NON-IMMIGRANT VISA OPTIONS AFTER GRADUATION
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 PRACTICAL TRAINING**

**CPT**
- Pre-completion
- 2 week OIS processing time
- Job offer letter required
- “Integral” to major curriculum
- Enrollment required
- No fee

**OPT**
- Post-completion
- 3 – 5½ months USCIS processing time
- No job offer necessary to apply
- Related to major field
- Enrollment not required
- $410 USCIS application fee
F-1 OPT

- Full-service or self-service OPT
- Eligible after enrolled full-time for two semesters
- Work required to be related to your major
- Valid up to 12 months
- Possible 24-month extension for STEM majors
- No salary issue
- Cap-Gap protection
- Authorization from USCIS
F-1 OPT LIMITATIONS

- OPT = 12-month period of post-graduation training authorization (not a work visa) with possible 24 month extension for STEM majors
- Can be difficult to renew visa abroad
- Maximum 90 days of unemployment allowed during OPT (SEVP will terminate SEVIS records)
- Full-time employment > 20 hours/week
  - Multiple jobs, volunteer positions
  - Must be related to major
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
- Often approved for one year at a time but can be approved for longer
J-1 RESEARCHER / PROFESSOR

ADVANTAGES
- Valid up to 5 years
- Full-time or part-time
- J-2 can apply for work authorization from USCIS
- Paid or unpaid activity
- 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**

- Fairly easy processing
- Unlimited extensions
- No salary issue

**LIMITATIONS**

- Canadian/Mexican citizens
- Limited Professions
- TD spouse cannot work
- Three years maximum at a time
- Possible travel concerns if immigrant intent
E-3 SPECIALITY OCCUPATION AUSTRALIA

• Similar to H-1B “specialty occupation”
  o Salary requirements
  o If applying for visa abroad a petition does not have to be processed by USCIS
  o Can only work for intended employer

• 10,500/year

• Dependents can apply for work authorization

• Can enter for up to two years at a time and renew in two year increments indefinitely
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 or Artists 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 OCCUPATION

**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 in a specific field 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 bachelor’s degree at a minimum in a specific field
- Documents that the foreign national meets all requirements of the position
- Submitted with approved LCA from Dept of Labor
- Application can be submitted six months prior to requested employment start date
H-1B FEES

Paid by employer
- $460 application fee
- $500 anti-fraud detection fee
- Some employers may be required to pay a $1,500 employer training fee if the employer has 25 or more full time employees ($750 for employers with 25 or fewer full-time employees)

Other fees may be paid by employer or employee
- Optional $1410 Premium Processing fee
- Attorney filing fees
H-1B CAP

- Employer preregistration requirement likely required next fiscal year
- 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
EXEMPTIONS FROM H-1B CAP

- Institutions of higher education or a related or affiliated nonprofit entity; nonprofit research organizations; 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

- Proactive partnership between IU career centers, OIS, and Fragomen, Del Ray, Bernsen & Loewy LLP to assist IU students with H-1B employment needs

- E-form in iStart initiated by IU student

- For companies who may not have Human Resource personnel or immigration counsel to file the H1B
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 and bridge applications

**Attend an OPT Information Session**
GRADUATING STUDENT SCENARIO
ACADEMIC YEAR 2018-2019

Sends out resumes ➔ Applies ➔ Interviews

- Feb 2019: Applies for OPT
- April 2019: Offered job by ABC Co. (related to field of study)
- April 2019: Employer files H-1B petition for a change of status to H-1B effective 10/01/19 - 09/30/22 – chosen in lottery
- May 2019: Student graduates
- June 2019: Starts employment on F-1 OPT valid 6/1/19 - 5/31/2020
- October 2019: Status change to H-1B effective 10/01/19
GRADUATING STUDENT SCENARIO
ACADEMIC YEAR 2018 - 2019

Sends out resumes → Applies → Interviews

- Feb 2019: Applies for OPT
- May 2019: Graduates and has OPT authorization from 06/10/2019 - 06/09/2020
- Sept 1, 2019: Offered job by ABC Co. working on valid OPT authorization
- April 1, 2020: ABC Co. submits H-1B petition with start date of October 1, 2020
- June 10, 2020: ????
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

