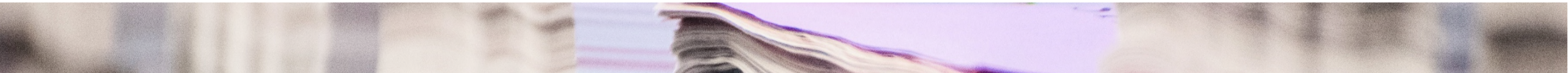


# Visa Options After Graduation

*William A. Stock*

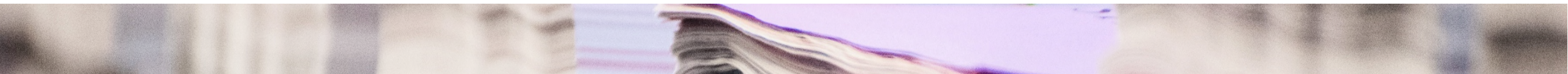
*March 2021*



# Agenda

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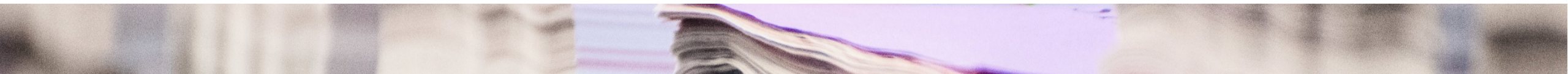
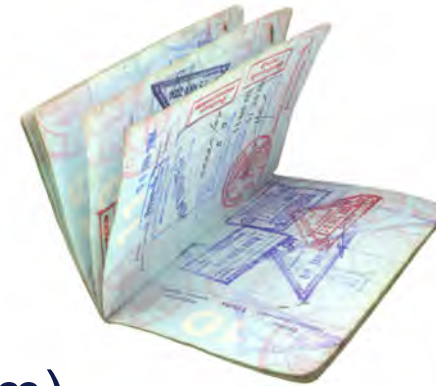
- Non-Immigrant Status
- H-1B Requirements
- H-1B Alternatives
- Introduction to Permanent Residency
- Q&As



# Non-Immigrant Status

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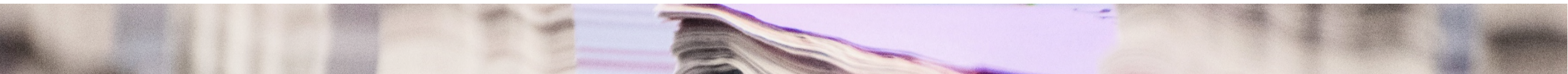
- Non-Immigrant Status (NIV)
  - H, F, J, O, etc.
  - Limited duration
  - Specific to employer/institution
  - Specific to purpose (work/study/tourism)
  - May require a showing of non-immigrant intent
  - Can only hold status in one classification at a time (i.e. – cannot have a J and an H)



# Post F/J NIV Options H-1B Visas

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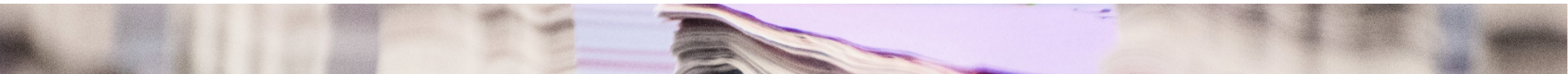
- H-1B: ‘specialty occupation’
  - Employer petition on your behalf
  - Legal/filing fees to be paid by employer
  - Position that normally requires at least a bachelors degree in a related field
  - Employer must agree to pay ‘prevailing wage’



# H-1B Quota

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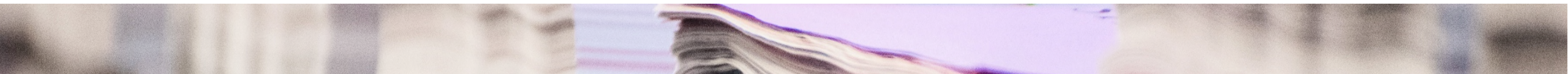
- What is it and what does it mean?
  - 20,000 for US awarded advanced degrees
  - 65,000 for bachelor's degree positions
    - Since FY 2014, gone on April 1-5 (Lottery)
    - Pre-Registration Process introduced in 2020
      - March 1-20: Employer Registers
      - Lottery Conducted
      - 3 months to file H-1B Petition
- Strategy: File multiple years
- 2020 had two lotteries



# Travel and Status Issues for H-1B Cap Cases

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- Change of status vs. consular visa issuance
  - Travel Considerations
  - Timing
- Travel after April 1
- Maintaining status until October 1
  - “Cap gap” relief
- Changing Employers
- COVID Considerations

