

Immigration Options After Graduation

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US Immigration: Basic Concepts

- Non-Immigrant Visa
- Lawful Permanent Resident/Immigrant Visa (Green Card)
- Citizenship (Naturalization)



Basic Terminology

- “Status” (“immigration status” or “visa status”)
 - NOT governed by the visa in the passport
 - Governed by an I-94, Arrival-Departure Record



Most Recent I-94

Admission (I-94) Record Number : 51415565885

Most Recent Date of Entry: 2017 July 25

Class of Admission **F1**

Admit Until Date **D/S**

Details provided on the I-94 Information form:

Last/Surname : [REDACTED]
 First (Given) Name : [REDACTED]
 Birth Date : [REDACTED]
 Passport Number : [REDACTED]
 Country of Issuance : China

Department of Homeland Security
 U.S. Citizenship and Immigration Services

I-797A, Notice of Action

THE UNITED STATES OF AMERICA

RECIPIENT SAC: [REDACTED]	OFFICE: I-229 SECTION FOR A NONIMMIGRANT WORKER
RECEIVED January 7, 2011	PETITIONER [REDACTED]
NOVEMBER 11, 2011	STATUS: A
PO BOX [REDACTED] BOSTON MA 02242-1887	Notice Type: Approval Notice CLASS: H1B Valid from 01/31/2011 to 12/14/2013

The above petition and change of status have been approved. The status of the named foreign national in this classification is valid as indicated above. The foreign worker may work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization stems from the filing of this petition, ongoing employment authorization documentation is not required. Please contact the USCIS call center for more information.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the upper part with his or her Form I-94, Arrival-Departure Record. This should be carried in with the I-94 when reentering the U.S. The USCIS will send him or her a new one. A person cannot change status without a petition. The petitioner may apply for the status in this case without a petition, but only if they are in a pre-flight inspection station. The petitioner may also file this form. **Attachment to Form I-797A, Notice of Action**, with this office to ensure that we notify a consulate, port of entry, or pre-flight, inspection station of this approval.

The approval of this new petition does not in itself grant the final status and does not guarantee that the alien beneficiary will be admitted to the United States. For admission to the United States, the alien must obtain, change, or adjust status.

THIS FORM IS NOT A VISA AND MAY BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SERVICE
 VERMONT SERVICE CENTER
 15 JONES BUILDING STREET
 EAST ALBANY VT 05478-0001
 Customer Service Telephone: (800) 375-5289
 Form I-797A (Rev. 06/20/10)

Detach This Half for Personal Records

Receipt # USCIS: [REDACTED]	Receipt Number USCIS: [REDACTED]
I-94# [REDACTED]	Immigration and Naturalization Service
NAME [REDACTED]	I-94
CLASS H1B	Departure Record
VALID FROM 01/31/2011 UNTIL 12/14/2013	Petitioner: [REDACTED]
PETITIONER: [REDACTED]	