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?
GRADUATING STUDENT IN HIGHER ED ACADEMIC YEAR 2018-2019

- February 2019: Applies for OPT
- March 2019: Offered job by State University
- March 2019: State University submits H-1B petition for August 1, 2019 start
- May 2019: Graduates, OPT approved from July 1, 2019 through June 30, 2020
- August 1, 2019: Starts employment with State Univ in H1B status
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 website for employment information
- Network with alumni
- Visit career offices (SPEA and KSOB) and Career Development Center
OFFICE OF INTERNATIONAL SERVICES

Poplars 221
700 E. Seventh Street
Bloomington IN 47405
855-9086
OIS@iu.edu
www.ois.iu.edu

GOOD LUCK!
IMMIGRANT VISA OPTIONS AFTER GRADUATION

Office of International Services
Indiana University
Spring 2019
SESSION GOALS

- Familiarity with U.S. visa system
- 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

More info on US Dept of State [website]
Diversity Lottery 2020

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 (except N. Ireland & terr.)
COLOMBIA | MEXICO |
DOM. REPUBLIC | NIGERIA | VIETNAM
PAKISTAN |
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 of the position
LABOR CERTIFICATION
TEACHING (SPECIAL HANDLING)

- Can use advertising from initial hire
- Requires 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 current position often cannot be used to meet experience requirements
- Focus on minimum requirements for the position
- Salary requirements
# ASSISTANT PROFESSOR

**LABOR CERTIFICATION**

Recent graduate has OPT through August 2020

<table>
<thead>
<tr>
<th>Month</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb 2019</td>
<td>Applies for faculty position at State Univ advertised in <em>The Chronicle of Higher Education</em></td>
</tr>
<tr>
<td>April 2019</td>
<td>Offered position, H-1B petition filed with start date 08/01/2019</td>
</tr>
<tr>
<td>May 2019</td>
<td>Special Handling Labor Certification filed by State Univ using original advertisement and recruitment</td>
</tr>
<tr>
<td>Aug 2019</td>
<td>Begins employment as H-1B</td>
</tr>
<tr>
<td>Dec 2019</td>
<td>Labor Certification approved, I-140 filed</td>
</tr>
</tbody>
</table>
FINANCIAL ANALYST
LABOR CERTIFICATION

Employee is a Financial Analyst in the Treasurer’s Office at State University with an H-1B valid through December, 2020

March 2019  State Univ “sponsors employee for green card” by placing advertisements, creating posting notices to meet Dept of Labor requirements, etc.

June 2019  State Univ screens applicants for Financial Analyst position, no one meets job requirements except for the H-1B employee.

July 2019  Labor Certification filed with Dept of Labor

Dec 2019  Labor Cert approved, I-140 filed with USCIS

Jan 2020  I-140 approved

March 2020  Employee files I-485 application to adjust to PR status along with spouse and children. Continues working as an H-1B while the I-485 is in process.

Nov 2020  Employee and family granted permanent residence status
TIMELINE FOR LABOR CERTIFICATION

**Step 1 -- file Labor Certification with Labor**
- 2-8 months to prepare to file
- Currently 4-6 months for DOL to adjudicate once filed

**Step 2 -- file form I-140 with USCIS**
- Currently 4-6 months processing time
- Premium processing option adjudication in 2 weeks

**Step 3 -- file form I-485 to adjust to PR status if a visa number is available**
- Currently 8-12 months at a minimum for employment-based petitions
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 Extraordinary, Outstanding, National Interest Waiver
   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 required

Types of I-140 petitions
- EB1A Extraordinary Ability
- EB1B Outstanding Professor / Researcher
- EB2 National Interest Waiver
I-140 EXTRAORDINARY ABILITY

- Extraordinary ability in the sciences, arts, education, business or athletics
- Sustained national or international acclaim
- No offer of employment or salary requirement
- Can be self-filed
- Evidence of a one-time achievement (Pulitzer Prize, Oscar, Olympic Medal, Nobel Prize, etc.) or evidence of lesser known prizes or awards, authorship of major publications, judging, citations of scholarly work, evidence of a high salary or commercial success, etc.
I-140 OUTSTANDING PROFESSOR OR RESEARCHER

- Requires a minimum of three years experience in the field 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, speaking invitations, etc.

