

The Basics of U.S. Immigration through Employment



Introduction

- This presentation is ONLY a general overview of employment-based immigration
- It is NOT legal advice on your specific case
- Please DO consult a qualified attorney
- Thank you for attending – please keep Q&A for the end

Employment-based Immigration

- Immigration Overview - Visa types
- Hiring an “alien”: CPT; OPT; H-1; O-1; TN; L
- Immigrant Visas
- Steps in the immigrant visa process
- The Green Card
- Green Card processes
- Naturalization

What we will cover today

- Basics – regulations, laws, priority dates
- Maintaining status
- Families and dependents
- Distinction between Green Card and naturalization
- Typical routes to immigration: immediate relative; family, employment, asylum, investor, religious worker; U-visas; T-visas

Non-Immigrant Visa Types:

- F-1 - J-1 – M-1
- CPT / OPT (employment-authorized status)
- H-1b; H-2A; H-2B; H-3 (trainee)
- O-1
- L-1 (a) or (b)
- “E” - treaty trader / investor
- Dependents in status – spouses and children

The Employment-Based Immigration Process

- Entry to USA as a non-immigrant: eg: F/J/H
- OPT or other work-authorized status
- Employer or self petition for I-140 approval
- File for Adjustment of Status or consular processing – stay in status at all times!
- Approval – “green card” or LPR status!

Hiring a foreign national

- What is OPT?
- Duration of OPT – 12 months or STEM extn.
- Timing of OPT is crucial
- Changing status to H-1b
- What is a H-1b?
- What if there are no H-1b's available?
- O-1 status / L-1 possible?

The H-1b visa

- Professional employment - up to 6 years
 - Minimum Bachelor's degree
 - Payment of Prevailing Wage (LCA)
- Premium Processing – not available for now
- Extension of H-1b?
- H-1b transfers
- Cap and Non-cap H-1b's

H-1b processing – the LCA

- What is the LCA? Labor Condition Application
- Process – registration with the DOL
- iCert portal – need employer FEIN
- Takes 7 working days minimum
- Must include approved LCA with H-1b
- “Material Change” needs new LCA, maybe new or amended petition
- STEM OPT extension needs E-verify

Immigrant visas – road to a “green card”

- What is an immigrant visa?
- So what were the visas that we just heard about?
- Why do we now need another visa?
- Immigrant v/s Non-immigrant categories
- Categories of immigrant visas
- Routes to immigrant visas

Immigrant visas – many routes, same destination

- Labor certification – PERM process
- EB-1: Outstanding Professor / Researcher
- EB-2: Advanced Degree - National Interest
- EB-3: Professional Worker / Skilled Worker
- EB-5: Investor Visa
- **BEWARE THE BACKLOGS!!!**

Extraordinary, Exceptional, Plain Vanilla?

File EB1, EB2 or EB3?

- Alien's qualifications
- Job requirements
- Salary offered
- DOL requirements
- Processing times at USCIS
- Priority Dates – backlogs

A Simple Flowchart of the EB-IV process

1. Obtain work-authorized non-immigrant status
2. Decide: PERM or direct I-140?
3. File applications - PERM or I-140*
4. Application Approved
5. File application for Adjustment of Status*
6. *Concurrent filing – what is it, what are the benefits?

Priority Dates

- What are they?
- Who sets them?
- Why do we need them?
- How does it affect an immigrant visa?
- How to plan around visa backlogs
- Child Status Protection Act
- H-1b extensions due to priority date backlogs

Priority Dates – Family Based Immigration

Category	All Areas Except	CHINA	INDIA	MEX	PHILIPP
F1	08DEC10	08DEC10	08DEC10	15JUN95	01FEB06
F2A	15JUL15	15JUL15	15JUL15	22JUN15	15JUL15
F2B	01OCT10	01OCT10	01OCT10	01FEB96	01AUG06
F3	15JUN05	15JUN05	15JUN05	22JAN95	22SEP94
F4	08MAY04	08MAY04	08SEP03	01JUL97	15OCT93

1st: Unmarried S/D of USC; 2A: Spouses, children of Permanent Residents;

2B: Adult unmarried S/D of Permanent Residents;

3rd: Adult Married S/D of USC; 4th: Brothers / Sisters of USC

Source - US Dept of State – Visa Bulletin – May 2017

Priority Dates – Employment Based

Category	All Areas	CHINA	C.A.	INDIA	MEX	PHILIPP
1st	C	C	C	C	C	C
2nd	C	08FEB13	C	22JUN08	C	C
3rd	15MAR17	01OCT14	15MAR17	25MAR05	15MAR17	01JAN13
Other Workers	15MAR17	08MAR06	15MAR17	25MAR05	15MAR17	01JAN13
Invest.	C	01JUN14	C	C	C	C

