Work Visa and Green Card Options

David E. Gluckman, Esquire
Phone: (804) 775-3826
Email: dgluckman@lawmh.com

McCandlish Holton, PC
Website: www.lawmh.com

November 19, 2020
Introduction to U.S. Immigration Law

- **Permanent Resident Green Cards:**
  - Live forever in the United States
  - Ease of employment
  - Ease of travel
  - Only limited ways to obtain / lengthy processing

- **Temporary Nonimmigrant Visas:**
  - Many categories (A – V)
  - Few allow employment
  - Categories most relevant for post-graduation work:
    - F-1 – OPT
    - H-1B
Typical Post-Completion Employment Path

- F-1 - Optional Practical Training (12 or 36 months)
  - or
- J-1 – Academic Training (18 or 36 months)
  - then
- H-1B – Most common work visa (6 years of work eligibility)
F-1 Optional Practical Training

- **Generally, 12 months of OPT post-graduation**
  - Allows work in any job related to degree
  - Cannot work until receive work card (Employment Authorization Document); application fee is $410
  - Can apply for card up to 90 days before completion of program, or up to 60 days after completion
  - Must apply within 30 days of OPT authorization from Foreign Student Advisor
  - 4-5 month processing time
  - No more than 90 days of unemployment permitted

- **Consult with international student office before traveling while on OPT**
F-1 OPT STEM Extension

- Students with qualifying “STEM” degree eligible for an additional 24 months of work authorization
  - Must apply before initial OPT expires and within 60 days of Foreign Student Advisor’s authorization for STEM extension
  - Employer MUST be enrolled in E-Verify

- Qualifying STEM degrees
  - Compare CIP Code on Form I-20 with the “STEM Designated Degree Program List”
  - U.S. degrees obtained within the last 10 years generally can be used as a basis for the STEM OPT extension, as long as program is on current STEM list
H-1B Visa

Most Common Work Visa

- Employer must “sponsor” (offer a job that requires a degree)
- Beneficiary must have degree
- Degree must relate to the job
- No need to advertise for U.S. workers
H-1B Issues

- **Duration**
  - 3 years initially
  - 3 year extension
  - 6 year maximum

- **Scope of H-1B Authorization**
  - Can only work for this employer, doing what was described on the petition, in the location described on the petition

- **Change Employer**
  - New employer must file new petition
  - But can begin working as soon as new petition is filed without waiting for approval
H-1B Issues

Cost - Who Pays?
- Legal Fee
- USCIS Filing Fees
  - H-1B registration fee - $10
  - Base fee - $460
  - Fraud Prevention Fee - $500
  - “Training Fee” - $1,500 ($750 for employers with 25 employees or less)
  - Optional Premium Processing Fee (15 days) - $2,500
  - Additional $4,000 fee for companies with 50 or more employees, and 50% or more of workforce is H-1B or L (rare)
H-1B: Harder—Not Hopeless

- **H-1B is a stable program**
  - H-1B program created by statutes and regulations.
  - Administration focusing on applying existing law harshly.

- “**Specialty occupation**”
  - Job must require degree in a particular field (or multiple closely-related fields).
  - Jobs accepting multiple, unrelated degrees won’t qualify.

- **Off-site work**
  - Need meticulous documentation linking you with the employer that filed H-1B petition.
**H-1B Quotas**

- **USCIS FISCAL YEAR**: October 1 – September 30

- **Quotas**:
  - 85,000 new H-1Bs available each fiscal year
  - Applicants with U.S. advanced degrees – 20,000
  - All other degrees – 65,000
  - New law improves lottery chances for U.S. advanced-degree grads

- **Current availability**: ?
Beat the H-1B Cap

- October 1 – new quota released
- March 1-20 – electronic pre-registration/lottery
- April 1 – 90-day filing window begins for cap lottery “winners”
- May/Dec – graduation & OPT
Example #1

- Student graduates in May 2021.

- Employer had submitted registration in March 2021 and student was selected in lottery. Employer files for H-1B, effective October 1, 2021.

- Student works on OPT until September 30, 2021, then H-1B effective October 1, 2021.
Example #2

- Student graduates in May 2021 without H-1B registration or lottery selection.

