – 65,000 per fiscal year
  – Additional 20,000 for U.S. graduates with MA or higher degree

• How early can you file an H-1B? *April 1*
Nonimmigrant Visas (H-1B)

H-1B Cap – Timing Issues and History:

- “March Madness”
- FY 2010 – cap reached December 21, 2009
- FY 2012 – cap reached November 22, 2011
- FY 2013 – cap reached June 11, 2012
- FY 2014 – cap reached April 5, 2013
- FY 2015 – cap reached April 7, 2014 (172,500)
- FY 2016 – cap reached April 7, 2015 (233,000)

- FY 2017: On April 7, 2016 USCIS announced that the H-1B cap was reached and a lottery was conducted (236,000)
Nonimmigrant Visas (H-1B)

H-1B “Cap-Gap” Provision

• Applies to all F-1 students who timely file H-1B petition during acceptance period (on or after April 1)
  – Timely = while D/S is still in effect (valid I-20, valid OPT, or within 60 day grace period).
  – F-1 status and work authorization automatically extended for at least a period through June 1 – check with ISO re: procedures. (MUST be filed prior to OPT exp.)
  – IF selected, F-1 status and work auth. extended until adjudicated or September 30.
  – If denied/rejected, you have 60 days from date of notification to depart the U.S., re-enroll in school, or file a change of status.
Nonimmigrant Visas (H-1B)

- Entities **not** subject to H-1B cap ("Cap-exempt"):  
  - Institutions of higher education (universities, colleges, teaching hospitals);  
  - Non-profit organizations affiliated with institutions of higher education (must have affiliation agreement)  
  - Others may qualify; must look at IRS-designation
**F-1/H-1B Cap-Gap Relief**

- Review your dates and timeline of your case closely to ensure “cap gap” relief.
- Apply for OPT keeping this timeline in mind so you are able to remain in the US during H-1B lottery.

**Timeline:**

- **Graduation:** June 2016
- **OPT starts:** July 2016
- **OPT ends:** July 2017
- **File H-1B on:** April 1, 2017
- **CAP-GAP PERIOD:** October 1, 2017 (H-1 starts)
Nonimmigrant Visas (H-1B)

• Validity period of H-1B visa:
  – 3 years, plus 3-year extension (total 6 years)
  – May extend beyond 6-year maximum if:
    • Green card started more than 1 year before H-1B expiration (will get 1-year extensions)
    • Immigrant visa (I-140) approved, but employee may not file adjustment application (I-485) because subject to visa retrogression (will get 3-year extensions)

• Spouse/children: H-4 visa (no work authorization, except if certain I-140s approved)
Nonimmigrant Visas (H-1B)

• Employer’s responsibilities:
  – Pay all H-1B expenses, including attorney and filing fees (except optional premium processing fee)
  – Pay required wage (“prevailing wage”) - you can find this at: http://www.flcdatacenter.com
  – Must offer same benefits as to U.S. workers
  – If H-1B worker terminated, must notify USCIS & pay for return transportation home (if worker returns home)
Nonimmigrant Visas (H-1B)

- H-1B USCIS filing fees:
  - Form I-129 fee: $460
  - Fraud prevention and detection fee: $500 (only with initial filing)
  - ACWIA/Training fee (*only for cap-subject employers*):
    - $1,500 for employers with 26 or more employees
    - $750 for employers with 25 or fewer employees
  - Premium processing fee (optional): $1,225
Nonimmigrant Visas (H-1B)

- Employer-specific visa (must work for sponsoring employer only) – fraud investigations/audits.
- May work for multiple employers (need concurrent petitions)
- May work full-time or part-time
- May transfer to another employer if transfer petition is filed
- Material changes to employment (salary, duties, location, hours) may require amended petition
The Cap has been met, now what?

Alternatives to the H-1B...
Nonimmigrant Visas (E-3)

• E-3 Treaty Visa requirements:
  – Beneficiary must be Australian citizen
  – “Specialty Occupation” visa (similar to H-1B) – requires LCA/prevailing wage.
  – Valid for 2 years with indefinite extensions
  – May apply at Consulate

• Spouse/children: E-3 Dependent visa (may apply for work authorization)
Nonimmigrant Visas (TN)

- **TN (Trade NAFTA) Visa requirements:**
  - Applicant must be citizen of Canada or Mexico
  - NAFTA “professions” listed in TN Appendix 1603.D.1 of NAFTA.
    - [http://travel.state.gov/content/visas/english/employment/nafta.html](http://travel.state.gov/content/visas/english/employment/nafta.html)
  - May work full-time or part-time for U.S. employer (self employment NOT permitted)
  - Applicant must meet occupational qualifications listed in NAFTA (*Graphic Designers, Engineers, Management Consultant, Computer Systems Analyst, etc.*)
  - Graphic Designer: BA or AA + 3 years of experience
Nonimmigrant Visas (TN)

- TN visa valid for 3 years (may be extended indefinitely)
- Applicant must maintain nonimmigrant intent
- May apply at border (for Canadians) or at consulate (for Mexicans)
- Extensions may be filed with USCIS
- Spouse/children: TD visa (no work authorization)

What will happen during Trump Administration?...
Nonimmigrant Visas (I Visas)

Representatives of Foreign Media

- Represent a foreign information media outlet (press, radio, film, or other foreign information media)
- Are coming to the United States to engage solely in this profession; and
- Have a home office in a foreign country

Occupations under this category include reporters, writers, bloggers, journalists, film crews, editors, and similar occupations. Any spouse and children under the age of 21 may accompany or follow to join an I nonimmigrant.