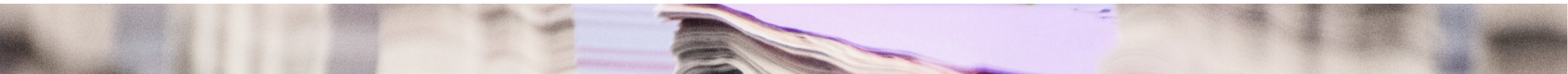




# Avoiding H-1B Quota

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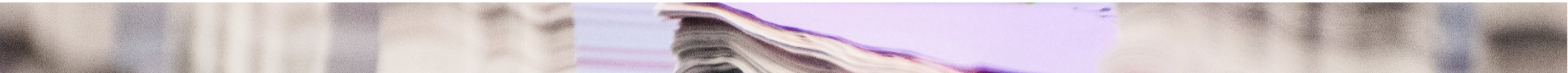
- Exemption based on employer
  - Universities
  - Non-profits affiliated with universities
    - Increased scrutiny of affiliations
  - Non-profit research organizations
  - Government research organizations



# Avoiding H-1B Quota

*(cont'd)*

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

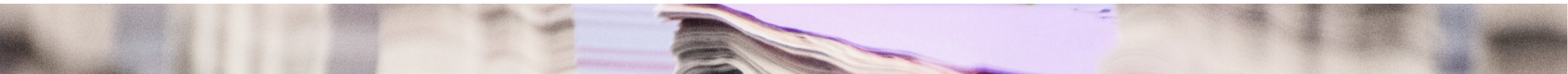




# H-1B Issues for Startups

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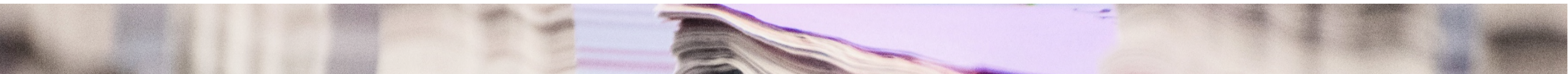
- Must have employer tax I.D. number
- Company owned by H-1B employee?
  - Must be W-2 employee
  - Separate entity from owner/employee
    - Company right of control over employee
    - Is there a Board of Directors?
    - Who has ability to hire/fire



# H-1B Issues for Startups

*(cont'd)*

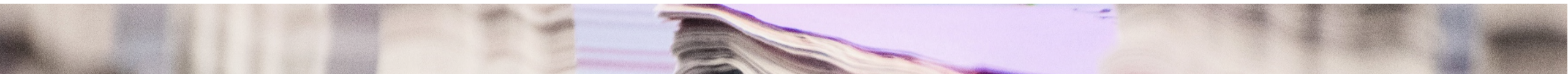
- 
- Company must prove
    - Financial ability to pay salary
    - Real job to be done by H-1B
    - Place of business
  - Business plan/financial projections
  - Prevailing Wage
    - CEO vs. function-descriptive position



# Intracompany Transferee (L-1) Visas

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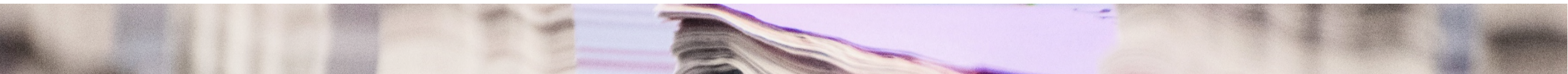
- Must have worked for petitioning company overseas for at least one year in the last three years
- L-1A: Manager (personnel or functional)
- L-1B: Specialized Knowledge
- Length of visa
  - Start up- 1 year
  - Established business- 3 years
  - Maximum length- 7 years (L-1A); 5 years (L-1B)



# Trainee (H-3) Visas

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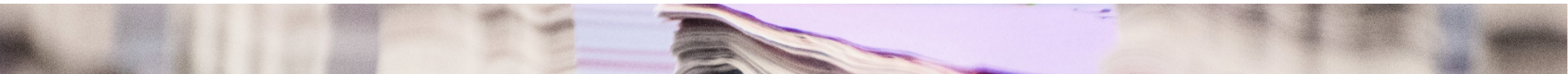
- Corporate trainee
- Training not available overseas
- Formal training program required
- Productive employment incidental to training
- Training will qualify for position abroad



# Treaty Trader/Investor (E-1/E-2) Visas

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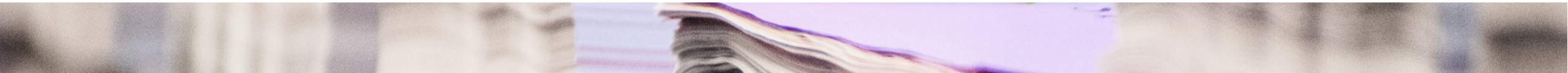
- Must be national of treaty country
  - <http://www.travel.state.gov/visa>
- Employing company must be owned at least 50% by treaty country nationals
- Extended indefinitely
- Spouse eligible for employment authorization



