



NON-IMMIGRANT VISA OPTIONS AFTER GRADUATION

**Office of International Services
Indiana University
Spring 2017**

SESSION GOALS

- Familiarity with U.S. visa system
- Discussion of non-immigrant employment options
- Long-term career planning



WHO IS HERE?

- Graduate/Undergraduate
- Music majors
- Canada – Mexico – Singapore – Chile – Australia
- J1 students / F1 students / non-students
- STEM majors
- May graduates



NON-IMMIGRANT VISA OPTIONS

- B1/B2 Visitor Business/Travel (WB/WT)
- F-1 Student on Optional Practical Training
- J -1 Student on Academic Training
- J -1 Professor or Researcher
- J -2 Spouse or Child
- TN (Treaty NAFTA --Canada/Mexico)
- E-3 Specialty Occupation (Australia)
- O-1 Extraordinary
- H-1B Specialty Occupation



F-1 STUDENT OPTIONAL PRACTICAL TRAINING

F1- Students should **ATTEND AN OPT SESSION**

Register online through iStart

Optional Practical Training
is not the same as
Curricular Practical Training



F-1 OPTIONAL PRACTICAL TRAINING

ADVANTAGES

- Easy to process
- Valid up to 12 months if working
- Possible 24month extension for STEM majors
- No job offer needed to apply
- No salary issue
- Can work for any employer in field of study
- Cap-Gap protection

LIMITATIONS

- Can be difficult to renew visa abroad
- Approximately 90 days to process at USCIS
- Maximum 90 days of unemployment
- Must be employed in field of study



Questions

F-1 Optional Practical Training?



J-1 ACADEMIC TRAINING

ADVANTAGES

- Authorized by program sponsor
- No specific employer
- Valid for 18 or 36 months
- Can be part-time
- J -2 can continue work authorization from USCIS
- No salary issue

LIMITATIONS

- Some sponsors don't authorize
- Must have job offer in field
- Can be difficult to renew visa abroad



J-2 SPOUSE

- No specific employer
- Can be part-time or full-time
- Must apply to USCIS for work authorization
- Typically approved for one year at a time but could be approved for longer



J-1 RESEARCHER / PROFESSOR

ADVANTAGES

- Valid up to 5 years
- Can be part-time
- J -2 can apply for work authorization from USCIS
- No salary issue

LIMITATIONS

- Not for tenure track
- Possible 2 - year home residence requirement
- Not for J -1 students
- May be subject to 12 or 24 month bars on repeat participation



TN (TREATY NAFTA) CANADA/MEXICO

ADVANTAGES

- Easy processing
- Unlimited extensions
- No salary issue

LIMITATIONS

- Canadian/Mexican citizens
- Limited Professions
- Spouse cannot work
- Three years at a time
- Travel problems if immigrant intent



E-3 SPECIALTY OCCUPATION AUSTRALIA

- Similar to H-1B
 - Salary requirements
 - If applying for visa abroad a petition does not have to be processed by USCIS
- 10,500/year
- Dependents can apply for work authorization



O-1 EXTRAORDINARY ABILITY

- Extraordinary ability in the sciences, arts, education, business, or athletics
- No degree requirement (musicians)
- Paper intense petition
- O-1 is an option even if subject to 2-year home residence requirement from a previous J status
- Musicians can use for multiple gigs



OTHER NON-IMMIGRANT WORK STATUSES

- **E-1:** treaty trader
- **E-2:** treaty investor
- **L:** intra-company transferee
- **P-1, P-2, P-3:** performing artist or athlete



H-1B (SPECIALTY WORKER)

ADVANTAGES

- Allows for dual intent
- Six years maximum in most cases
- Multiple employers
- Premium Processing
- Portability
- H-4 spouse can work in some cases

LIMITATIONS

- H-1B Cap for industry
- Employer-specific
- Position must require a bachelor's degree at a minimum
- Minimum salary requirement
- Not eligible if subject to J-1 two-year home residence requirement



LABOR CONDITION APPLICATION (LCA) DEPARTMENT OF LABOR

Confirms:

- Worker paid actual wage paid to all other workers, OR prevailing wage, whichever is higher
- No effect on working conditions of those similarly employed
- No strike, lockout, or work stoppage
- Notice provided to other workers at worksite



H-1B PETITION FILED WITH USCIS

- Documents that position requires a professional degree
- Documents that the foreign national meets the requirements of the position
- Submitted with approved LCA from Dept of Labor
- May submit an application 6 months prior to intended employment start date



H-1B FEES

Paid by employer

- \$460 application fee
- \$500 anti-fraud detection fee
- Some employers may pay \$1,500 employer training fee (\$750 for employers with 25 or fewer full-time employees)