- **Eligibility Criteria**
  - You must demonstrate that you are a bona fide representative of foreign media whose activities are essential to the functions of your organization.
  - The consular officer at the U.S. embassy will determine whether an activity is qualifying in order to obtain a nonimmigrant visa.
Nonimmigrant Visas (E visas)

• General requirements:
  – Requisite treaty between U.S. & country of citizenship – must check to see if you are eligible, based on treaty list: http://travel.state.gov/content/visas/english/fees/treaty.html
  – Enterprise and Individual must share “treaty nationality”
  – Spouses and children receive E-1/E-2 dependent visas & spouses can apply for work permit – unrestricted employment

• E-1 Treaty Trader
  – 50% trade must be between Treaty Country and U.S.
  – Import-export
Nonimmigrant Visas (E-2)

- **E-2 Treaty Investor:**
  - Must make “substantial investment “ in U.S. company
  - Must be executive, manager or essential employee -- must have nationality of treaty country. (*E.g. Company in U.S. is 50% Korean owned; can hire Korean national employee/manager under E visa*)
  - Visa granted for up to 5 years; may extend indefinitely
  - Allows for self-employment
  - Spouse/children: E-2 Dependent Visa (may apply for work authorization)
  - Must intend to depart U.S. – when visa ends
Nonimmigrant Visas (L-1)

L-1A Multinational Executive/Manager Visa or L-1B Specialized Knowledge (for related companies abroad)

- One-year abroad at parent, affiliate or subsidiary as an executive, manager or specialized knowledge individual
- Must be coming to U.S. to fill executive, managerial or specialized knowledge position
- Based on corporate relationship of foreign entity and U.S. entity (parent, subsidiary, affiliate, etc.)
Nonimmigrant Visas (L-1)

• National of any country - No quota
• Length of visa
  – Start up 1 year
  – Established business 3 years
  – Maximum length 7 years
• “New office” L for new companies – only good for 1 year. Good option for start-up. Must show continued revenue/business to renew.
• Spouses and children receive L-2 visa and spouses may apply for work permit – unrestricted employment
• Good basis for EB-13 green card
Nonimmigrant Visas (O-1)

• O-1 Extraordinary Ability Visa requirements:
  – Must demonstrate “sustained national or international acclaim and recognition for achievements”
  – Must show that has risen to the top of the field

• Spouse/children: O-3 visa (no work authorization)
Nonimmigrant Visas (O-1)

- Must meet at least 3 of the following criteria:
  - National or international awards
  - Membership in associations in the field that require outstanding achievements
  - Published material about beneficiary
  - Participation as a judge of the work of others
  - Original scientific or scholarly contributions of major significance
  - Authorship of scholarly articles in professional journals
  - Employment in a critical/essential capacity for organizations with distinguished reputation
  - High salary or remuneration for services
Nonimmigrant Visas (O-1)

• Suggested evidence in support of petition:
  – Confirmation of achievements (publications, presentations, peer-review or editorial duties, awards, memberships, etc.)
  – Reference letters (8-10) from experts in the field
  – Press about beneficiary or his/her work

• Present as much evidence as possible to meet more than 3 criteria

• O-1 visa may be stepping stone for green card
Nonimmigrant Visas (P Visa)

• P-1A Internationally Recognized Athlete: coming to U.S. to perform at a specific athletic competition as an individual athlete or as part of a team, at an internationally recognized level of performance

• P-1B Member of Internationally Recognized Entertainment Group: coming to U.S. to perform as a member of an entertainment group that has been recognized internationally as outstanding

• P-2 Performer (Reciprocal Exchange Program)
Interviewing Strategies

• Use EAD as stepping stone to prove yourself
• Be upfront about immigration status
• Ask about company sponsorship policies
• Offer to recommend immigration attorney if you have already done research & prep.
• Explain benefits of hiring international staff
Why Hire International Staff?

