

Life After Student Status: Immigration Workshop For International Students

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Choosing an Immigration Lawyer

○ Five Tips

- #1: Lawyer Should be a Member of AILA
 - American Immigration Lawyers Assoc.
- #2: Only Immigration Law
- #3: Student Should Pick a Lawyer Via Reliable Reference
- #4: Confidentiality (exception in H-1B context – dual representation)
- #5: Generally Pay a Fixed Legal Fee



Where to get the Right Advice?

- ▶ Foreign Student Advisors or DSOs
 - ▶ The Appropriate Lawyer
 - Cheapest is not the best.
 - Don't choose lawyers who advertise for general practice.
 - ▶ New York City Bar Legal Referral Service
 - 212-626-7373 or www.iLawyer.com
 - ▶ Beware of Mistaken Perception of New Laws and Online Materials
 - ▶ Pitfalls in Social Media (Facebook, LinkedIn, Craigslist, online materials)
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Beware of Non-Lawyer Experts, Notarios, Travel Agents, etc.



- ▶ To Report Unauthorized Practice of Law
 - N.Y. County District Attorney's Office – 212-335-3600
 - Northern Manhattan – 212-864-7884
 - N.Y. Attorney General's Office – <http://www.oag.state.ny.us/>
 - USCIS National Customer Service Center – 1-800-375-5283

- ▶ To Confirm Lawyer in New York
 - Unified Court System – 212-428-2800
 - <http://iapps.courts.state.ny.us/attorney/AttorneySearch>
 - Lawyer licensing is by state. Please check each state's board of bar examiners online.

The Various Federal Agencies:

- ▶ DOS (Department of State) through its Visa Office and the U.S. Consulates issue Visas.
 - ▶ CBP (Customs and Border Protection) – the “Gatekeeper”, they stamp you in.
 - This is the first point of contact at airports or other ports of entry.
 - ▶ USCIS (United States Citizenship and Immigration Services) –
 - Decides motions to reinstate, changes of status, and employment cards (OPT/STEM) – and maybe one day, green cards.
 - ▶ ICE (Immigration and Customs Enforcement) – The immigration police who manage SEVIS and enforce compliance.
 - ▶ USDOL, HHS, Social Security
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What is a Visa? What is Status?

◉ Visa:

- The Key to Enter the U.S.
- This is a Travel Document
- Consulate Laminates into Passport

◉ Status:

- F-1: I-20
- J-1: DS-2019
- Passport Stamp at Entry, Electronic I-94
- Change by USCIS while in the U.S. if in status
- Note → OPT/AT is Under F-1 /J-1 Status

You Are Going To
Graduate.

Now What?

General Issues

▶ Finding a Job

- Employers CAN Discriminate Against International Students.
- What to Say in the Job Interview?
 - Should I disclose that I will need to be “sponsored”?
 - What should I say?
 - Sell Yourself.
 - Please call my very reputable lawyer.
 - The employer does not need to advertise for the H-1B category.
 - Beware of employer’s misconception relating to H-1B petitions and green card petitions.
 - Hiring Cycle

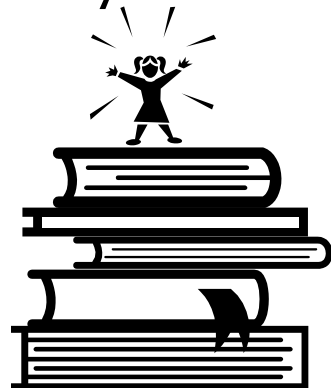
H-1B – Specialty Occupation Petition

- ▶ Specialty Occupation = Professional
 - 4 year degree or higher (abroad or U.S.)
 - Equivalency OK
 - Major/Classes from Degree Must Match Job Duties
 - Not What you Have – But What the Job Needs:



- For example: Registered Nurses are not professional as job requires only a 2 year degree.
- For example: Specialty or head nurse does qualify as job requires B.S. degree.