Paid by employer or employee

- Optional \$1225 Premium Processing fee (currently suspended)
- Lawyer fees



H-1B CAP

- Cap of 65,000 set by Congress
- 20,000 additional for US masters degree and higher
- Cap year runs October 1 to September 30 each year
- Can file April 1 for start date of October 1 (6 months prior)
- Cap is often been met immediately (mid- April this year)
- Set asides for Chile and Singapore



EXEMPTIONS FROM H-1B CAP

- Institution of higher education or a related or affiliated nonprofit entity; nonprofit research organization; governmental research organizations
- Anyone counted against the cap at some point during the previous six years
- H-1B extension or amendment petitions



IU IMMIGRATION BRIDGE

- For H-1B employment
- E-form in iStart
- For companies who may not have Human Resource personnel or immigration counsel to file the H1B petition
- Referral for IU students



PROBLEM: CAP GAP

- Student OPT that expires before October 1
- Approved H-1B petition start date October 1
- What do I do?
- Can I stay in the U.S.?



PROBLEM: CAP GAP

Possible Options

- STEM OPT extension
- Cap-Gap extension
- Travel out of the US
- Cap exempt employer
- Change of status

****Attend an OPT Information Session****



SUSIE STUDENT

ACADEMIC YEAR 2016 - 17

Sends out resumes → Applies → Interviews

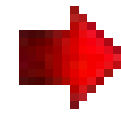
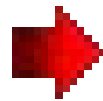
- Feb 2017 Applies for OPT
- April 2017 Offered job by ABC Co. (related to her studies),
- April 2017 Employer files H-1B petition for her, requesting validity dates of 10/01/17 - 09/30/20
- May 2017 Graduates
- June 2017 Starts employment on F-1 OPT valid 6/1/17 - 5/31/2018
- October 2017 Status change to H-1B on 10/01/17



SAM STUDENT ACADEMIC YEAR 2016 - 17

Sends out resumes → Applies → Interviews

- Feb 2017 Applies for OPT
- May 2017 Graduates and receives OPT from 06/10/2017 - 06/09/2018
- Sept 1 2017 Offered job by ABC Co. working on valid OPT authorization
- April 1, 2018 ABC Co. submits H-1B petition with start date of October 1, 2018
- June 10, 2018 ????



SAM STUDENT CONTINUED

Options if H-1B petition approved

- Remain in the US and work under Cap Gap coverage because employer filed H-1B petition while in valid OPT status

Options if H-1B petition not approved

- H-1B opportunity with a cap exempt employer
- Other visa options: J-1, O-1, E-3 Australian, TN
- STEM OPT extension filed prior to expiration of original OPT authorization



MARIA STUDENT ACADEMIC YEAR 2016-17

Sends out resumes → Applies → Interviews

- February 2017 Applies for OPT
- March 2017 Offered job by State University
- March 2017 State University submits H-1B petition for August 1, 2017 start
- May 2017 Graduates, OPT approved from July 1, 2017 through June 30, 2018
- August 1, 2017 Starts employment with State Univ in H1B status



WHAT TO SAY TO EMPLOYERS

You **can** work in U.S. without green card!

- Optional Practical Training – 12 months with an additional 24 months for STEM majors
- Academic Training – 18 months/36 months
- H-1B – up to 6 years
- J-1 Professor/Researcher – up to 5 years
- O-1 exceptional ability
- And more

***Non-immigration options do not require advertising
Does not matter if US Citizens have applied***



RESOURCE LIST

- Sign-up for OPT Sessions if you are an F-1 student
- See OIS website for information on Academic Training if you are a J-1 student
- Check out the International Services Web Pages
- Network with alumni
- Visit career offices including SPEA, Career Services Online, and Career Development Center



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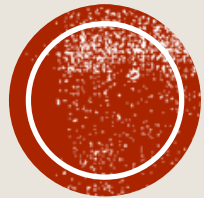
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GOOD LUCK!





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Discussion of routes to permanent residence

Long-term career planning



WHO IS AN IMMIGRANT ?