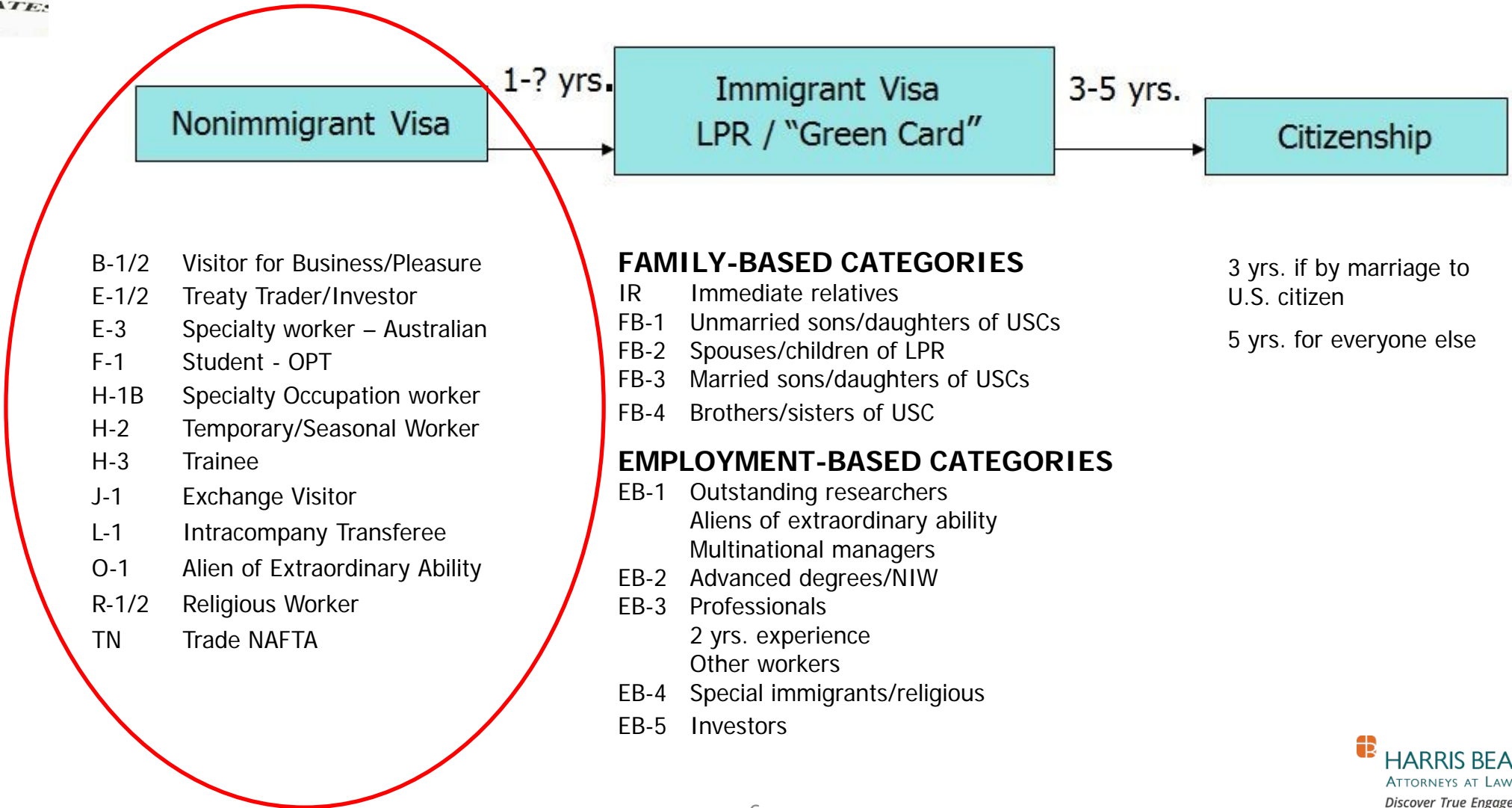
Basic Terminology

- “Green Card” = Lawful Permanent Resident
 - NOT a United States citizen





Overview of US Immigration Process



- B-1/2 Visitor for Business/Pleasure
- E-1/2 Treaty Trader/Investor
- E-3 Specialty worker – Australian
- F-1 Student - OPT
- H-1B Specialty Occupation worker
- H-2 Temporary/Seasonal Worker
- H-3 Trainee
- J-1 Exchange Visitor
- L-1 Intracompany Transferee
- O-1 Alien of Extraordinary Ability
- R-1/2 Religious Worker
- TN Trade NAFTA

FAMILY-BASED CATEGORIES

- IR Immediate relatives
- FB-1 Unmarried sons/daughters of USCs
- FB-2 Spouses/children of LPR
- FB-3 Married sons/daughters of USCs
- FB-4 Brothers/sisters of USC

EMPLOYMENT-BASED CATEGORIES

- EB-1 Outstanding researchers
Aliens of extraordinary ability
Multinational managers
- EB-2 Advanced degrees/NIW
- EB-3 Professionals
2 yrs. experience
Other workers
- EB-4 Special immigrants/religious
- EB-5 Investors

3 yrs. if by marriage to U.S. citizen
5 yrs. for everyone else

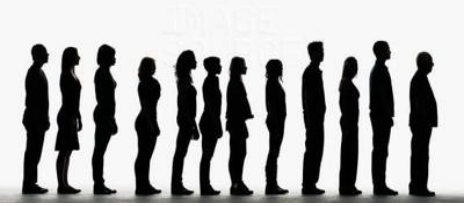


H-1B Basics

- “Specialty Occupation” – job must require BA/BS or equivalent in a specific field for entry-level requirement
 - And employee must have a degree related to the specialty occupation

- Employer-employee relationship
 - W-2 employee
 - Employer-specific – no moonlighting, but can have concurrent H-1Bs
 - Off-site/remote employment permitted if petitioner retains control over work, salary, etc.