• International life and work experience
• Multi-lingual communication skills
• Understanding of global cultures, markets, and business practices
• Ability to work internationally
• Fresh perspectives and new problem-solving skills
• Diversity in the workplace
Immigrant Visas or “Green Cards”

• Immigrant visa is path to permanent residence (two- or three-step process)
• Options depend on job, employee’s qualifications, employer’s involvement
• Each case is analyzed individually to determine the best strategy
Green Card Options

• DV Green Card Lottery (www.travel.state.gov)
  – 50,000 green cards – APPLY!!!
  – Registration period will be October 2017 – November 2017 (similar period each year) – ONLINE REGISTRATION IS CLOSED.
  – FREE - no application fee
  – Must be eligible to participate – for people from countries with low immigrant populations in the U.S.
  – Must have high school education, or its equivalent, or two years of qualifying work experience
Green Card Lottery

- Based on country of birth (not citizenship)
- Natives of countries who have sent more than 50,000 immigrants to the U.S. over the past 5 years are not eligible:
  - BANGLADESH, BRAZIL, CANADA, CHINA (mainland-born), COLOMBIA, DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, HAITI, INDIA, JAMAICA, MEXICO, NIGERIA, PAKISTAN, PERU, PHILIPPINES, SOUTH KOREA, UNITED KINGDOM (except Northern Ireland) and its dependent territories, and VIETNAM.
  - Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.
- “Cross-charge” to spouse’s country of birth
Family-Based Green Cards

- Immediate Relative of USC: spouse, parent, minor children of U.S. citizens
  - Immediate benefits – work permit and travel document within 2-3 months
  - 6-8 month processing
  - Conditional 2 year green card (marriage cases)
  - Adult child must be 21 years old to sponsor parent
- Same-sex couples are eligible for immediate benefits as well.
Family-Based Green Cards

• Unmarried Adult Children of U.S. citizens (F1) (8 year backlog)
• Spouse/Child of Legal Permanent Resident (LPR) (F2A) (1 year backlog)
• Unmarried adult children of LPR (F2B) (7 year backlog)
• Married adult children of U.S. citizens (F3) (12 year backlog)
• Brothers and sisters of U.S. citizens (F4) (12 year backlog)

***Check www.travel.state.gov for most recent Visa Bulletin and dates***
Employment-Based Green Cards (EB-1 through EB-5)

• EB-1 (First Preference)
  – Aliens of Extraordinary Ability (EB-11)
    • May self sponsor – which is popular in the arts
    • Very high standard of evidence – top of your field
  – Outstanding Researchers/Professors (EB-12)
  – Multinational Executives and Managers (EB-13)
    • Higher standards
    • Faster processing and wait times

• Check DOS Visa Bulletin (www.travel.state.gov) for monthly updates and changes.
Employment-Based Green Cards

• **EB-2 (Second Preference)**
  – PERM for Advanced Degree Holders
    • Masters or higher degree or foreign equivalent
    • BA plus five years progressive experience
  – Schedule A, Group II Alien of Exceptional Ability in Arts, Sciences or Performing Arts
  – National Interest Waiver (NIW) – you are working in a field that is in the “national interest” – *entrepreneurs*?

• **EB-3 (Third Preference)** – PERM
  – Professionals with BA degree or foreign equivalent
  – Skilled Workers with 2 years experience
  – Other Workers
Employment-Based Green Cards

• PERM Labor Certification process:
  – Test of local labor market for available U.S. workers, able, willing and qualified for the job
  – Recruitment conducted before applying to DOL
  – If no able, willing and qualified U.S. workers, DOL will certify PERM application
  – If U.S. worker applies for the job and meets the minimum requirements, application may be denied

• General Processing Times:
  – PERM: 3-4 months if no audit
  – I-140: 6-9 months (15 days if premium)
  – I-485: 9-12 months
PERM-Based GC

- **Step 1: PERM Labor Certification process**
  - Employer must conduct “good faith” recruitment efforts and show there is no qualified U.S. worker to do the job

- **Step 2: I-140 Immigrant visa petition**
  - Employer must show “ability to pay”

- **Step 3: I-485 Application to Adjust Status to Permanent Residence (AOS)**
  - Can only be filed once your priority date becomes “current”
  - Receive work and travel authorization within 60-90 days of filing AOS
PERM-Based GC

• If no visa retrogression, beneficiary may file Adjustment of Status Application (I-485)
• Visa retrogression:
  – Backlog in immigrant visa availability for certain categories (EB-3 for all countries; EB-2 for China and India)
  – Not eligible to file I-485 until priority date (PD) becomes current
  – PD established when PERM filed
Other Green Card Options (NIW)

- National Interest Waiver (EB-2) requirements:
  - Work has substantial merit and national importance
  - Beneficiary is qualified to further this work; and
  - It would be beneficial to the U.S. to waive the job offer and labor certification requirements.
  - May self-sponsor but must demonstrate above + advanced degree or exceptional ability + future U.S. job.
  - New case: *Matter of Dhanesar* – expanded the NIW option for entrepreneurs and self-employed ventures.
Other Green Card Options

- **EB-4**
  - Religious Worker visas

- **EB-5 Investor program**
  - Million Dollar Investor Green Card (stand alone)
  - or $500,000 in area of high unemployment
    - Must create 10 direct jobs (full-time)
    - Source of funds issues

- **EB-5 Regional Center programs**
  - $500,000 in program pre-approved by USCIS
  - Pooled investment (passive)

*EB-5 backlogs for China – 2 years. Current for all others*
Thank you for attending

Questions?

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