EB-1: (1) Extraordinary ability; (2) Outstanding Prof/Researcher; (3) Multinational Executive or Manager; EB-2: Exceptional Ability/Masters/ NIV; EB-3: Bachelors / 2 yr exp.; Unsk – unskilled “other workers”; (Special immig, Religious and Investors not incl); Source - US Dept of State – Visa Bulletin – May 2017

EB Immigrant Visas – Path I: PERM

- File PERM application with DOL
- Requires: advertisement; recruitment; good faith job opening to US workers; preparation of recruitment results to US DOL; e-file form ETA 9089; expect audit (currently 60%+)
- Once PERM is approved – file I-140 Immigrant Worker Petition with USCIS, and
- If priority date is current, file for AOS as well

EB Immigrant Visas – Part II: EB-1(2)

- Outstanding Professor / Researcher
- Criteria: “Recognized internationally as outstanding” - at least TWO out of:
 - Major Prizes, International or National Awards
 - Memberships in professional assn's
 - Publications by the immigrant
 - Written about by others in professional publications
 - Judge of the work of others
 - Original contribution(s) to the field

EB Immigrant Visas – Path III: EB-2-NIW

- Alien with Exceptional Ability in the field seeking a waiver of Labor Certification
- Drawback: needs “national interest” waiver
- Standard for NIW – relaxed – Matter of Dhanasar (AAO, December 2016)
- Current economic and political climate

EB Immigrant Visas – Path IV: Schedule A, Groups I and II – 20 CFR § 656.5

- The USDOL has determined that there are shortages of certain occupations in the USA and exempt from Labor Certification
- Schedule A, Group I:
 - Professional Nurses
 - Licensed Physical Therapists

And for other professionals, Schedule A, Group II
– Aliens of exceptional ability (not EB-2)

EB Immigrant Visas – Path IV: Schedule A, Group II – 20 CFR § 656.5

- ***Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts...who have been practicing their science or art during the year prior to application and who intend to practice... in the United States. (no degree req't!)***
- ***Performing arts. Aliens of exceptional ability in the performing arts whose work during the past 12 months did require, and whose intended work in the United States will require, exceptional ability.***
- **Applicable standard: Exceptional Ability: must meet at least 2 out of 7 criteria; suggested elements – show recognition in the academic/professional community; international scope and reach; as well have previous “exceptional” work**

EB-5: The investor visa

- Why: because most immigrants are entrepreneurs at heart!
- Highly skilled and creative talent
- Must invest either US \$ 1 Million or \$ 500,000 if in high unemployment / Regional Centers
- Must create at least 10 US jobs
- Conditional status for 2 years, then full LPR
- Option – non immigrant “E” visa status

Some Statistics about Immigrant Investors

2011 Kauffman Foundation report:

“immigrants were more than twice as likely to start businesses each month than were the native-born in 2010.”

September 2010 Hamilton Project of the Brookings Institution report: “among people with advanced degrees, immigrants are three times more likely to file patents than U.S.-born citizens.”

The “Green Card” - some key facts

- Limited by law to a specific number per year
- Is not green and is not citizenship!
- Can lead to citizenship (naturalization)
- Restricts length of stay outside the USA
- Must declare worldwide income
- Cannot vote – deportable offense
- Can be Deported (“removed”) from the USA

Applying for a “green card” - Path I - Adjustment of Status (“AOS”)

- The immigration process is NOT over once the alien has a non-immigrant visa!
- The alien must now switch from his or her non-immigrant visa status to an immigrant status, or Legal Permanent Residency, which is represented by the “Green Card”
- If the alien is already legally in the USA, use AOS, if overseas, process at consulate

Applying for a “Green Card” - Path II – Consular Processing

- Used if the alien is outside the USA
- Application made at a US consulate in a foreign country
- Pay fees, obtain medical exam; interviewed at consulate
- If approved, enter USA with “LPR” status
- “Green Card” mailed within a few weeks

Naturalization – becoming a US Citizen

- Now the foreign-born employee finally is a Legal Permanent Resident
- Perhaps he or she wants to become a US citizen!
- Permanent Residency is NOT citizenship
- File form N-400
- Be very careful! Criminal history will lead to denial and possible deportation proceedings!

A Short Recap: Part 1

- Non-Immigrant v/s Immigrant visas
- F-1/J-1; CPT and OPT – STEM extension
- e-verify
- H-1b – cap issues
- O-1
- L-1A or L-1B: Intracompany Transferees
- TN – citizens of Canada or Mexico

A Short Recap: Part 2

- Process to convert to immigrant status
- Employment preference application
- Labor Certification – PERM v/s Schedule A
- I-140 Immigrant Petition for Alien Worker
- I-485 – with EAD and Advance Parole
- I-826 – Immigrant Entrepreneur
- Apply for “green card” and then citizenship

Your expectations - the anxious employee

- Anxiety is understandable – but it must be controlled – no internet “rumors”, please!
- Unreasonable expectations - immigration processes take time – FIFO
- Ask questions and request answers
- Retain a qualified immigration attorney
- Be open and transparent – keep the employer in the loop

Thank you for attending!

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