Immigration

Options After Practical Training
Cornell University
October 26th, 2015

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Miller Mayer’s lawyers have 25 years of experience working together to guide U.S. businesses through the immigration process. We help employees and employers in start-up companies, hospitals, universities, and financial and tech industries in our region and across America. We appreciate helping our business clients succeed – furthering their growth and talent-development with sound immigration guidance.
We work closely with HR departments to achieve compliance and planning. For smaller employers or situations where time to explore immigration rules and workarounds is limited, we make immigration easier with newsletters, tracking reports, bilingual advice memos, and helpful templates for documents and policies. Our responsiveness and customer service is unmatched among peer firms.

**Immigrant visas**

**Nonimmigrant visas**
## Nonimmigrant Visa Categories

<table>
<thead>
<tr>
<th>Letter</th>
<th>Category</th>
</tr>
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<tbody>
<tr>
<td>A</td>
<td>Diplomats</td>
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<tr>
<td>B</td>
<td>Visitors (business/pleasure)</td>
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<td>Transit</td>
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<td>D</td>
<td>Crewman</td>
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<td>E</td>
<td>Treaty trader/investors</td>
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<td>F</td>
<td>Academic students</td>
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<td>G</td>
<td>International Organization</td>
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<td>H</td>
<td>Temporary workers</td>
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<td>I</td>
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<td>J</td>
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<tr>
<td>K</td>
<td>Fiancés/fiancées of US citizens</td>
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<tr>
<td>L</td>
<td>Intra-company transferees</td>
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<tr>
<td>M</td>
<td>Vocational students</td>
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<tr>
<td>N</td>
<td>Parents or children of special immigrants</td>
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<tr>
<td>O</td>
<td>Persons of extraordinary ability</td>
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<td>P</td>
<td>Athletes or entertainers</td>
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<td>Q</td>
<td>International cultural exchange visitors</td>
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<td>R</td>
<td>Religious workers</td>
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<td>S</td>
<td>Federal witnesses (sneaky snitches)</td>
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<tr>
<td>T</td>
<td>Trafficking of persons victims</td>
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<tr>
<td>TN</td>
<td>NAFTA professionals (Mexico and Canada)</td>
</tr>
<tr>
<td>U</td>
<td>Certain crime victims</td>
</tr>
<tr>
<td>V</td>
<td>Certain spouses/children waiting for green cards</td>
</tr>
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</table>
H-1B Nonimmigrant Visas

• Employer sponsored for up to 6 years in a “specialty occupation”

• Three Requirements:

  1. Job must require a Bachelor’s degree or higher in **specific field** – USCIS now imposing more exacting standard
  2. Beneficiary must have at least the relevant Bachelor’s degree or equivalent
  3. Employer must pay a required wage
### Procedure

#### DOL
- **File LCA**
  - Employer must pay higher of prevailing or actual wage
  - Post wage at worksite

#### CIS
- **File H-1B**
  - Also known as Form I-129
  - **Processing**
    - Currently 2 months for normal processing time
    - Premium processing possibility is 2 weeks

#### DOS
- **Visa Application**
  - Apply for visa if need to travel outside US
Advantages of H-1B

1. Duration:
   - 6 year maximum
   - 1 year stay outside U.S. refreshes 6 years
   - Additional H extensions if green card started by end of 5th year

2. Time to work toward green card

3. No advertising or test of the U.S. labor market

4. H-1B portability when change employers
In certain situations, H-4 dependent spouses can work!

- Effective May 26, 2015, the Immigration Service is extending work authorization to certain H-4 dependent spouses of H-1B nonimmigrants who are seeking employment-based lawful permanent resident (LPR) status.

- Eligible individuals include H-4 dependent spouses of H-1B nonimmigrants who:
  - Are the principal beneficiaries of an approved I-140; or
  - Have been granted H-1B status beyond the six-year limit based on pending green card applications (pursuant to sections 106(a) and (b) of AC21).
Disadvantages of H-1B

1. Tied to one employer
2. Not flexible like F-1 OPT
3. Paperwork, cost and delay
4. October 1\textsuperscript{st} start date + cap race
5. “Self-sponsorship” not permitted
6. Must work to maintain status
7. Fees:
   - $825 – cap-exempt
   - $1,575 to $2,325 – cap-subject
   - $1,225 – expedite
   - $3,000 approx. – legal fee
What is the H-1B “cap”? 