- Granted for up to 3 years at a time; maximum of 6 years in H-1B status
 - With some exceptions if going through the green card process



H-1B visas: the numerical cap

H-1B Visas Currently Capped at 65,000 per year

- Cap exemptions for colleges/universities, non-profit/governmental research organizations, and non-profits that are affiliated with colleges/universities
- Fiscal Year (FY) begins October 1; Applicants for H-1Bs can apply 6 months in advance, or on/after April 1 each year

Advanced Degree Allocation

- 20,000 visas reserved for graduates of Master's or higher degree programs from a U.S. college or university

****USCIS received nearly 800,000 (!) submissions in the 2023 lottery, for 85,000 visas**



H-1B Cap Subject vs. Cap Exempt

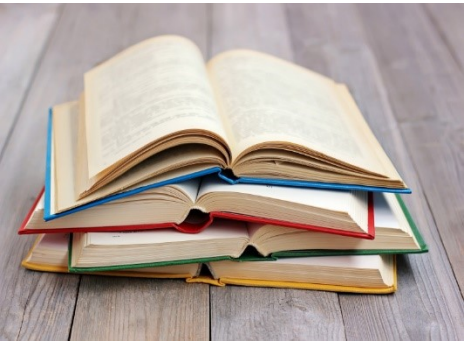
- **NO numerical cap for:**
 - Colleges/universities
 - Nonprofit or government research organizations
 - Nonprofit entities that are affiliated with or related to institutions of higher education
 - Concurrent employment with, or employment at, a cap-exempt entity

- **Transferability limitation**
 - General rule: can transfer from one H-1B employer to another upon submission of new H-1B petition (“portability”)
 - Cap-exempt personnel have limited ability to transfer to cap-subject employer if H-1B numerical cap has been reached
 - Can transfer to another cap-exempt organization
 - Cannot transfer to a non-exempt organization (cap-subject), without going through the H-1B lottery



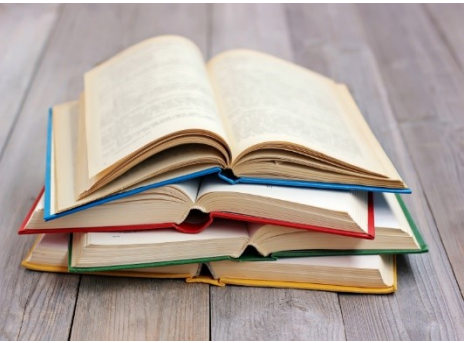
Alternatives to the H-1B

- TN (Trade NAFTA) for Canadians and Mexicans in specified professions
- Special Free Trade Hs for Chileans and Singaporeans
- E-2s for investors
- E-3s for Australian professionals
- O-1s (Aliens of Extraordinary Ability)
- F-1 students (CPT and OPT)
- H-2Bs for temporary need (usually unskilled workers)
- J-1s for exchange visitors



Work Authorization Options for F-1 Students

- **Post-completion Optional Practical Training (OPT)**
 - Temporary employment that is directly related to an F-1 student's major area of study. Eligible students can apply to receive up to 12 months of OPT employment authorization after completing their academic studies
 - Fewer restrictions than H-1B
 - Not employer-specific (just requires that it be related to degree field)
 - No prevailing wage requirements
 - No "specialty occupation" inquiry
 - Can serve as bridge between completion of degree program and obtaining H-1B visa



Work Authorization for F-1 Students (con't)

- **STEM OPT Extension**
 - If a student has earned a degree in certain science, technology, engineering and math (STEM) fields, she may apply for a 24-month extension of her post-completion OPT employment authorization if she:
 - Is an F-1 student who received a STEM degree included on the STEM Designated Degree Program List
 - Is employed by an employer who is enrolled in and is using E-Verify, and
 - Received an initial grant of post-completion OPT employment authorization based on her STEM degree.
 - Employer and student must jointly complete a detailed Training Plan to describe the training to be received and the supervision of the foreign student's practical training experience
 - Can facilitate multiple entries in H-1B lottery and multiple opportunities for selection



