AFTER GRADUATION: VISAS FOR PROFESSIONALS

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OVERVIEW

Visas after Graduation

• Navigating U.S. Immigration
• Non-immigrant options after graduation
• How to become a permanent resident
Navigating U.S. Immigration
Nonimmigrants
- Employment limited.
- Duration of stay limited.
- Starting place for most graduates.

Permanent Residents
- "Green Card Holder"
- Can work or live anywhere.
- Cannot vote in U.S. elections; can be deported.

Citizens
- Can work or live anywhere.
- Can vote in U.S. elections.
- No fear of deportation.

Not on Continuum: DACA, TPS, Undocumented
Typical Immigration Timeline

**Student Employee Pathway**
- U.S. Graduated F-1/J-1 Students work permit (OPT)
- Employer Sponsored Work Visa (H-1B or other)
- Green Card, LPR
- U.S. Citizenship (Naturalization)

**International Employee Pathway**
- Employer Sponsored Work Visa (H-1B or other)
- Green Card, LPR
- U.S. Citizenship (Naturalization)

**Family or Asylee Pathway**
- Green Card, LPR
- U.S. Citizenship (Naturalization)
Getting Started: Nonimmigrant Visas
<table>
<thead>
<tr>
<th>Letter</th>
<th>Category</th>
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<tbody>
<tr>
<td>A</td>
<td>Diplomats</td>
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<td>B</td>
<td>Visitors (business/pleasure)</td>
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<td>C</td>
<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>
<td>Journalists/Media</td>
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<td>J</td>
<td>Exchange visitors</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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<td>N</td>
<td>Parents or children of special immigrants</td>
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<td>O</td>
<td>Persons of extraordinary ability</td>
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<tr>
<td>P</td>
<td>Athletes or entertainers</td>
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<tr>
<td>Q</td>
<td>International cultural exchange visitors</td>
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<tr>
<td>R</td>
<td>Religious workers</td>
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<tr>
<td>S</td>
<td>Federal witnesses</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>
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</table>
• STEM = Science, Technology, Engineering and Math
• Graduated F-1 STEM student to 36 months OPT
• For some, no need for employer-sponsored work visa, e.g., H-1B
WORK AUTHORIZATION UNDER STEM OPT

- **ALL F-1 grads**: 12 months work authorization to work in field of study = “OPT”
- **STEM F-1s**: Extra 24 months of work authorization if major listed = “STEM OPT”

[http://www.ice.gov/sevis/stemlist.htm](http://www.ice.gov/sevis/stemlist.htm)

- **Non-STEM advance degree holder** (e.g., MBA) may receive the 24 month STEM OPT extension based on a prior STEM degree (e.g., BS in Math) if not previously used = 4 years work
- **STEM advance degree holder** can access full 36 months OPT even if used full 36 months following prior STEM degree at lower level = 6 years work
WHAT JOBS QUALIFY?

• **OPT** = work or volunteer in field of study, at least 20 hours per week, no pay requirements, start up and self-employment acceptable (self-employment)

• **STEM OPT** = need employer, no self-employment, salary commensurate with American workers, commissions and dividends okay

• Employer requirements to participate STEM OPT:
  • Must participate in the E-Verify program
  • Report to student’s school on training, wages, evaluations and job changes
H-1B PROFESSIONALS

- 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 the required wage (Watch out for Level 1 Wage)
H-1B PROCEDURE

DOL
File LCA
Employer files with Department of Labor

CIS
File H-1B
Employer files petition with Citizen and Immigration Services

DOS
Visa application
Employee files for a visa stamp in passport during non-US travel
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. No delay when you change employers

5. Some spouse work authorization by regulations
1. Each employer must file separate petition
2. Not flexible like F-1 OPT
3. Paperwork, cost and delay
   - Fees: approx. $5,000 per filing, based on:
     - $960 – cap-exempt fee
     - $1,710 to $2,460 – cap-subject fee
     - $1,225 – expedite fee
     - $3,500 approx. – legal fee
4. RFE Trends (45% Increase in 2017)
5. Primary disadvantage is inadequate supply – H-1B lottery
Non-university employers are subject to H-1B cap (annual quota)

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
Inadequate H-1B Quota – April Lottery

- Cap-subject H-1B filings exceed supply
- All cap-H-1B employers file as early as possible, April 1
- Annual cap-H-1B quota filled in short time

- Recent lottery success rate approx. 35% for bachelor’s degree holders
  - FY 07 - May 26, 2006 (8 weeks)
  - FY 08 - April 3, 2007 (1 day)
  - FY 09 - April 7, 2008 (1 week, lottery)
  - FY 10 - Dec. 21, 2009 (9 months)
  - FY 11 - Jan. 26, 2011 (10 months)
  - FY 12 - Nov. 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)
  - FY 17 - April 8, 2016 (1 week, lottery)
  - FY 18 – April 7, 2017 (1 week, lottery)
U.S. MASTER’S CAP