- Full Time (40 hr+) vs. Part Time (less than 35 hrs per week–but must be able to support yourself)



H-1B – Specialty Occupation Petition

- ▶ 6 Year Limit (3+3, 2+2+2, etc.)
- ▶ Must be Outside U.S. for One Year Before Reenter in New H-1B Cycle
- ▶ Reclaim Time Spent Outside U.S.
 - Prove with Entry/Exit Stamps, Boarding Passes, Frequent Flier Records, Etc.
- ▶ AC21 Extension if Pending Employment-Based Green Card Applications for 1 Year

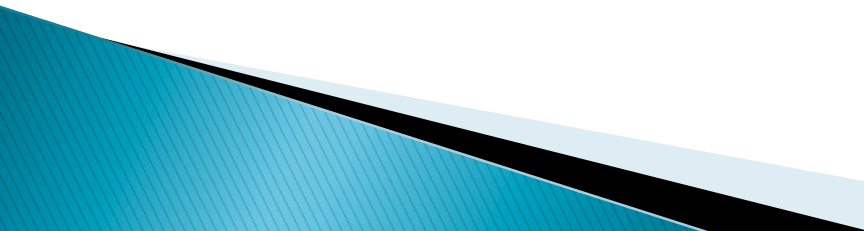
Employer Files on Behalf of Employee

- H-1B Specific To Employer:
 - Each Employer Must Petition
 - One Employer/One Petition, Or
 - Multiple Employers/Multiple Petitions.
 - Employer signs all paperwork
 - Must have Employer–Employee relationship
 - No Independent Contractors
 - Can change employers, but only after approval and you have actually worked for your first petitioner
 - Use of an Agent Employer For Multiple Short Jobs – Issues of Principal/Agent (January 2010 USCIS Memo)

H-1B Cap

- ▶ 65,000 +/-
 - Plus 20,000 Advanced U.S. Degrees from Public/Nonprofit institutions
- ▶ Government Fiscal Year is 10/1 – 9/30
 - USCIS Permits Filing 6 months before fiscal year starts
- ▶ Earliest filing date is April 1st
 - A number is captured after timely filing & USCIS receipt of H-1B
 - H-1B becomes effective on 10/1
 - Premium Processing does NOT guarantee a number
- ▶ Cap-Gap – Only for spring graduates
 - Must file H-1B Change of Status petition prior to OPT expiration date.
 - OPT extended to 10/1 H-1B start date with employment – but no travel.
- ▶ If no Cap-Gap – cannot begin work until Oct 1st

H-1 B Jobs Exempted from Cap

- ▶ Employment at a U.S. Institution of Higher Education (Colleges or Universities – Public or Nonprofit) or a Related/Affiliated Non-Profit Entity.
 - ▶ Employment at a Non-Profit Organization that engages primarily in research or certain types of Government Research Organizations.
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What is in an H-1B petition?

- ▶ Labor Condition Application – LCA
 - Not Labor Certification – No Newspaper Advertising
- ▶ I-129
- ▶ H-Supplements (Statistics, Fee Exemption), Explanation Letter, Supporting Documents (Credentials, Employer Bona Fides)

- ▶ Costs =
 - Filing Fee \$460
 - Fraud Detection Fee \$500 by **Employer**
 - Training Fee \$750 (for companies of 25 employees or less / \$1,500 if 26 employees or more) by **Employer**
 - Premium Processing Fee \$1,225 (optional)

Change Status in the U.S. or Consular Notice Abroad?

◎ Change of Status

- While in the U.S.
- Still in Status



◎ Consular Notice

- To Obtain Visa Outside the U.S.
- If Out of Status

Intent: to stay or to go?

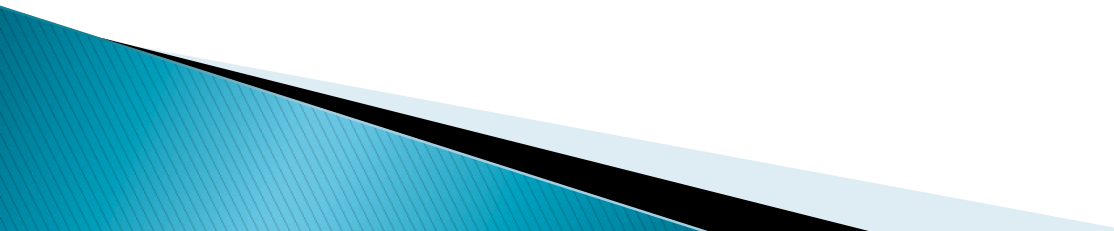
- ▶ Non-immigrant intent: intent to return home
- ▶ Immigrant intent: intent to stay in the US
- ▶ Beware of what you are telling USCIS, CBP, and DOS by what you are filing or have filed.
 - If there are conflicts or inconsistency in your statements/actions and your paperwork, it could be construed as visa fraud.
- ▶ Beware of filing of immigrant petition before changing status from F-1 /J-1.

