



# After Graduation:

## *Visa and Permanent Residence Options for International Students and Exchange Visitors*

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## Agenda

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- Current immigration “climate”
- OPT and STEM
- Overview of H-1B
- H-1B for Startups
- Alternatives to H-1B
- Permanent residence
- Q&A

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## The Current Immigration Climate

- Unprecedented restrictive immigration policies  
“Buy American – Hire American”
- Strong economy = more job offers
- H-1B issues (quota and new procedures)
- Obama support for entrepreneurs withdrawn
- Legislative proposals

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## Post-Grad Options: OPT+STEM and Academic Training

- F-1 students: Post-completion Optional Practical Training (OPT) + STEM extension for certain majors
- J-1 students: Academic Training
- Advice from attorneys:
  - Work closely with your OISS advisors
  - Pay attention to deadlines and correct processes
  - Use your OPT/AT to the max, but plan ahead for the long term

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## Post-Grad and Post-OPT Employment

- The “alphabet soup”:
  - H-1B
  - L-1A/B
  - O-1
  - E-3 (Australia)
  - E-1/E-2
- TN (Mexico and Canada)
- H-1B1 (Singapore and Chile)
- J-1
- H-3

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## H-1B Visas

- In general:
  - Must be sponsored by a US Employer
  - Must be for a specialty occupation (i.e. role must require a bachelor's or higher degree);
  - Degree must be related to the work being done
  - Employer specific, job specific, and location specific
  - Employer must pay the “prevailing wage” for the geographic area of employment
- Procedure and processing time
  - File Labor Condition Application with DOL
  - File H-1B petition with CIS
  - Change of status or consular visa issuance
  - Processing time
    - 4 to 6 months or more
    - Premium processing to expedite
  - New Procedures affecting traditional timelines

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## H-1B Visas

(cont'd)

- Length of approval and extensions
  - 3 year initial approval and 3 year extension
  - 6 year maximum – any combination of employers
  - Extensions beyond 6 years
    - Recapture time out of U.S.
    - More time allowed if your green card application has progressed far enough:
      - 1 year extension if file labor certification application or immigrant petition one year before expiration
      - 3 year extension if immigrant petition approved and quota backlog

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## H-1B Visas

(cont'd)

- Employer specific, job specific, and location specific
  - File an amendment or new petition if anything changes
- 60 day grace period if you resign or are terminated

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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
- How the Timing Used to Work:
  - April 1 filing date
  - October 1 employment start date
  - What about elimination of premium processing combined with delays in adjudication?
- How the Timing will Likely Work Now\*
  - March 1 – March 20 – preregistration
  - 90-day filing window

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## Travel and Status Issues

- Travel after Filing
  - Use your F visa to come back to use OPT?
  - What about your pending H? What happens to petition?
  - Coordinate with your school and your employer
  - Consider delaying travel
- Maintaining status until **October 1**
  - “Cap gap” relief
  - OPT must be valid at time H-1B petition is filed
  - Extends only until September 30

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## Quota-Exempt Employment

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- Who is not subject to the quota?
  - Universities
  - Nonprofit institutions affiliated with universities
  - Nonprofit or government research organization
  - Employed “at” university
  - Concurrent employment
  - Previous H-1B

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## Strategies to Enhance Chances of Getting H-1B

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- Filing multiple years (on STEM OPT, working abroad, etc.)
- Filing Properly (old v. new procedures)
- Using a previously-obtained degree
- Start your own business
  - Apply as H-1B employee?

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## H-1B Issues for Start-Up Business

- Must establish company with employer tax I.D. number
- Can company be owned by the H-1B employee?
  - Must be W-2 employee
  - Company separate entity from owner/employee
  - Company right of control over employee
- Company must prove
  - Financial ability to pay salary
    - Profits and/or capitalization
  - Real job to be done by H-1B
  - Place of business
- Importance of business plan/financial projections
- Other employees helpful – not required
- Prevailing Wage
  - CEO vs. function-descriptive position
- “Specialty Occupation”
  - Use of concepts learned in courses

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## My H-1B Was Not Selected, Now What?