Treaty-Based Visas

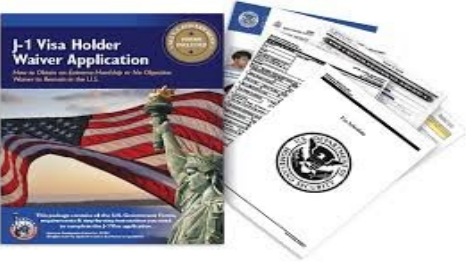
- Several options very similar to the H-1B, but limited to nationals of specific countries by way of treaties with the United States
- Like the H-1B, (almost) all require the “specialty occupation” analysis and for the beneficiary to possess a related bachelor’s degree or higher
 - H-1B1: nationals of Chile and Singapore
 - E-3: nationals of Australia
 - TN: nationals of Canada and Mexico
 - The TN is slightly different in its requirements, in that the NAFTA/USMCA treaty between US/Canada/Mexico lists specific occupations that will qualify – most are the standard “professions” (engineer, scientist, accountant, lawyer, etc.), with a few categories that don’t actually require a bachelor’s degree (management consultant, scientific technician)



J1VISA.STATE.GOV

J-1 Cultural Exchange Visas

- **INTENDED AS A 'CULTURAL EXCHANGE' OPPORTUNITY**
 - Administration through U.S. Dept. of State
 - Employer must be authorized by DOS to sponsor J-1 visas themselves (universities, hotel chains, medical centers) OR
 - Employer must work through approved sponsoring agencies for defined categories: J-1 Trainees, Summer Work Study, etc.
 - Approved sponsors listed on DOS website (<http://j1visa.state.gov>)
- **MANY CATEGORIES OF J-1 VISAS:**
 - Professor / Research Scholar (5 years) – common option for postdocs
 - Specialist (12 months)
 - Short-Term Scholar (6 months)
 - Trainee (18 months) / Intern (12 months)
 - Au pair (2 years) / Camp counselors (4 months)
 - Teachers – primary & secondary (3 years)



Downside of J-1: Home Residence Requirement

- **TWO-YEAR HOME RESIDENCE REQUIREMENT**
 - Some participants in J-1 programs must return to home country for 2 years before eligible for change of status, H or L visa, or 'green card'
 - Two-year home residency requirement applies if:
 - Either U.S. or home **government funded** the exchange program in the US;
 - Country has filed **Skills List** with DOS designating study areas which are needed in country – no matter who paid for the study; or
 - Participant has engaged in Graduate Medical Education/Training in US.
 - "Home country" = country of citizenship or last residence at time of J visa issuance
 - ***Annotations on J visa stamp and/or DS-2019 are frequently wrong – consult with attorney to determine if subject to 2-year rule, or obtain Advisory Opinion from Department of State***
- **WAIVER OF HOME RESIDENCE REQUIREMENT BY DOS**
 - 4 statutory grounds for waiver application; decision is ALWAYS discretionary
 - "No Objection" (good option if no government funding received)
 - Exceptional Hardship to US citizen spouse or child
 - Persecution
 - Interested Government Agency/Clinical waivers for physicians
 - Some situations where waivers are almost NEVER granted: Fulbright, USAID



O-1 Visas: Extraordinary Ability

Individuals with Extraordinary Ability or Achievement

- Science, Education, Business or Athletics (O-1A), or Arts (O-1B)
- National or International Acclaim
 - Letters of support
 - Publications
 - High salary
 - Media, citations, press
 - Judge work
 - Awards, critical acclaim
 - Selective professional memberships
 - Employment in a “critical” or “essential” capacity

