

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 Association
- #2: Fixed Legal Fee (some exceptions)
- #3: Only Immigration Law
- #4: Pick from a Reliable Reference
- #5: Confidentiality (Except in employment context – Dual representation)



Where to get the Right Advice?

- ◎ DSOs, Foreign Student Advisors, International Student Offices
- ◎ New York City Bar Legal Referral Service
 - 212-626-7373 or www.iLawyer.com
- ◎ Beware of Mistaken Perception of New Laws; Online Materials
- ◎ Pitfalls in Social Media (Facebook, LinkedIn, Craigslist, etc.)

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/>
 - 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>
 - Lawyers licensed 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)
 - Determines U.S. admissibility
 - 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 and naturalization.
- ◎ 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.
- A Travel Document
- Consulate Laminates into Passport

◎ Status:

- F-1: I-20
- J-1: DS-2019
- Passport Stamp/ 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”?
 - Can I use an agent?
 - What should I say?
 - Sell Yourself.
 - Please call my knowledgeable lawyer.
 - Employers do not need to advertise for non-immigrant (H-1B, O-1, etc.) categories.
 - Hiring season.

H-1B – Specialty Occupation Petition

◎ Specialty Occupation = Professional

- 4 year degree or higher
- 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 (35 hr+) vs. Part Time (must be able to support yourself)



H-1B – Specialty Occupation Petition

- ⦿ 6 Year Limit (3+3, etc.)
- ⦿ 1 Year Outside U.S. Before Reenter in 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
- 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/Non-Profit Institutions
- ◎ Government Fiscal Year is 10/1 – 9/30
 - USCIS Permits Filing 6 months before fiscal year starts
- ◎ Earliest filing date is April 1st for Oct. 1st start date
 - A number is captured after a timely filing of a H-1B
 - Premium Processing does NOT guarantee a number
- ◎ Cap-Gap – Only for spring graduates
 - Must have H-1B Change of Status petition received by USCIS prior to OPT expiration date.
 - OPT extended to 9/30, then start H-1B status on 10/1 – 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) or a Related/Affiliated Non-Profit Entity.
- Employment at a Non-Profit Organization that engages primarily in research or a certain types of Government Research Organizations.

What is in a 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 \$325
 - Training Fee \$750 (for companies of 25 employees or less/\$1,500 if 26 employees or more) by **Employer**
 - Fraud Detection Fee \$500 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.
 - Agencies are interconnected now. They share their information with each other.
- ⦿ 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: National Monetary Fund, U.N., World Bank, etc.
- ⦿ I: Journalist

Green Card Categories

- Family-Based
- Employment-Based

Understanding Green Card Quotas

- ⦿ Limited Number of Places Each Year for Specific Family and Employment Categories.
- ⦿ Place in Line Determined 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 can be Long Quota Delays.
 - ⦿ Especially for citizens of Mainland China, Mexico, India, and the Philippines.
- ⦿ In Order to Adjust Status in U.S., Must Remain in Lawful Status.

Family-Based Green Card (I-130)

- ◎ Immediate Relative (Exempt from Quotas):
 - Marriage to U.S. Citizen – must be *bona fide*
 - Parents of U.S. Citizens over the age of 21

- ◎ Preference Categories (subject to quotas):
 - Unmarried Sons and Daughters (Over 21) of U.S. Citizens
 - Spouses, Children, and Unmarried Sons and Daughter (Over 21) of Legal Permanent Residents.
 - Married Sons and Daughters of U.S. Citizens
 - Siblings of Adult U.S. Citizens

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 (no Sponsor)
- Exceptional
- Outstanding Professor or Researcher
- International Transferees
(Managers/Executives)
- Investors (\$\$\$)

EMPLOYMENT Green Card Categories

◎ EB-2:

- Generally job requiring Master's degree or equivalent
- 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:

- Generally job requiring Bachelor's degree or equivalent

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

Unlawful Presence

- In Order to Change Status in the U.S., Must Remain in Lawful Status.
- If Out of Status, Must Apply Via Consular Processing.
- However, Need to Determine if Accruing Unlawful Presence.
- 3/10 Year Bar
- 180 Days Grace Period
- Exemption for D/S

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