

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.

Recent Updates

***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 2011- cap reached January 27, 2011
- 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)

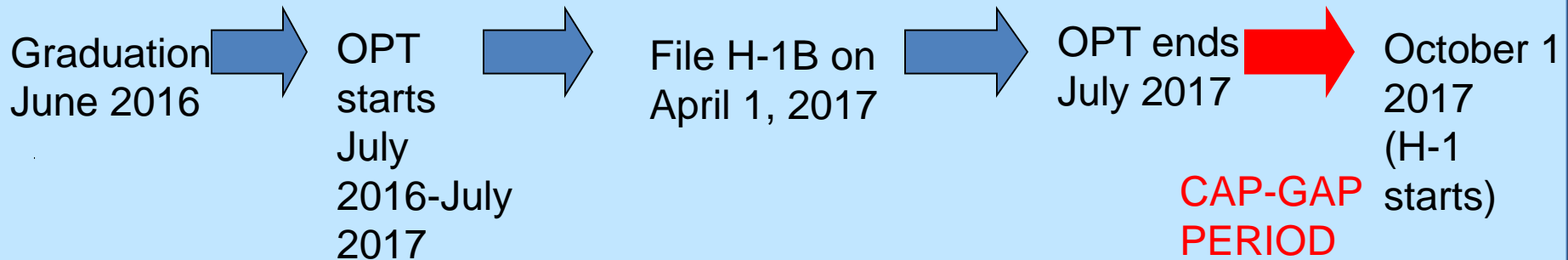
H-1B “Cap-Gap” Provision

- 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.

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/prevaling 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>)
 - 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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Presenter

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