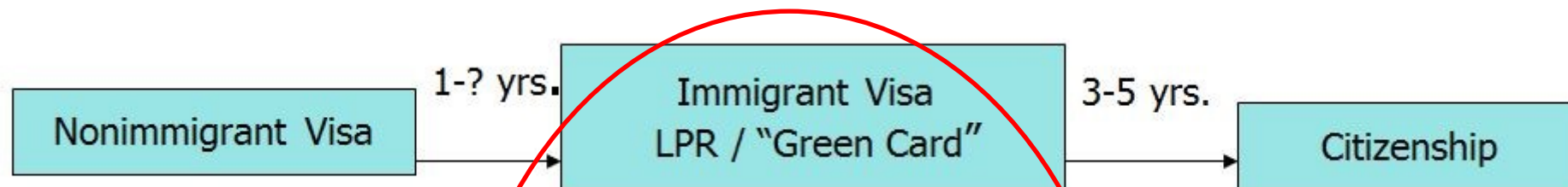


E-2 Visas: Treaty Investors

- Available to nationals of certain countries with whom the US has a treaty of trade and commerce (<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html>) -- notable exceptions include India and mainland China
- Have invested, or be actively in the process of investing, a substantial amount of capital in a bona fide enterprise in the US
- Be seeking to enter the US to develop and direct the investment enterprise (at least 50% ownership interest, or operational control)
- Enterprise cannot be “marginal” – i.e., must create jobs for US workers or for individuals beyond just the investor himself/herself
- Can be granted in two-year increments, indefinitely, as long as the business continues operating and remains profitable



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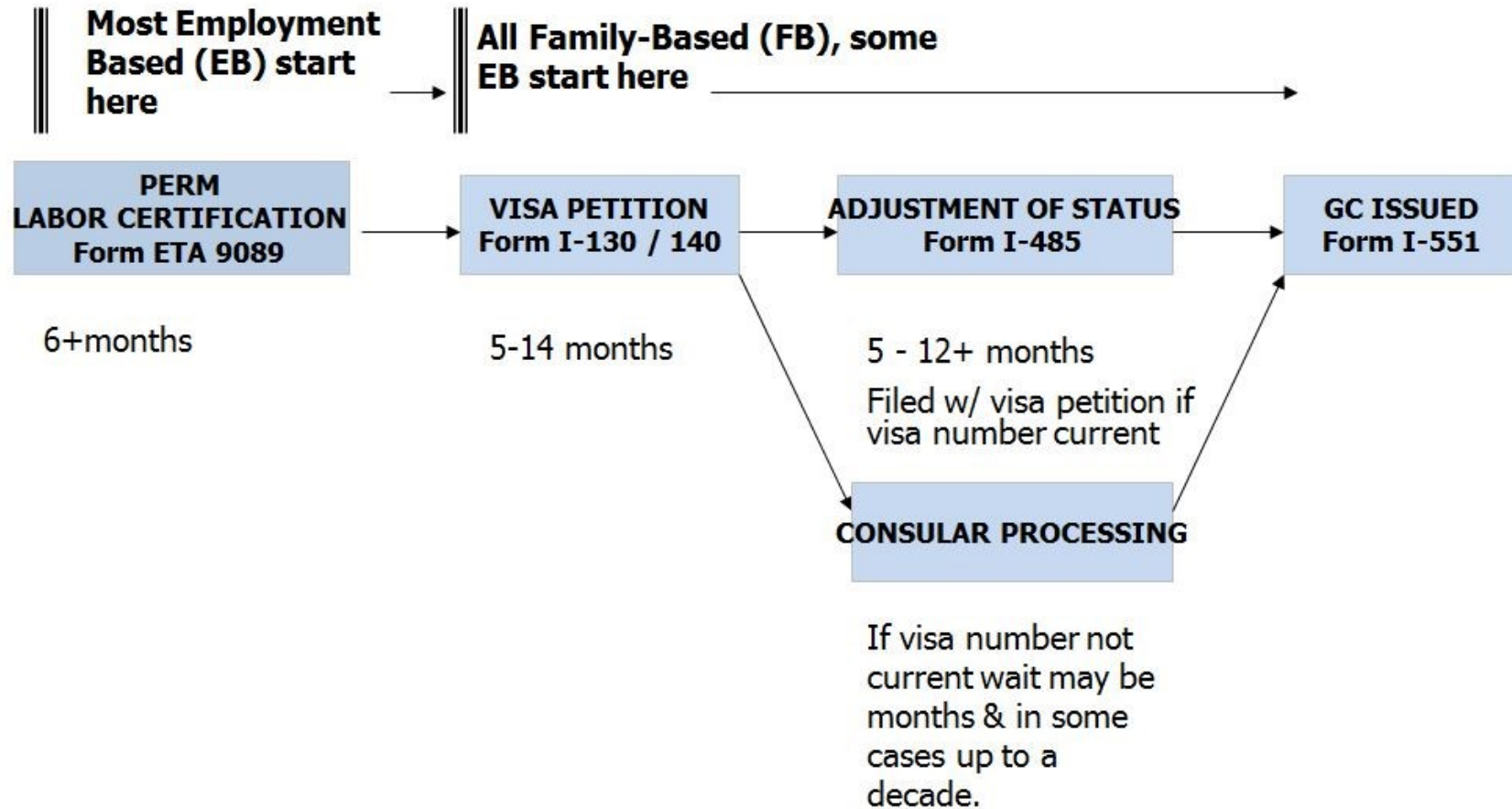
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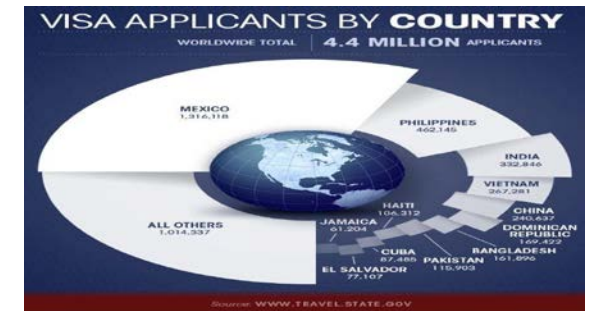
- 3 yrs. if by marriage to U.S. citizen
- 5 yrs. for everyone else