- Must have degree by April 1 (time of H-1B filing)
- Accredited U.S. institutions, excluding for-profit schools
- All advanced degrees included
- Master’s cases considered under both caps (approx. 60% success rate)
H-1B Cap Exemptions

Employers who are:
- College/university
- University affiliated nonprofits (i.e., university teaching hospitals)
- Non-profit research institution (rare)

Individuals who are:
- Prior cap H-1B holders
- Employed “at” cap-exempt worksite
- Concurrently employed at cap-exempt worksite
- J-1 shortage area waiver doctors

Advantages:
- Lower filing fees
- No race, no quota
- Apply any time
CHANGING JOBS ON H-1B

- Requires new filing by new employer
- Lottery not repeated for company H-1B to new company H-1B
- ‘Portability’ (start new job before approval of that employer’s H-1B petition) means no delay
- Moving from university job to private sector job requires April 1 filing (cap-exempt to cap-subject)
10/1/2019
H-1B Started

EAD expires 7/22/2019

Apply for H 4/1/2019

7/25/18
Example: 7/22/18

7/25/18
Apply for H 4/1/2019

EAD expires 7/22/2019

H-1B Started 10/1/2019

Program end date 5/25/18

60 day grace period

12 months OPT plus cap gap extension

Apply up to 90 days before program end date
and no later than 60 days after.
Hiring Timing: OPT and H-1B

- **Graduating F-1s: Jan to March interview**
  - Timing of OPT work permit to match start date
  - Is H-1B necessary because OPT time not enough?
  - Future visa planning

- **Students working on OPT at another company**
  - OPT expiration and STEM extension timing
  - Avoiding a gap between OPT and H-1B
  - Future visa planning

- **H-1Bs working at other companies**
  - How much time of 6 year limit remains?
  - Has permanent resident process started and status?
OTHER VISA OPTIONS: L-1 AND E-3

L-1: Multinational Transferee
- For employers with related foreign companies
- 12 months foreign employment
- Executive, manager, specialized knowledge
- Spouse work permits

E-3: Australian work visa
- 2 years
- Renewable indefinitely
- Professional positions (similar to H-1B)
- Spouse and child work permits
Other Visa Options: TN

- Mexican/Canadian citizens
- Up to 3 years in job offer in listed occupation
- Same day application process possible
- Unlimited extensions
- Bachelor’s degree/license in that field

Common TN Occupations:

- Accountant
- Architect
- College/university professor
- Computer systems analyst
- Engineer
- Management consultant
- Occupational therapist
- Registered nurse
- Scientific technician
- Graphic designer
OTHER VISA OPTIONS: E-1 AND E-2

• E-1 Treaty Traders
  ▪ Substantial trade, principally between the U.S. and home country.

• E-2 Treaty Investors
  ▪ Invest substantial capital in a bona fide enterprise in the U.S.
  ▪ Toronto Consulate has indicated that $50,000 is the lowest “substantial investment” they have approved

• E-1/E-2 Generally
  ▪ Can start or buy a company
  ▪ Company must be 50% owned by nationals of the same treaty country
  ▪ Can be employed by a company qualifying for E-1/E-2 status where the owner(s) shares your nationality
  ▪ Holders of E-1/E-2 status can lead, direct, manage
  ▪ No China, India; few Middle Eastern or African countries
  ▪ Spouse can work.
  ▪ No limit on extensions.
Must prove 3 of 8 criteria:

- Receipt of a nationally or internationally recognized prize for achievement in field
- Membership in associations in field that require “outstanding achievement” of their members
- Material published about applicant in major trade publications or other major media
- Applicant served as a judge of others in field either individually or on a panel
- Original, scientific, scholarly, artistic, athletic, or business-related contributions of major significance in field
- Authorship of scholarly articles in field
- Performing a critical or leading role for organizations that have a distinguished reputation
- Command a high salary in field
• J: Study and Research (Careful about 2-year foreign residency requirement)

• H-1B1: Carve out for Singapore and Chile

• H-3: Training Program

• I: Information Media Representatives (Press, Radio, Film, Print)
Spouses

• E-1, E-2, E-3, L-1, and J-1 status allow spouses to work in any field, and now some H-1Bs

• Spouse may also be able to pursue permanent residence
Here to Stay: Permanent Residence
TRANSITIONING TO PERMANENT RESIDENCE

- Family-based
- Employment-based
- Diversity Lottery
# Family-Based Green Card Categories (FB)