- 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 6-8 months processing
- Can pay to premium process EB1 I-140

**STEP 2** -- file I-485 PR application if visa number available
- Currently 8-12 months for employment-based petitions

File **both** I-140 AND I-485 concurrently if a visa number is available.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 2018</td>
<td>Employer filed H-1B petition valid through August 2021</td>
</tr>
<tr>
<td>December 2018</td>
<td>I-140 Outstanding petition filed</td>
</tr>
<tr>
<td>June 2019</td>
<td>I-140 petition approved</td>
</tr>
<tr>
<td>July 2019</td>
<td>I-485 filed to adjust to PR</td>
</tr>
<tr>
<td>April 2020</td>
<td>Permanent Resident status granted</td>
</tr>
</tbody>
</table>
BASIC CONCEPT OF ADJUSTING STATUS TO PERMANENT RESIDENCE

I-140 Qualifying for Permanent Residence

I-485 Applying for ‘Green Card’ or Permanent Resident status

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 in employment-based categories

• 40,000 annual limit for each employment preference category (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 and 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

Department of State Visa Bulletin
**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)*

*Dates for Filing (application can be submitted)*

<table>
<thead>
<tr>
<th>March 2019</th>
<th>Other</th>
<th>China</th>
<th>India</th>
<th>Mexico</th>
<th>Philippines</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EB1</strong> Extraordinary Ability; Outstanding</td>
<td>01JAN18</td>
<td>22FEB17</td>
<td>22FEB17</td>
<td>01JAN18</td>
<td>01JAN18</td>
</tr>
<tr>
<td><strong>EB2</strong> Labor Certification Advanced Degree; NIW</td>
<td>C</td>
<td>01JAN16</td>
<td>09APR09</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td><strong>EB3</strong> Labor Certification Bachelor’s Degree</td>
<td>C</td>
<td>08JUL15</td>
<td>22MAY09</td>
<td>C</td>
<td>01DEC17</td>
</tr>
</tbody>
</table>

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

*U = Unavailable*
<table>
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<tr>
<th>March 2019</th>
<th>Other</th>
<th>China</th>
<th>India</th>
<th>Mexico</th>
<th>Philippines</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>F1</strong> unmarried child of USC</td>
<td>22OCT11</td>
<td>22OCT11</td>
<td>22OCT11</td>
<td>01AUG97</td>
<td>01APR07</td>
</tr>
<tr>
<td><strong>F2A</strong> spouses and children</td>
<td>08JAN17</td>
<td>08JAN17</td>
<td>08JAN17</td>
<td>15DEC16</td>
<td>08JAN17</td>
</tr>
<tr>
<td><strong>F2B</strong> unmarried child of USC age 21 &amp; older</td>
<td>01AUG12</td>
<td>01AUG12</td>
<td>01AUG12</td>
<td>22SEP97</td>
<td>22JUL07</td>
</tr>
<tr>
<td><strong>F3</strong> married child of USC</td>
<td>08SEP06</td>
<td>08SEP06</td>
<td>08SEP06</td>
<td>15JAN96</td>
<td>01JAN96</td>
</tr>
<tr>
<td><strong>F4</strong> brothers/sisters of adult USC</td>
<td>22SEP05</td>
<td>22SEP05</td>
<td>08JUL04</td>
<td>08FEB98</td>
<td>01JAN96</td>
</tr>
</tbody>
</table>

Source: US State Department Visa Bulletin
Must maintain nonimmigrant status and employment authorization while waiting for priority date to become current.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 2018</td>
<td>H-1B status approved through Sept 2021</td>
</tr>
<tr>
<td>January 2019</td>
<td>Labor Certification filed</td>
</tr>
<tr>
<td>August 2019</td>
<td>I-140 filed based on approved Labor Certification</td>
</tr>
<tr>
<td>February 2020</td>
<td>I-140 approved</td>
</tr>
</tbody>
</table>

EB2 priority date is not current

Extends H-1B status as needed until priority date is current and I-485 can be filed
SPECIAL NOTES AFFECTING PR QUOTA AND PROCESSING

In certain circumstances H-1B can be extended beyond 6 years

Individuals with I-485 pending over 180 days may be able to 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 US

Non-immigrant status must be maintained until PR status granted if remaining in the US
OFFICE OF INTERNATIONAL SERVICES

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