Other Categories

If H-1B is Unavailable or Not Appropriate:

- ▶ E-1: Treaty Trader
- ▶ E-2: Treaty Investor
- ▶ E-3: Specialty Occupation Professional – Australia
- ▶ L-1: Intracompany Transferee
- ▶ O-1: Extraordinary Individual
- ▶ P-1: Entertainment Group
- ▶ TN: NAFTA (Mexico, Canada)
 - Free Trade: Chile, Singapore
- ▶ A: Diplomat
- ▶ G: Non-Government Diplomat
 - Ex: International Monetary Fund, U.N., World Bank, etc.
- ▶ I: Journalist

Green Card Categories

- ▶ Family-Based
 - ▶ Employment-Based
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Green Card Quotas

- ◉ Limited Number of Places Each Year for Specific Family and Employment Categories.
- ◉ Place in Line Set by Petition Filing Date (aka Priority Date).
- ◉ Changes Each Month – Check the Visa Bulletin Website
http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html
- ◉ There Could be Long Quota Delays.
- ◉ In Order to Adjust Status in U.S., Must Remain in Lawful Status.

Family-Based Green Card (I-130)

- ▶ Immediate Relative (Above the Quotas):
 - Marriage to US Citizen – must be *bona fide*
 - Parents of USC (USC must be over 21)
- ▶ Preference Categories:
 - Unmarried Sons and Daughters (Over 21) of USC (Age Out Provisions – CSPA)
 - Spouses, Children and Unmarried Sons and Daughter (Over 21) of LPR.
 - Married Sons and Daughters of USC
 - Siblings of Adult USC
- ▶ To Adjust Status in U.S. – Remain in Lawful Status.
- ▶ If Unable to Adjust Status in U.S. – Consular Process if Able.

VAWA:

Violence Against Women Act

- ▶ Relationships must be bona fide.
- ▶ Relief is available for spousal abuse
- ▶ VAWA Applies to Both Women and Men.
 - Go to hospital
 - Call police
 - Take photos of injuries
- ▶ Private Agencies:
 - Sanctuary for Families
 - 24hr Hotline → (800) 621 - HOPE
 - NYC → (212) 349 - 6009
- ▶ New York State:
 - New York State's 24-hour Domestic Violence Hotline:
(800) 942-6906 (English) (800) 942-6908
(Spanish)

EMPLOYMENT Green Card Categories (The I-140)

▶ EB-1

- Extraordinary Ability
 - (No sponsor required)
- Outstanding Professor or Researcher
- International Transferees
 - (Managers & Executives only)
- Investors \$\$\$

EMPLOYMENT Green Card Categories

◎ EB-2:

- For jobs requiring Master's degree or equivalent
- Exceptional
- National Interest Waiver
 - Waiver of Labor Certification if:
 - Work in National Interest
 - First Among Equals - Able to Make *Unique* Impact
 - No Petitioner Required

◎ EB-3:

- For jobs that require a Bachelor's degree or no degree

EMPLOYMENT Green Card Categories

◉ Labor Certification

- PERM
- U.S. Job Offer:
 - Objectively describe duties, experience, education.
 - Requirements must be open to U.S. workers, not particularized to applicants' skills.
 - Must show no U.S. worker is able, willing, qualified or available at the prevailing wage.
- Delays

EMPLOYMENT (cont.)

▶ Quotas

- Limited Pool of Places Each Year by Category and by Country.
- Fewer Places in EB3, Therefore Delays Up to Many Years
- EB-2 Delays for China and India
- If in Lawful Status in US, then Adjust Status in U.S.
- If Out of Status, Consular Process, but, may be Banned for 3 or 10 Years If **Unlawfully Present** (180 days before bar is triggered)
 - Generally exempt From Unlawful Presence if D/S.

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