- Going Back to School (F-1)
  - Same degree level vs. next degree level
- Working overseas for U.S. employer
  - The L-1A/L-1B path
- Looking at spouse’s status
  - Spouse of J, E and L can work
- Country-Specific Options
  - TN-1, E-3, H-1B1
- Extraordinary Ability O-1
- Investments and Trade: E-1/E-2

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## J-1 Visas

- Used frequently by universities and research organizations
- Must be an “Academic” position, such as postdoctoral researcher or comparable. Staff/administrative positions not allowed
- Category is “Research Scholar”
- Available for 5 years

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## Typical Path: Nonimmigrant to Immigrant

- F-1 Attend school
- F-1 Work on OPT and STEM
  - Submit H-1B(s?) for cap-subject employment
- Work on H-1B – Max is 6 years
- In year #4 – Begin Permanent Residence
- Employer files Immigrant Petition
- When can you file Adjustment of Status?
- Maintain Nonimmigrant Status until PR

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## Permanent Resident Status

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- Family
- Employment
- Investment
- Asylum
- Lottery

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## Permanent Resident Status

### Employment

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- Employer-sponsored or self-sponsored
- Labor certification – default process
- Categories which don't require labor certification:
  - Extraordinary ability/outstanding professor and researcher
  - National interest/exceptional
- Multiple petitions = OK

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## Permanent Resident Status

### Employment (cont'd)

- Self-Sponsored
  - Extraordinary ability
    - EB-1
    - Standard is: "One of the small percentage at the top of the field"
  - National Interest Waiver
    - EB-2
    - Standard is: Dhanasar case 3 prong test
    - Entrepreneurship recognized as being in the national interest

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## Permanent Resident Status

### Employment (cont'd)

- Employer-Sponsored
  - Outstanding Professor/Researcher
    - EB-1
    - Standard is: "internationally recognized as outstanding"
    - Requires a qualifying job offer
    - Requires 3 years of experience
  - Labor Certification ("PERM")
    - EB-2 or EB-3
    - Standard is: No minimally qualified U.S. workers available
    - Requires a qualifying job offer
    - Requires 3 years of experience

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## Permanent Resident Status Employment

(cont'd)

- Labor Certification Application (PERM)
  - Employer must:
    - Pay attorney fees and advertising costs
    - Define “minimum requirements” for the job
    - Pay prevailing wage
    - Engage in specific, required recruitment steps
    - Interview U.S. worker applicants
    - Prove unavailability of qualified, interested, and available U.S. worker
  - Not available to owner of business

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## Permanent Resident Status Investment (EB-5)

- Amount of investment
  - \$1.8 million or
  - \$900,000 in “targeted employment area”
- Lawful source of funds
  - Extensive documentation required
  - Can be gift
    - Must prove giftor's source of funds

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## Permanent Resident Status Investment (EB-5) (cont'd)

- Two possibilities
  - Individual investment
    - Requires creation of 10 full time jobs for US citizen or permanent resident employees
  - Regional center investment
    - Over 800 USCIS-approved regional centers
    - Used to be mostly \$500,000 investments (old investment minimum)
    - Indirect employment creation ok
    - 90-95% of all EB-5 applications

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## Permanent Resident Status Adjustment of Status

- Last step in permanent residence process
- Eligibility to File is Controlled by a quota
  - Based on EB "priority level" and country of birth
  - Check the Visa Bulletin: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>
- Filing AOS has benefits
  - Interim unrestricted work authorization and visa-free travel
  - Individual can stop maintaining their nonimmigrant status
- Long wait
  - Once filed, processing can take a year or more
  - In-person interview will be required

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# Questions?

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# For Further Information

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