



Navigating the Immigration System After Graduation

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Andrew J. Zeltner is an Associate in the Firm's Philadelphia office. Mr. Zeltner handles a wide array of corporate immigration matters including those involving the processing of permanent resident applications (green cards) on behalf of multinational corporate and individual clients, including labor certification applications, immigrant visa petitions and adjustment of status applications.

He has significant experience providing employment-based U.S. immigration services for large corporate clients, including applications for B-1 OCS, E-1/E-2, H-1B, H-3, J-1, L-1, O-1, TN, labor certifications, multinational manager and executive immigrant petitions, outstanding researchers, extraordinary ability aliens, and national interest waivers. He has provided extensive advice to human resources professionals and corporate counsel regarding immigration compliance matters including I-9 and LCA compliance issues.

Mr. Zeltner received a Bachelor of Arts degree in Politics (cum laude) from The Catholic University of America. He earned his J.D. (cum laude) from Quinnipiac University School of Law. While in law school, Mr. Zeltner served as Opinions Editor of the Quinnipiac Probate Law Journal.

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Agenda

- H-1B Visas
- Start-ups and H-1Bs
- H-1B Quota and Options for Dealing with H-1B Quota
- Quota-Exempt Employment
- Strategies to Maximize Chances of Getting H-1B
- Other Visa Options
- Permanent Residence – Non-employment
- Permanent Residence – Employment
- Entrepreneurs
- Q & A Session

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Non-Immigrant Visas

- Non-Immigrant Status (NIV)
 - H, J, E, L, O, etc.
 - Limited duration
 - Specific to employer
 - Specific to job
 - May require a showing of non-immigrant intent



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H-1B Visas

- H-1B: 'specialty occupation'
 - Employer petition on your behalf
 - Legal/filing fees – tricky issue. Intended to be paid by employer
 - Position that normally requires at least a bachelors degree in a related field
 - Employer must agree to pay 'prevailing wage'

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H-1B Visas *(cont'd)*

- Part-time or full-time
- Length of approval
- Extensions
- Maximum in H status 6 years total
- "AC21" extensions
- Portability
- CAP on number of H-1Bs issued each year

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H-1B Quota

- What is it, and what does it mean?
 - 65,000 visas
- Separate quota for US-educated advanced degree holders
 - 20,000 visas

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H-1B Quota *(cont'd)*

- Separate options for Canada, Mexico, Australia, Chile and Singapore
 - TN-1, E-3, H-1B1
- Prospects for change
- Timing
 - April 1 filing date
 - October 1 start date

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Avoiding H-1B Quota

- Exemption based on **employer**
 - Universities
 - Non-profits affiliated with universities (Employed "at" vs. employed "by")
 - Increased scrutiny of affiliations
 - Non-profit research organizations
 - Government research organizations

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Avoiding H-1B Quota *(cont'd)*

- Exemption based on **employee**
 - Previously counted
 - Singapore/Chile
 - Concurrent employment

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Strategies to Maximize Chances of Getting H-1B

- File properly
- File first day (start preparations early)
- File multiple years
- Obtain a U.S. masters degree
- Use previously-obtained degree/experience
- Start your own company to sponsor

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H-1B Issues for Start-Ups

- Must have employer tax I.D. number
- Company owned by H-1B employee?
 - Must be W-2 employee
 - Separate entity from owner/employee
 - Company right of control over employee
 - Is there a Board of Directors?
 - Who has ability to hire/fire

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H-1B Issues for Start-Ups *(cont'd)*

- Company must prove
 - Financial ability to pay salary
 - Real job to be done by H-1B
 - Place of business
- Business plan/financial projections
- Prevailing Wage
 - CEO vs. function-descriptive position

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Other Visa Options

- F-1
 - OPT
 - Going back to school
 - Advantages of Masters or PhD
- Working overseas for U.S. employer
 - Entering U.S. as B-1
 - Eligibility for L-1 after one year
- Look at spouse's status
 - Spouse of J,E and L can work

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Employment-Based Visa Alternatives

- TN – for citizens of Canada and Mexico
- J-1 – for academic or cultural exchange
- L-1 – intracompany transferees
- E visas – treaty traders, treaty investors, Australians
- O visas – extraordinary ability or achievement

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Permanent Residence

- Authorization to live & work indefinitely in the US
- “Immigrant Visa”
- The “Green Card” or “Form I-551”
- Not always ‘forever’ – may be abandoned or taken away
- How to qualify:
 - Family
 - Investment
 - Asylum
 - Employment
 - Diversity lottery

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Nonimmigrant to Immigrant

F-1 – attend school, OPT (or J-1 for Postdocs)



H-1B/L-1 – continue working;
max 6 years total in HL



4th Year H-1B status – start thinking about LPR



Maintain nonimmigrant status until eligible to file
Adjustment of Status

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Permanent Residence Quotas

- Annual Limit on Permanent Residency
- Per Country Limit – 7%
- Allocated by:
 - Priority Date – place in line
 - Preference Category



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Permanent Resident Status Employment

- Employer-sponsored or self-sponsored
- Labor certification or extraordinary/national interest/exceptional
- Multiple petitions

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Permanent Residence Quotas *(cont'd)*

- Employment Based Preference Categories:
 - First Preference (EB-1)
 - Extraordinary Ability
 - Outstanding Researcher
 - Multinational Executive
 - Second Preference (EB-2)
 - National Interest Waiver for Advanced Degreed Professionals
 - Labor Certification

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National Interest Waiver *(cont'd)*

- EB-2
- New standard/precedent decision favorable to entrepreneurs: Matter of Dhanasar (12/27/16)
 - Exceptional ability or advanced degree
 - Substantial merit and national importance
 - Well positioned to advance endeavor
 - On balance beneficial to US to waive labor certification/job offer required
- Extensive documentation required
- Reference letters critical

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Permanent Residence Quotas *(cont'd)*

- Third Preference (EB-3)
 - Skilled Worker (2+ years experience)
 - Bachelor's Degree
- Fifth Preference (EB-5)
 - \$1 Million Investment in the U.S. that creates at least 10 U.S. jobs

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Final Action Date Visa Bulletin for November 2019

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	01JUN18	01FEB17	01JUN18	01JAN15	01JUN18	01JUN18	01JUN18
2nd	C	15MAR15	C	13MAY09	C	C	C
3rd	C	01NOV15	C	01JAN09	C	01FEB18	C
Other Workers	C	01FEB08	C	01JAN09	C	01FEB18	C
4th	C	C	01JUL16	C	22JUL17	C	C
Certain Religious Workers	C	C	01JUL16	C	22JUL17	C	C
5th Non-Regional Center (C5 and T5)	C	01NOV14	C	08DEC17	C	C	15NOV16
5th Regional Center (I5 and R5)	C	01NOV14	C	08DEC17	C	C	15NOV16

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Considerations in Employment-Based Applications

- Employer-sponsored or self-sponsored
- Labor certification or extraordinary/NIW
- Filing multiple under different categories?
- Multi-Step Process
 - Department of Labor?
 - USCIS: I-140
 - USCIS: I-485
- Non-Immigrant Status?

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Questions?



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For Further Information



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