<table>
<thead>
<tr>
<th></th>
<th>Spouse, Parents, children under 21</th>
<th>Sons and daughter 21+</th>
<th>Married sons/daughter</th>
<th>Siblings</th>
<th>Nationality = China, Mexico, Philippines, India</th>
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</thead>
<tbody>
<tr>
<td>US citizen sponsor &gt; 21</td>
<td>Yes</td>
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<td>Yes</td>
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<tr>
<td>Approx. wait time</td>
<td>None</td>
<td>6 years</td>
<td>12 years</td>
<td>13 years</td>
<td>longer</td>
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<tr>
<td>LPR/CPR sponsor &gt; 21</td>
<td>Yes – spouse, child</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td></td>
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<tr>
<td></td>
<td>No - parents</td>
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<td></td>
<td></td>
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<tr>
<td>Approx. wait time</td>
<td>1.5 years</td>
<td>7 years</td>
<td>N/A</td>
<td>N/A</td>
<td>Longer</td>
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**Note:** The approx. wait times are as of the latest update, subject to change.
<table>
<thead>
<tr>
<th>Family-Sponsored</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
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<td>22DEC10</td>
<td>22DEC10</td>
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<td>01JAN07</td>
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<td>22OCT15</td>
<td>22OCT15</td>
<td>15OCT15</td>
<td>22OCT15</td>
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<tr>
<td>F2B</td>
<td>08NOV10</td>
<td>08NOV10</td>
<td>08NOV10</td>
<td>15JUL96</td>
<td>01JAN07</td>
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<td>22JUL05</td>
<td>22APR95</td>
<td>22FEB95</td>
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<td>F4</td>
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<td>01OCT03</td>
<td>01OCT97</td>
<td>01JUN94</td>
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</table>
Program allows 50,000 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-2019 Instructions
**EMPLOYMENT BASED AND PERM**

- **What:** A certification from the Department of Labor that a particular position at a particular company is “open” for a foreign national because no qualified U.S. workers are available to fill the position.

- **How:** Employer completes 5 kinds of advertising/recruitment to show no qualified U.S. workers applied for the position.

- **When:** Date of PERM filing = initial green card application date, triggering start of quota waiting period, if any.

- **Streamlined process for professors (“special handling”)**
PERM-BASED GREEN CARD PROCESS

PERM (DOL)

“Special Handling PERM” *For professors* (DOL)

I-140 Immigrant Visa Petition (USCIS)

Adjustment of Status-AOS (USCIS)

Consular Process Overseas (DOS)
**Employment-Based Green Card Categories (EB)**

**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
# EB Overview

<table>
<thead>
<tr>
<th>EB-1</th>
<th>EB-2</th>
<th>EB-3</th>
<th>EB-5</th>
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<tbody>
<tr>
<td>Extra-ordinary ability</td>
<td>Advanced degree with PERM</td>
<td>Bachelor’s degree with PERM</td>
<td>Investors in job-creating project of</td>
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<td>Regional Center</td>
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<td>Tenure-track professor</td>
<td>Exceptional ability with PERM</td>
<td>Skilled workers with PERM</td>
<td>In self-managed business</td>
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<td>Permanent researcher</td>
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<td>no PERM</td>
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<tr>
<td>Multinational transferees</td>
<td>National Interest Waiver no PERM</td>
<td>Unskilled workers with PERM</td>
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<td>no PERM</td>
<td>PERM</td>
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<tr>
<td>No quota delay</td>
<td>0-7 years</td>
<td>1-11 years</td>
<td>2+ years (China only)</td>
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<tr>
<td>3 -12 months processing</td>
<td>3 - 24 months processing time</td>
<td>24+ months processing time</td>
<td>2 – 3 years processing time</td>
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<tr>
<td>time</td>
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Source: Miller Mayer
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<tr>
<th>Employment Based</th>
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<th>CHINA - mainland born</th>
<th>EL SALVADOR, GUATEMALA, HONDURAS</th>
<th>INDIA</th>
<th>MEXICO</th>
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<td>Other Workers</td>
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<td>01MAR16</td>
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<td>Certain Religious Workers</td>
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<td>5th Regional Center (IS and RS)</td>
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</table>
• **EB-1 priority workers:**
  1. EB-1-A Extraordinary ability aliens
     i. Self-sponsor
     ii. Similar to O-1A NIV
  2. EB-1-B Outstanding professors and researchers
  3. EB-1-C Multinational executives and managers
     i. Similar to L-1A NIV

• **EB-2 “national interest” workers:**
  i. Self-sponsored
  ii. Advanced degree or exceptional ability
  iii. Doing work in the national interest
EB-5 INVESTORS

• Self-sponsored

• Must invest 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

• Quota backlogs for Chinese nationals
Complex process (PERM, I-140, AOS) > 5 years

Quota delays affect Bachelor’s degree level jobs (EB-3) and India and China Masters and Bachelor’s degrees (EB-2)

During quota delay wait period, employer-sponsored temporary work visa necessary

USCIS issued a rule recently that liberalizes work permissions for many foreign nationals, especially those affected by long quota delays in the employment-based green card categories
GOVERNMENT RESOURCES

- 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

U.S. Citizenship and Immigration Services

- Statutes & regulations
- Forms
- Procedures and instructions
- Contact information
- Processing times
THE INTERNET: A TOOL FOR YOU AND USCIS

- Google
- LinkedIn
- Facebook
- Online articles

Make sure your web presence only has authorized work!
THE ROAD AHEAD

• Realistic assessment is important
• Planning ahead is key
• Get to know employers soon
• Think of alternative and creative employment options
We’re Here to Help

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