- 65,000 per fiscal year 
- Reduced by 6,800 allocation for Chile and Singapore 
- Separate 20,000 for U.S. master’s degree or higher
• Fiscal Year: October 1 to September 30

• Apply April 1 (6 months prior)

• Past experience:
  
  ▪ FY 06 - August 10, 2005 (4.3 months)
  ▪ FY 07 - May 26, 2006 (8 weeks)
  ▪ FY 08 - April 3, 2007 (1 day)
  ▪ FY 09 - April 7, 2008 (1 week, lottery)
  ▪ FY 10 - December 21, 2009 (9 months)
  ▪ FY 11 - January 26, 2011 (10 months)
  ▪ FY 12 - November 22, 2011 (7.6 months)
  ▪ FY 13 - June 11, 2012 (2.4 months)
  ▪ FY 14 - April 5, 2013 (1 week, lottery)
  ▪ FY 15 - April 7, 2014 (1 week, lottery)
  ▪ FY 16 - April 7, 2015 (1 week, lottery)
• Defining receipt of degree as “complete requirements for degree”

• Accredited U.S. institutions

• All advanced degrees included

• Master’s cases considered under both caps
H-1B Cap Exemptions

• Lower filing fees

• No race

• College/university employees

• Related or affiliated nonprofit entities (i.e. university teaching hospitals)

• Nonprofit research organizations

• Government research

• Prior cap H-1B holders

• Employed “at” cap exempt worksite

• Concurrent cap-exempt and cap-subject H’s

• J-1 shortage area waived doctors
• Makes you subject to the cap

• Concurrent employment: considered part-time with each job
**OPT Timeline & Cap Gap Extension**

- **Program end date:** 5/25/16
- **7/25/16**
- **Apply for H 4/1/2017**
- **EAD expires 7/22/2017**
- **H-1B Started 10/1/2017**
- **60 day grace period**
- **Example: 7/22/16**
- **Apply up to 90 days before program end date and no later than 60 days after.**

12 months OPT plus cap gap extension

- **Apply 2/25/16**
• Regulations restrict release of certain “technology” and “technical data” to certain foreign nationals

• Employers of covered foreign nationals must get a license to release “technology” or “technical data”
• Employer Site visits:
  • USCIS Office of Fraud Investigation
  • DOL LCA audits

• Foreign National inspections:
  • U.S. consulate DS-160 visa processing
  • CBP airport inspection: where do you work? Carry LCA for additional worksite
  • Border patrol interior stop

• Compliance important, enforcement occurs
H-1B Conclusion

Are the workhorse of the temporary worker visa categories

Are complex and must be done correctly to avoid violations

Limited supply makes careful planning essential
• **Prove 3 of 8 criteria:**

1. Receipt of a nationally or internationally recognized prize for achievement in field
2. Membership in associations in field that require “outstanding achievement” of their members
3. Material published about applicant in major trade publications or other major media
4. Applicant serves as a judge of others in field either individually or on a panel
5. Original, scientific, scholarly, artistic, athletic, or business-related contributions of major significance in field
6. Authorship of scholarly articles in field
7. Performing a critical or leading role for
   – organizations that have a distinguished reputation
8. Command a high salary in field
Other Professional NIVs

**L-1:**
Multinational Transferee

- 12 months foreign employment
- Executive, manager, specialized knowledge
- Lower cost, no quota, no prevailing wage requirement
- Dual intent (may apply for a green card)
- Harsh adjudications
- Spouse work permits

**E-3:**
Australian work visa

- 2 year renewable,
- indefinitely
- 10,500 annual quota
- LCA only, consular filing
- Spouse and child work permits
• Mexican/ Canadian citizens

• Unlimited extensions

• POE in-person application for Canadian citizens, visa required for Mexican citizens

• Up to 3 years in job offer in listed occupation

• Bachelor’s degree/license in that field

❖ See chapter 16 of NAFTA and
• 8 C.F.R. § 216.4
Common TN Occupations

- Accountant
- Architect
- College/university professor
- Computer systems analyst
- Engineer
- Graphic designer
- Occupational therapist
- Registered nurse
- Scientific technician
- Social worker
- Urban planner
- Management consultant
Other NIV’s

- **B/WT**: Visitor, Exams
- **F/J**: Study and Research
- **J**: Professional trainees/Interns
- **H-3**: Training Program

- **E-1/E-2**: Treaty investors
  - Start/buy a company
  - 50+% foreign owned
  - Lead, direct, manage
- No China, India; few Middle Eastern or African countries
- **List of E-2 visa countries**
How can I become a US Permanent Resident?

- Family-based
- Employment-based
- Diversity Lottery
1. Immediate Relatives (children, spouses, or parents of US citizens) → No limit per year

2. Unmarried sons & daughters of US citizens → 23,400 visas per year

3. Spouses/minor children & unmarried sons and daughters of US permanent residents → 114,200 visas per year

4. Married sons and daughters of US citizens → 23,400 visas per year

5. Brothers and sisters of US citizens → 65,000 visas per year

6. US citizen son or daughter sponsor must be age 21 or over
<table>
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<th>Family-Sponsored</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
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<th>MEXICO</th>
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</table>
Program allows 55,000 randomly selected diversity visas (DVs) annually, must meet strict eligibility requirements, from countries with low immigration rates.

