



Work Visa and Green Card Options

David E. Gluckman, Esquire
Phone: (804) 775-3826
Email: dgluckman@lawmh.com

McCandlish Holton, PC
Website: www.lawmh.com

November 19, 2020



Introduction to U.S. Immigration Law

- Permanent Resident Green Cards:
 - Live forever in the United States
 - Ease of employment
 - Ease of travel
 - Only limited ways to obtain / lengthy processing
- Temporary Nonimmigrant Visas:
 - Many categories (A – V)
 - Few allow employment
 - Categories most relevant for post-graduation work:
 - F-1 – OPT
 - H-1B



Typical Post-Completion Employment Path

- F-1 - Optional Practical Training (12 or 36 months)
 - or
- J-1 – Academic Training (18 or 36 months)
 - then
- H-1B – Most common work visa (6 years of work eligibility)



F-1 Optional Practical Training

- **Generally, 12 months of OPT post-graduation**
 - Allows work in any job related to degree
 - Cannot work until receive work card (Employment Authorization Document); application fee is \$410
 - Can apply for card up to 90 days before completion of program, or up to 60 days after completion
 - Must apply within 30 days of OPT authorization from Foreign Student Advisor
 - 4-5 month processing time
 - No more than 90 days of unemployment permitted
- **Consult with international student office before traveling while on OPT**



F-1 OPT STEM Extension

- Students with qualifying “STEM” degree eligible for an additional 24 months of work authorization
 - Must apply before initial OPT expires and within 60 days of Foreign Student Advisor’s authorization for STEM extension
 - Employer **MUST** be enrolled in E-Verify
- Qualifying STEM degrees
 - Compare CIP Code on Form I-20 with the “STEM Designated Degree Program List”
 - U.S. degrees obtained within the last 10 years generally can be used as a basis for the STEM OPT extension, as long as program is on current STEM list



H-1B Visa

- **Most Common Work Visa**

- Employer must “sponsor” (offer a job that requires a degree)
- Beneficiary must have degree
- Degree must relate to the job
- No need to advertise for U.S. workers



H-1B Issues

- **Duration**

- 3 years initially
- 3 year extension
- 6 year maximum

- **Scope of H-1B Authorization**

- Can only work for this employer, doing what was described on the petition, in the location described on the petition

- **Change Employer**

- New employer must file new petition
- But can begin working as soon as new petition is filed without waiting for approval



H-1B Issues

- **Cost - Who Pays?**
 - Legal Fee
 - USCIS Filing Fees
 - H-1B registration fee - \$10
 - Base fee - \$460
 - Fraud Prevention Fee - \$500
 - “Training Fee” - \$1,500 (\$750 for employers with 25 employees or less)
 - Optional Premium Processing Fee (15 days) - \$2,500
 - Additional \$4,000 fee for companies with 50 or more employees, and 50% or more of workforce is H-1B or L (rare)



H-1B: Harder—Not Hopeless

- **H-1B is a stable program**
 - H-1B program created by statutes and regulations.
 - Administration focusing on applying existing law harshly.
- **“Specialty occupation”**
 - Job must require degree in a particular field (or multiple closely-related fields).
 - Jobs accepting multiple, unrelated degrees won’t qualify.
- **Off-site work**
 - Need meticulous documentation linking you with the employer that filed H-1B petition.

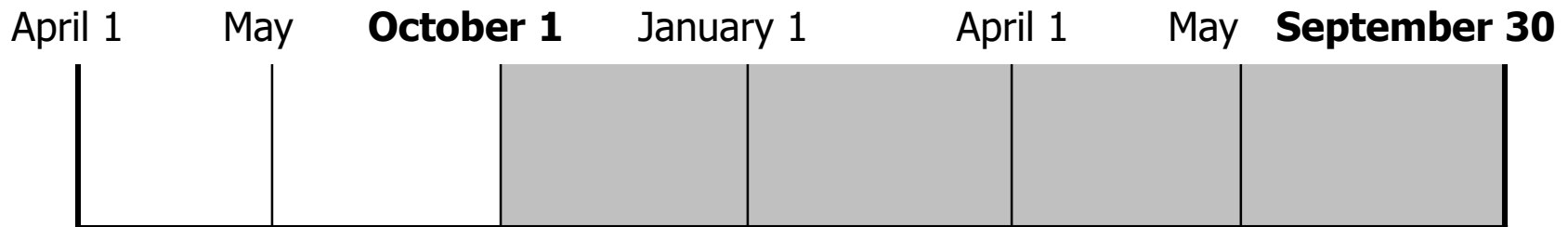


H-1B Quotas

- **USCIS FISCAL YEAR:** October 1 – September 30
- **Quotas:**
 - 85,000 new H-1Bs available each fiscal year
 - Applicants with U.S. advanced degrees – 20,000
 - All other degrees – 65,000
 - New law improves lottery chances for U.S. advanced-degree grads
- **Current availability:** ?