- Legal Permanent Residents
- Green Card holders
- I-551 stamp in passport
- Resident Aliens (also a TAX term)
- PR

Not the same as CITIZENSHIP



IMMIGRANT VISAS: QUOTA EMPLOYMENT-BASED CATEGORIES

- EB-1 Extraordinary Ability
Outstanding Professor/Researcher
- EB-2 Labor Certification Advanced Degree;
National Interest Waiver
- EB-3 Labor Certification Bachelors Degree
or Skilled Worker
- EB-4 Special Immigrants and Religious Workers
- EB-5 Employment Creation



IMMIGRANT VISAS: QUOTA FAMILY-BASED CATEGORIES

- FB-1 Unmarried child under 21 of USC
- FB-2 Family of Permanent Resident
 - Spouse/minor child of PR
 - Unmarried child over 21 of PR
- FB-3 Married child of USC
- FB-4 Brother/sister of USC



IMMIGRANT VISAS: NO QUOTA

Spouse of USC

Parents of USC age 21 or over

Unmarried children under 21 of USC

****Unless 2 year requirement applies***



DIVERSITY IMMIGRANT VISA PROGRAM (DV-LOTTERY)

Application Period: October - December

Electronic submissions ONLY

Countries with high immigration rates are not eligible to participate

<http://www.travel.state.gov>



Diversity Lottery 2018

Countries NOT eligible to apply
more than 50,000 immigrants in the past 5 years

BANGLADESH

EL SALVADOR

PERU

BRAZIL

HAITI

PHILIPPINES

CANADA

INDIA

SOUTH KOREA

CHINA (mainland-born)

JAMAICA

UNITED KINGDOM

COLOMBIA

MEXICO

(except N. Ireland & terr.)

DOM. REPUBLIC

NIGERIA

VIETNAM

PAKISTAN

Persons born in Hong Kong SAR, Macau SAR, Taiwan are eligible

****based on country of birth****



ROUTES TO EMPLOYMENT-BASED PERMANENT RESIDENCE

Labor Certification starts with Dept of Labor

Step 1 -- Labor Certification application

Step 2 -- I-140 based on Labor Certification

Step 3 -- I-485 for Permanent Residence

I-140 Petition starts with USCIS

Step 1 -- I-140 based on Outstanding,

Extraordinary, National Interest Waiver

Step 2 -- I-485 for Permanent Residence



LABOR CERTIFICATION (PERM)

A determination by the Department of Labor that no qualified USC or PR is available to accept the position.

PERM application filed with the Department of Labor as first step toward permanent residence.

Always requires advertising.



LABOR CERTIFICATION

TEACHING (SPECIAL HANDLING)

- Can use advertising from initial hire
- Requires print or online advertisement in a national professional print or online journal
- Can hire best qualified, not just minimally qualified
- Must be filed within 18 months of offer of employment
- Salary requirements



LABOR CERTIFICATION NON-TEACHING (STANDARD)

- Extensive re-advertising required
- Experience/qualifications gained in the position often cannot be used to meet position requirements
- Focus on minimum requirements for the position
- Salary requirements



PETER PROFESSOR LABOR CERTIFICATION

Peter has OPT through August 2017

- Feb 2017 Applies for faculty position at State Univ advertised in *The Chronicle of Higher Education*
- April 2017 Offered position, H-1B petition filed with start date 08/01/2017
- May 2017 Special Handling Labor Certification filed by State Univ using original advertisement and recruitment
- Aug 2017 Begins employment as H-1B
- Jan 2018 Labor Certification approved, I-140 filed



BETTY BRILLIANT LABOR CERTIFICATION

Betty is a Financial Analyst in the Treasurer's Office at State University with an H-1B valid through December, 2018

- | | |
|---------------------|---|
| March 2017 | State Univ sponsors Betty for green card, places ads, files with Dept of Labor, internal postings, etc. |
| June 2017
Betty. | State Univ screens applicants, no one meets job requirements but Betty. |
| July 2017 | Labor Certification filed |
| January 2018 | Labor Cert approved, I-140 filed with USCIS |
| May 2018 | I-140 approved |
| May 2018 | Betty files I-485 application for PR along with spouse and children. She continues working as an H-1B during the process. |
| Sept 2018 | Betty and family granted permanent residence status |



TIMELINE FOR LABOR CERTIFICATION

Step 1 -- file Labor Certification with Labor

- 2-8 months to prepare
- Currently ~4-6 months for DOL to adjudicate

Step 2 -- file form I-140 with USCIS

- Currently ~4-6 months processing time

Step 3 -- file form I-485 to adjust to PR status if a visa number is available

- Currently 6-10 months for employment-based petitions



ROUTES TO EMPLOYMENT-BASED PERMANENT RESIDENCE

Labor Certification starts with Dept of Labor

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Step 1 -- I-140 based on Outstanding,

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Step 2 -- I-485 for Permanent Residence



PR STATUS BASED ON I-140 PETITION

Filing form I-140 immigrant petition directly with the USCIS – no Labor Certification