Eligibility requirements:
• Receive a visa based on education or work
• Must have a high school education or
• Two years of work experience within the past five years

•Current program: DV-2017 Program Instructions
**Priority Workers (EB-1)**

40,000 visas per year

- Extraordinary ability (self-sponsor)
- Outstanding professors & researchers (tenure-track position)
- Business executives & managers (no labor certification required)

**Advanced degree holders (EB-2)**

40,000 visas per year

- Professionals with advanced degrees or exceptional ability in sciences, arts & business (labor certification required)
- National Interest Waiver of labor certification requirement

**Skilled & unskilled workers (EB-3)**

40,000 visas per year

- Skilled workers in short supply
- Professionals with bachelor’s degree
- Unskilled workers in short supply (all require labor certification)

**Special Immigrants (EB-4)**

10,000 visas per year

- Religious workers; certain US govt. employees; Panama Canal employees; plus certain dependent juveniles

**Investors (EB-5)**

10,000 visas per year

- Must invest between $500,000 and $1 million
- Must create at least 10 full-time jobs
PERM Pathway to a Green Card (for some EB-2, EB-3)

PERM (DOL)

“Special Handling” PERM for professors (DOL)

I-140 Immigrant Visa Petition (USCIS)

Adjustment of Status—AOS (USCIS)

Consular Process Overseas (DOS)
• A certification from the Department of Labor that a particular position at a particular company is “open” because no qualified U.S. workers are available

• Employer must complete 5 kinds of recruitment, show ability to pay wage and prepare audit file

• Takes approximately 1 year

• Streamlined process for University professors (“Special Handling”)
I-140: Non-PERM Green Card Pathways (for EB-1, some EB-2)

• **EB-1** priority workers:
  1. **EB-1-A** Extraordinary ability aliens
  2. **EB-1-B** Outstanding professors and researchers
  3. **EB-1-C** Multinational executives and managers

• **EB-2** workers:
  1. advance degree with “national interest” waiver
  2. exceptional ability with “national interest” waiver
• Processing delays and quota delays mean it could take five years or longer to get an immigrant visa!

• EB-3 all and India and China EB-2 frequently have quota backlogs

• After PERM + I-140 approval, wait for quota delay. “Priority date” must be “current” to file step 3 of green card process and get a green card

• Priority date is date of PERM or I-140 filing

• Current = prior to date in Visa Bulletin
• May be able to file earlier under new “filing dates” in Visa Bulletin, but no approval until priority date is current.

Visa Bulletin
## Visa Bulletin:
### November 2015

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<th>Filing Date</th>
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<td>Other Workers</td>
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<td>4th</td>
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<td>Certain Religious Workers</td>
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<tr>
<td>5th Non-Regional Center (C5 and T5)</td>
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<tr>
<td>5th Regional Center (I5 and R5)</td>
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| Employed-Based | All Chargeability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPPINES |
| 1st | C | C | C | C | C |
| 2nd | C | 01JAN13 | 01JUL09 | C | C |
| 3rd | 01SEP15 | 01OCT13 | 01JUL05 | 01SEP15 | 01JAN10 |
| Other Workers | 01SEP15 | 01JAN07 | 01JUL05 | 01SEP15 | 01JAN10 |
| 4th | C | C | C | C | C |
| Certain Religious Workers | C | C | C | C | C |
| 5th Non-Regional Center (C5 and T5) | C | 01MAY15 | C | C | C |
| 5th Regional Center (I5 and R5) | C | 01MAY15 | C | C | C |
EB-5 Immigrant Investors

- For investors in U.S. companies that benefit U.S. economy and create or save at least 10 full-time U.S. worker jobs

- $1 million normally required to invest; $500,000 in rural or poor areas

- Receive conditional residence for two years; then file again to show job creation and receive permanent green card

- 10,000 EB-5 green cards per year

- Quota backlogs for Chinese nationals
Sources of Information on Immigration Law

- Links to embassies & consulates worldwide
- Application procedures and consulate closings
- Wardens messages and travel advisories
- Public announcements
- Derivative citizenship and renunciation
- Visa Bulletin regarding priority dates

- Statutes & regulations
- Forms
- Procedures and instructions
- Contact information
- Processing times
Parting Thoughts

• Realistic assessment is important

• Planning ahead is key

• Get to know employers soon

• Think of alternative and creative employment options

• Access this presentation online at: https://millermayer.box.com/s/zfhqzui82bqeojm6v6esfkpc1jq1h6rg
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