

Life After Student Status: Immigration Workshop For International Students

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Disclaimer

- The topics discussed in these materials may overlap many areas of law, including, but not limited to, corporate law, immigration law, and accounting.
- No legal advice is being offered at this workshop, or through these materials. Rather, the information presented is general. Reviewing these materials does not create a client-attorney relationship.
- Should you wish to discuss your specific situation, please contact our office to schedule a consultation.

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, etc.)

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

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

General Employment 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
 - There must be a direct connection from your Degree/major to your future job as an H-1B
 - 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)



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
- *New* USCIS expects: a bona fide job offer of employment, where the employer has a legal presence in the United States and is amenable to service of process, and has an IRS tax identification number, among other things
 - New regulation allows for beneficiary-owners
 - Beneficiary owners initially approved for only 18 months
 - Then apply for 18 month extension, before able to apply for final 3 years of H-1B – still 6 years total of H-1B
- Can change employers, but only after approval and you have actually worked for your first petitioner

H-1B Cap

- 65,000 +/-
 - Plus 20,000 Advanced U.S. Degrees from Public/Nonprofit institutions
- Government Fiscal Year is 10/1 – 9/30
- ***New*** Company Registration from 3/7 – 3/24/25 noon EST
 - Company pays \$215 Registration fee per beneficiary
 - If selected, the company will be invited to submit the entire H-1B petition.
 - Will have up to 90 days to file the petition with USCIS
- Earliest H-1B becomes effective is 10/1
- Cap-Gap – Only for spring graduates
 - Must file H-1B Change of Status petition prior to OPT expiration date.
 - ***New*** OPT extended to end of March the following year– but no travel while H-1B COS is pending.
- If no Cap-Gap – cannot begin work until Oct 1st or when petition is approved – whichever is later.

H-1B Employers/Petitioners Exempted from the Cap

- Employment at U.S. Institutions of Higher Education (Colleges or Universities – Public or Nonprofit) or Related/Affiliated Non-Profit Entities.
- Employment at Non-Profit Organizations that conduct research as a fundamental activity or certain types of Government Research Organizations.

What is in an H-1B petition?

- Labor Condition Application – LCA
 - Not a Labor Certification – LCAs do not require recruitment or newspaper advertising
- Form I-129
- H-Supplements (Statistics, Fee Exemption), cover letter, supporting documents (education credentials, employer bona fides, etc.)
- Costs:
 - Registration Fee \$215* beginning March, 2025
 - General Filing Fee \$460 for small employers; \$780 for other employers
 - Fraud Detection Fee \$500 for all employers
 - Training Fee \$750 for small employers; \$1,500 for other employers
 - Asylum Program Fee \$300 for small; \$600 for other employers
 - Premium Processing Fee \$2,805 (optional)
 - Employers are required to pay all of the required fees
 - Small employers are businesses with 25 or less full-time employees
 - Nonprofit organizations pay \$460 as the general filing fee, and are not subject to the Asylum Program fee

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



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

Intent: to stay or to go?

- Non-immigrant intent: intent to depart the US.
- 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
- H-1B1 Free Trade - Chile, Singapore
- L-1: Intracompany Transferee
- O-1: Extraordinary Individual
- P-1: Entertainment Group
- TN: USMCA (formerly NAFTA) - Mexico, Canada
- A: Diplomat
- G: Non-Government Diplomat
 - Ex: International Monetary Fund, U.N., World Bank, etc.
- I: Journalist

Immigration Workshop For International Students (F-1 & J-1)

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