Types of I-140 petitions

- Extraordinary

- Outstanding Professor / Researcher

- National Interest Waiver



I-140: OUTSTANDING PROFESSOR OR RESEARCHER

- Requires three years experience and evidence that the applicant is at the very top in the specific field
- International recognition in the field
- Publications, citations, judging, major awards and honors to document original contributions to the field
- Employer-specific
- Must be a tenure-track or “permanent position”
- Teaching or research
- No salary requirement
- No advertisement requirement



I-140: NATIONAL INTEREST WAIVER

- Advanced degree +2 years experience
- Publications, citations, established in field
- Key role in research
- Can be self-filed
- Does not require a permanent position
- No salary requirement
- No advertisement requirement
- Must document why it is in the national interest not to advertise



TIMELINE FOR I-140 PETITION OUTSTANDING OR NIW

Step 1 -- file Form I-140 with USCIS

- Currently ~6 months processing
- Can pay to premium process Outstanding I-140

STEP 2 – file I-485 PR application if visa number available

- Currently ~6-10 months for employment-based petitions

File **both** I-140 AND I-485 concurrently
if a visa number is available.



SUSIE SUMMIT

September 2017	H-1B status granted through August 2019
December 2017	I-140 Outstanding petition filed
July 2018	I-140 petition approved
August 2018	I-485 filed to adjust to PR
February 2019	Permanent Resident status granted



BASIC CONCEPT OF ADJUSTING STATUS TO PERMANENT RESIDENCE

I-140 Qualifying for Permanent Residence

I-485 Applying for 'Green Card'

An immigrant visa number must be available for your country in the appropriate employment-based category at the time the I-485 is filed



QUOTAS, PREFERENCE CATEGORIES, AND PER-COUNTRY LIMITS

- 140,000 annual quota
- 40,000 annual limit for each employment preference (EB1, EB2, etc.)
- 7% limit from any single country



PRIORITY DATE

Date Labor Certification application filed;

OR

Date I-140 filed if a Labor Certification is not required

Priority date = “place in line” for an immigrant visa



VISA BULLETIN

- Is issued monthly by the Department of State. Controls the total number of family-based and employment-based visas each year.
- Summarizes which priority dates have an immigrant visa number available in the current month.
- If the priority date is current, the applicant can file Form I-485 to adjust to PR status in the US or receive an immigrant visa if abroad

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>



PRIORITY DATES AND PREFERENCE CATEGORIES

Priority date is the date that a Labor Certification application was first filed OR the date the I-140 was filed if a Labor Certification is not required.

Two charts – *Final Action Dates (cases being adjudicated) and Dates for Filing (application can be submitted)

April 2017	Other	China	India	Mexico	Philippines
EB1 Extraordinary Ability; Outstanding	C	C	C	C	C
EB2 Labor Certification Advanced Degree; NIW	C	15JAN13	22JUN08	C	C
EB3 Labor Certification Bachelor's Degree	15FEB17	15AUG14	24MAR05	15FEB17	15SEP12

C = Current (proceed to PR as soon as qualified)



PRIORITY DATES AND PREFERENCE CATEGORIES FAMILY BASED

April 2017	Other	China	India	Mexico	Philip- pines
F1 unmarried child of USC	15OCT10	15OCT10	15OCT10	22MAY95	15JAN06
F2A spouses and children	08JUN15	08JUN15	08JUN15	22MAY15	08JUN15
F2B unmarried child of USC age 21 & older	15SEP10	15SEP10	15SEP10	22DEC95	15JUN06
F3 married child of USC	15MAY05	15MAY05	15MAY05	08JAN95	15SEP94
F4 brothers/sisters of adult USC	08MAY04	08MAY04	15AUG03	15JUN97	08SEP93

[Source: US State Department Visa Bulletin](#)



ELIGIBLE TO FILE FOR PR BUT PRIORITY DATE NOT CURRENT

Must maintain nonimmigrant status and employment authorization while waiting for the priority date to become current.



SUSIE SUMMIT

October 2017	H-1B status approved through Sept 2020
January 2018	Labor Certification filed
August 2018	I-140 filed based on approved Labor Certification
January 2019	I-140 approved

Susie's EB2 priority date is not current.

Extends H-1B status as needed until priority date is current and her I-485 can be filed.



SPECIAL NOTES AFFECTING PR QUOTA AND PROCESSING

Can extend H-1B beyond 6 years under certain circumstances.

Individuals with I-485 pending over 180 days may change jobs or employers, as long as new job is in same or similar occupational classification.

Labor Certification approval or the filing of an I-140 petition does NOT automatically give employment eligibility or permission to stay in the U.S.

Non-immigrant status must be maintained until PR status granted if remaining in the US.



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