Overview: Green Card Process



Quotas and Priority Dates



LIMITS ON NUMBER OF GREEN CARDS PER YEAR

- Each type of green card (preference category) has numerical limits: numbers vary by year and by usage
- Approximately 140,000 employment-based GCs in all categories
- Approximately 226,000 family-based GCs in all categories
- Each country is also limited to a ceiling number of visas, regardless of demand
- When either preference group or country quotas are met, waiting lists build

PRIORITY DATE DETERMINES PLACE ON WAITING LIST

- When waiting lists build, cases are processed in priority date order
- Priority date established at the first official filing date of the paperwork (USCIS, DOL)

GLOBAL VS. COUNTRY WAITING LISTS

- Country which hits country ceiling taken out of the worldwide visa pool and given its own separate pool of visas (approximately 7% of total available)
- Ensures even distribution of visas across all GC categories.
- Leads to longer waits in many categories.
- The Visa Bulletin (www.travel.state.gov): priority dates for each month.

Visa Bulletin



- Available each month at:
<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>
- Shows the current cut-off dates for immigrant visa availability in the various “green card” categories, by country
- Immigrant visa cases with priority dates *before* the stated dates are eligible for filing and/or final action
- Family Based vs. Employment Based
- “Final Action Dates” chart vs. “Dates for Filing” chart
 - For Adjustment of Status applications, this distinction is separately determined each month by USCIS: <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin>

Visa Bulletin: October 2023

- USCIS: “For all employment-based preference categories, you must use the Dates for Filing chart in the Department of State Visa Bulletin for October 2023.”

Employment Categories	World-wide	China	India	Mexico	Philippines
EB-1	C	15FEB22	01JAN17	C	C
EB-2	08JUL22	01OCT19	01JAN12	08JUL22	08JUL22
EB-3	01DEC21	01JAN20	01MAY12	01DEC21	01DEC21
EB-3 - other	01AUG20	01JAN16	01MAY12	01AUG20	01MAY20
EB-4	01JAN19	01JAN19	01JAN19	01JAN19	01JAN19
Relig. Workers	U	U	U	U	U



Employment-Based Green Cards: PERM Labor Certification

MOST COMMON EMPLOYMENT-BASED GREEN CARD PROCESS:

- Application by employer to USDOL to certify individual and position after statutorily mandated recruitment campaign — “Test the labor market”
- Nearly all positions qualify, but substantial waiting periods for non-professional positions, vs. short or no waiting for positions with higher requirements
 - EB-2 “advanced degree” category = Master’s degree (or higher); or Bachelor’s degree plus five or more years of progressively responsible work experience
 - EB-3 category = anything less
- Process requires significant employer involvement, including payment of all costs and legal fees
- Streamlined process available for college/university faculty – submit within 18 months of date of selection/conclusion of competitive search for the position; “most qualified” standard, so presence of a minimally qualified US worker does not block the process



