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)
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
  - 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](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**
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-1B 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.
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)
    - Best practice is to have employer pay all of these fees
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 – Details

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- AC21 Extension if Pending Employment-Based Green Card Applications for 1 Year
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.
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
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](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.
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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