- Student works on OPT. Employer submits registration in March 2022 and student is selected in lottery. In April 2022, employer files for H-1B, effective October 1, 2022.

- But student’s OPT expires in June 2022.

- What now?
H-1B “Cap Gap” Relief

- If your employer files an H-1B petition on your behalf on or after April 1st,
- OPT is still valid at the time of filing,
- OPT is extended until September 30th
H-1B Cap-Exempt Organizations

- Universities

- Non-profit organizations affiliated with universities (such as research facilities or hospitals)

- Non-profit research organizations, engaged primarily in basic or applied research

- Governmental research organizations (federal, state, or local)
H-1B Alternatives

- Canada, Mexico, Chile, Singapore, Australia
- L-1 Manager / Executive / Specialized Knowledge. Work overseas for one year; now working for affiliate in United States
- E treaty investor/trader (not China, India) working for companies owned by citizens of your country in the United States
- Re-enroll in full-time study (F-1 or J-1)
- Other possible options are very limited (e.g., J-1). Consult qualified immigration specialist
O-1 Extraordinary Ability

- Filed by an employer
- Small percentage at top of field
- Beneficiary is allowed to pay filing/legal fees
- Can be filed up to 1 year before start date

Requirements:
- Major international award (e.g., Nobel Prize)
- or
- At least 3 of 8 specific criteria
O-1 Extraordinary Ability

O-1 Criteria (need at least 3):

- Nationally or internationally recognized prizes or awards for excellence in field
- Membership in associations requiring outstanding achievement
- Published material about you or your work
- Judge of the work of others (peer review)
- Original contributions of major significance
- Authorship of scholarly articles
- Employed in critical or essential critical role for distinguished organizations
- High salary
Green Card

- **Limited Ways to Obtain**
  - Family Relationships
  - Diversity Visa Lottery
  - Employment/Special Skills
    - EB-1 - Extraordinary / Outstanding / Multi-national
    - EB-2 - Advanced Degree / Exceptional
    - EB-3 - Bachelor’s Degree / Skilled worker
  - **Must maintain non-immigrant status**
Extending H-1B Beyond Six Years

- Normal length of H-1B – 6 years
- Can extend for the following:
  - Recapture time outside the U.S.
  - Employment-based green card process pending at least 1 year – can extend H-1B in 1 year increments
  - Approved I-140, but no quota number to adjust – 3 year extension
EB-1A Extraordinary Ability

- Self-sponsor (no job offer required)
- Small percentage at top of field
- Factors:
  - Major international award, or at least 3 of the following:
  - Lesser national or international awards
  - Membership in association requiring outstanding achievement
  - Published material about you or your work
  - Participation as judge of the work of others (peer review)
  - Original contributions of major significance
  - Authorship of scholarly articles
  - Leading or critical role for distinguished organizations
  - High salary
EB-1B Outstanding Professor/Researcher

- Employer-sponsored
- “Permanent” position (no definite end date)
- At least 3 years of teaching/research experience
- Factors: at least 2 of the following:
  - Major prizes or awards
  - Membership in associations requiring outstanding achievement
  - Published material about you or your work
  - Judge of the work of others (peer review)
  - Original research contributions
  - Authorship of scholarly articles
EB-2 National Interest Waiver

- Exceptional Ability/Work in National Interest
- Self-sponsor (no job offer required)
- Expertise significantly above that ordinarily encountered

Factors: at least 3 of the following:
- Degree relating to area of exceptional ability
- 10 years of full-time experience
- License/certification for particular profession/occupation
- High salary
- Membership in professional association
- Significant contributions/recognized achievements

Would be harmful to the national interest to require employer to advertise to find U.S. workers
PERM Labor Certification

- EB-2 or EB-3 (depending on requirements for position)
- Employer-sponsored
- “Permanent” position

The “normal” PERM Labor Certification process requires employer to advertise and show that it cannot find “minimally qualified” U.S. workers
- Separate process available for teaching positions at institutions of higher education
Choosing an Attorney

- **Location** - Irrelevant
  - Immigration law is federal, not state specific
  - All filings are made at the same lockboxes and service centers

- **Knowledge and Experience** – Very Relevant
RESOURCE

David E. Gluckman, Esq.
dgluckman@lawmh.com
(804) 775-3826

Free consultations with students and employers