PERM Labor Certification: Steps

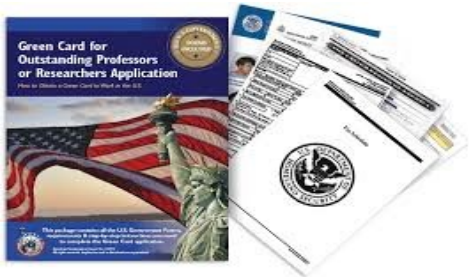
PROCEDURES/ADVERTISING:

- Define job and skills on DOL forms in compliance with DOL requirements
- Obtain DOL prevailing wage determination
- Advertise with the State Workforce Agency/Job Bank, and two Sundays in newspaper of general circulation in the geographic area
- Professional positions: 3 additional recruitment steps (job fairs, web ads, etc.)
- Interview and evaluate applicants; prepare recruitment report
- Submit ETA 9089 to DOL
- DOL reviews and will either approve or issue audit request
- Random audits in approximately 20% of cases
- PERM Labor Certification process takes approximately 18 months to complete – importance of planning ahead



Other Employment-Based Green Card Options

- Extraordinary Ability Individual (EB-1A)
- Outstanding Researcher (EB-1B)
- Multinational Manager (EB-1C)
- National Interest Waiver (EB-2)
- *All of the above are exempt from the labor certification requirement



“Individual of Extraordinary Ability”

Must demonstrate extraordinary ability in the sciences, arts, education, business, or athletics. “Extraordinary Ability” means sustained national or international acclaim and that your achievements have been recognized in your field of expertise through extensive documentation. Limited to those who have risen to the very top of their field of endeavor.

Must be seeking to enter the United States to continue work in your area of extraordinary ability.

Flexibility:

- Can apply to a wide variety of fields
- Can be filed as a self-petition; does not require an employer sponsor

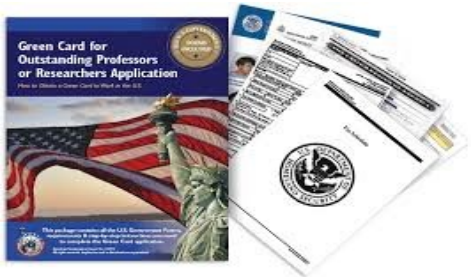


“Extraordinary Ability” Evidentiary Requirements

Documentary Evidence must include at least 3 of the following:

- Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
- Evidence of your membership in associations in the field requiring outstanding achievement of members
- Evidence of published material about you in professional/major trade publications or other major media
- Evidence that you have been asked to judge the work of others, either individually or on a panel
- Evidence of original scientific/scholarly/artistic/athletic/business-related contributions of major significance to the field
- Evidence of authorship of scholarly articles in professional/major trade publications or other major media
- Evidence that your work has been displayed at artistic exhibitions or showcases
- Evidence of your performance of a leading or critical role in distinguished organizations
- Evidence of a high salary or significantly high remuneration compared to others in the field
- Evidence of your commercial successes in the performing arts

Must also pass USCIS’s “final merits analysis”



Outstanding Professor or Researcher

Intended to accommodate prospective immigrants who are **recognized nationally or internationally for their outstanding achievement in their field and who have made original contributions of major significance.** An employer must submit this petition on behalf of a prospective permanent resident.

USCIS regulations provide that applicant must demonstrate international recognition for outstanding achievements in a particular academic field, as well as at least 3 years' experience in teaching or research in that academic area.

Applicant must be entering the United States in order to pursue tenure or tenure track teaching or comparable research position at a university or other institution of higher education, or for organizations that employ other researchers.