Beat the H-1B Cap



- October 1 – new quota released
- March 1-20 – electronic pre-registration/lottery
- April 1 – 90-day filing window begins for cap lottery “winners”
- May/Dec – graduation & OPT



Example #1

- Student graduates in May 2021.
- Employer had submitted registration in March 2021 and student was selected in lottery. Employer files for H-1B, effective October 1, 2021.
- Student works on OPT until September 30, 2021, then H-1B effective October 1, 2021.



Example #2

- Student graduates in May 2021 without H-1B registration or lottery selection.
- Student works on OPT. Employer submits registration in March 2022 and student is selected in lottery. In April 2022, employer files for H-1B, effective October 1, 2022.
- But student's OPT expires in June 2022.
- What now?



H-1B “Cap Gap” Relief

- If your employer files an H-1B petition on your behalf on or after April 1st,
AND
- OPT is still valid at the time of filing,
THEN
- OPT is extended until September 30th



H-1B Cap-Exempt Organizations

- Universities
- Non-profit organizations affiliated with universities (such as research facilities or hospitals)
- Non-profit research organizations, engaged primarily in basic or applied research
- Governmental research organizations (federal, state, or local)



H-1B Alternatives

- Canada, Mexico, Chile, Singapore, Australia
- L-1 Manager / Executive / Specialized Knowledge. Work overseas for one year; now working for affiliate in United States
- E treaty investor/trader (not China, India) working for companies owned by citizens of your country in the United States
- Re-enroll in full-time study (F-1 or J-1)
- Other possible options are very limited (e.g., J-1). Consult qualified immigration specialist



O-1 Extraordinary Ability

- Filed by an employer
- Small percentage at top of field
- Beneficiary is allowed to pay filing/legal fees
- Can be filed up to 1 year before start date
- Requirements:
 - Major international award (e.g., Nobel Prize)
 - or
 - At least 3 of 8 specific criteria



O-1 Extraordinary Ability

O-1 Criteria (need at least 3):

- Nationally or internationally recognized prizes or awards for excellence in field
- Membership in associations requiring outstanding achievement
- Published material about you or your work
- Judge of the work of others (peer review)
- Original contributions of major significance
- Authorship of scholarly articles
- Employed in critical or essential critical role for distinguished organizations
- High salary



Green Card

- Limited Ways to Obtain
 - Family Relationships
 - Diversity Visa Lottery
 - Employment/Special Skills
 - EB-1 - Extraordinary / Outstanding / Multi-national
 - EB-2 - Advanced Degree / Exceptional
 - EB-3 - Bachelor's Degree / Skilled worker
 - Must maintain non-immigrant status



Extending H-1B Beyond Six Years

- Normal length of H-1B – 6 years
- Can extend for the following:
 - Recapture time outside the U.S.
 - Employment-based green card process pending at least 1 year – can extend H-1B in 1 year increments
 - Approved I-140, but no quota number to adjust – 3 year extension



EB-1A Extraordinary Ability

- Self-sponsor (no job offer required)
- Small percentage at top of field
- Factors:
 - Major international award, or at least 3 of the following:
 - Lesser national or international awards
 - Membership in association requiring outstanding achievement
 - Published material about you or your work
 - Participation as judge of the work of others (peer review)
 - Original contributions of major significance
 - Authorship of scholarly articles
 - Leading or critical role for distinguished organizations
 - High salary



EB-1B Outstanding Professor/Researcher

- Employer-sponsored
- “Permanent” position (no definite end date)
- At least 3 years of teaching/research experience
- Factors: at least 2 of the following:
 - Major prizes or awards
 - Membership in associations requiring outstanding achievement
 - Published material about you or your work
 - Judge of the work of others (peer review)
 - Original research contributions
 - Authorship of scholarly articles



EB-2 National Interest Waiver

- Exceptional Ability/Work in National Interest
- Self-sponsor (no job offer required)
- Expertise significantly above that ordinarily encountered
- Factors: at least 3 of the following:
 - Degree relating to area of exceptional ability
 - 10 years of full-time experience
 - License/certification for particular profession/occupation
 - High salary
 - Membership in professional association
 - Significant contributions/recognized achievements
- Would be harmful to the national interest to require employer to advertise to find U.S. workers



PERM Labor Certification

- EB-2 or EB-3 (depending on requirements for position)
- Employer-sponsored
- “Permanent” position
- The “normal” PERM Labor Certification process requires employer to advertise and show that it cannot find “minimally qualified” U.S. workers
 - Separate process available for teaching positions at institutions of higher education



Choosing an Attorney

- Location - Irrelevant
 - Immigration law is federal, not state specific
 - All filings are made at the same lockboxes and service centers
- Knowledge and Experience – Very Relevant



RESOURCE

David E. Gluckman, Esq.
dgluckman@lawmh.com
(804) 775-3826

Free consultations with students and employers