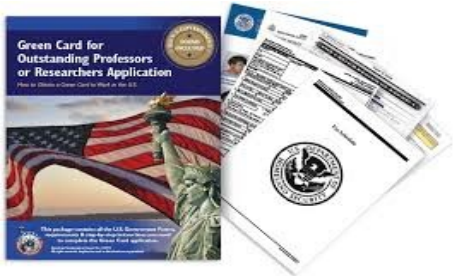


“Outstanding Professor/Researcher” Requirements

Documentary Evidence must include at least 2 of the following:

- Evidence of receipt of major prizes or awards for outstanding achievement
- Evidence of membership in associations that require their members to demonstrate outstanding achievement
- Evidence of published material in professional publications written by others about the alien's work in the academic field
- Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
- Evidence of original scientific or scholarly research contributions in the field
- Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

Must also pass USCIS’s “final merits analysis”



National Interest Waiver

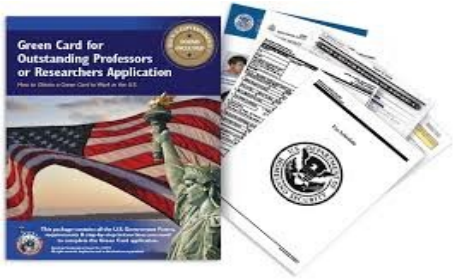
Granted to those who have an advanced degree or “exceptional” ability,” and whose employment in the United States would greatly benefit the nation in the area of business, health care, economy, national security, or another important area.

3-Prong Test for evaluating NIW cases:

- You must show that you plan on working in the United States in an area of substantial intrinsic merit and/or national importance
- **You must show that you are well-positioned to advance work in your field of endeavor
- You must show that, on balance, it would be beneficial to the United States to waive the requirement of a job offer and thus of a labor certification

Can be filed as a self-petition (no employer sponsor required)

Recent modifications to USCIS policies, offering additional flexibility/deference to individuals with doctoral degrees in a STEM field



National Interest Waiver (continued)

Can be filed as a self-petition (no employer sponsor required)

- No requirement of having an employer sponsor
- No requirement of having a permanent job offer
- Flexibility to change employers during the process without impacting validity of green card process

Recent modifications to USCIS policies, offering additional flexibility/deference to individuals with doctoral degrees in a STEM field

- Many **proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance.**
- **USCIS considers an advanced degree, particularly a doctoral degree, in a STEM field tied to the proposed endeavor and related to work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness or national security, an especially positive factor to be considered along with other evidence for purposes of the assessment under the second prong.**
- When evaluating the third prong and whether the United States may benefit from the person's entry, regardless of whether other U.S. workers are available (as well as other factors relating to prong three discussed above, such as urgency), USCIS considers the following combination of facts contained in the record to be a **strong positive factor**:
 - The **person possesses an advanced STEM degree, particularly a doctoral degree;**
 - The **person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness;** and
 - The **person is well positioned to advance the proposed STEM endeavor of national importance.**



Family-Based Green Card Categories

- Immediate Relatives: Spouse of US Citizen; unmarried child (under 21) of US citizen; or parent of a US citizen (if the US citizen is 21 years of age or older)
 - No quota/waiting period – immigrant visas always available
- Family-based first preference category (F1): Unmarried sons and daughters of US citizens
- Family-based second preference category (F2):
 - F2A: Spouses and children of Permanent Residents
 - F2B: Unmarried sons and daughters (21 years of age or older) of Permanent Residents
- Family-based third preference category (F3): Married sons and daughters of US citizens
- Family-based fourth preference category (F4): Brothers and sisters of Adult US citizens



Diversity Lottery

- Diversity Immigrant Visa Program makes up to 55,000 diversity visas available each year to individuals from countries with historically low rates of immigration to the United States
- Selectees determined through a randomized computer drawing
 - ****Entry period ends November 7 at 12:00pm EST**
- Requirements:
 - Must be a native of a qualifying country
 - Education/work experience requirements:
 - At least a high school education or its equivalent (12-year course of formal elementary and secondary education); OR
 - Two years of work experience within the last five years in an occupation that requires at least two years of training or experience to perform, according to the US Department of labor
 - Submit an entry within the qualifying entry period (usually around October/November each year)
 - Must obtain immigrant visa or adjust to permanent resident status by September 30 of the following year (end of government fiscal year)
- Monitor Visa Bulletin each month to see which numbers are eligible for immigrant visa processing/filing

Contact Information



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BVenter@harrisbeach.com

The information in this presentation is intended as general background information on immigration law and employment eligibility issues. It is not to be considered as legal advice with regard to any specific immigration issue. Immigration law changes often and information becomes rapidly outdated. Please consult your immigration counsel before taking action on immigration matters.