# TN

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- Citizens of Canada and Mexico
- Must have employer and job offer
- Profession must be on the USMCA list
- Applicant must have qualifications as indicated on USMCA list
- Must evidence non-immigrant intent

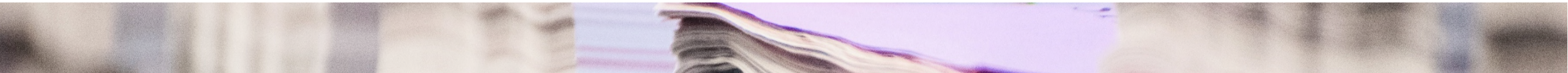




# Alternatives

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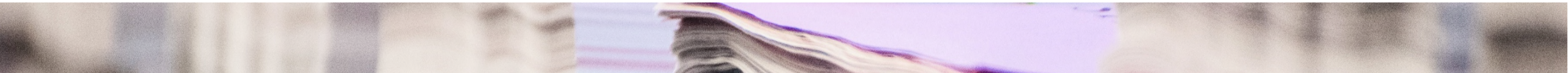
- I visa – journalists for media outside US
- E-3 – Australians only, similar to H-1B
- Dependent on spouse visa
- O visa
  - Artists with distinction in field
  - Scientists with extraordinary ability
  - Top of their field



# Permanent Residence

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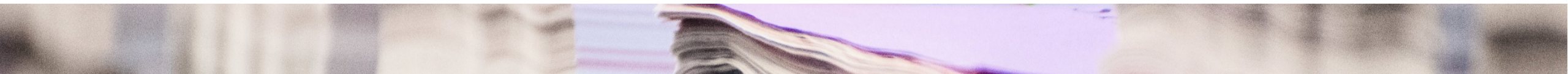
- Authorization to Live & Work Indefinitely in the United States
- “Immigrant Visa”
- The “Green Card” or “Form I-551”
- Not always ‘forever’ – may be abandoned or taken away



# How Do I Apply?

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- Family
- Investment
- Asylum
- Employment
- DV Lottery



# Nonimmigrant to Immigrant

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F-1 – attend school



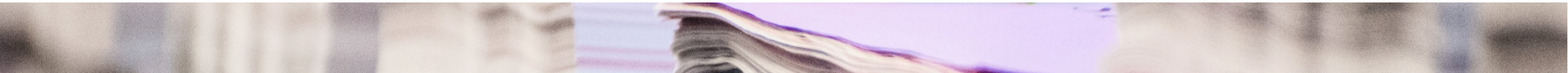
F-1 OPT – start work or J-1 Postdoc



H-1B/L-1 – continue working;  
max 6 years total in H, 7 in L



H-1B – change employer, continues to count against 6  
years maximum



# Nonimmigrant to Immigrant

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H-1B – change employer, requires new petition may start working under ‘H-1B portability’



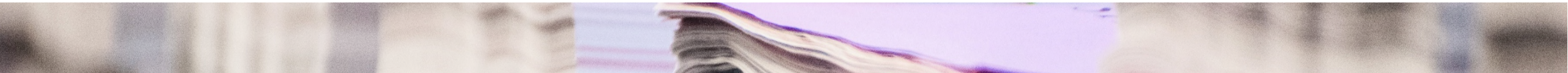
4th Year H-1B status – start thinking about LPR



Maintain NIV status until LPR



6 years in H-1B, other options?  
Eligible to file adjustment of status?

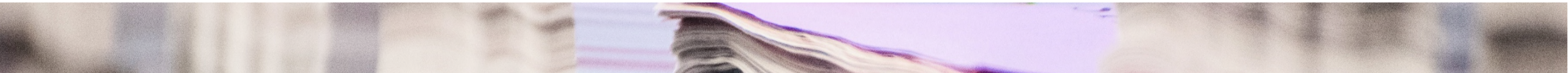




# Permanent Residence Quotas

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



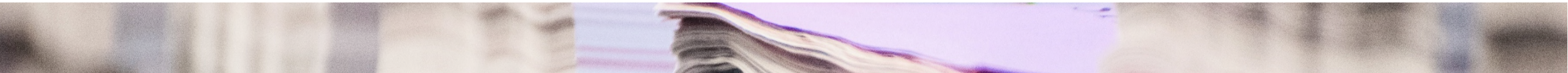


# Permanent Residence Quotas

(cont'd)

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- 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

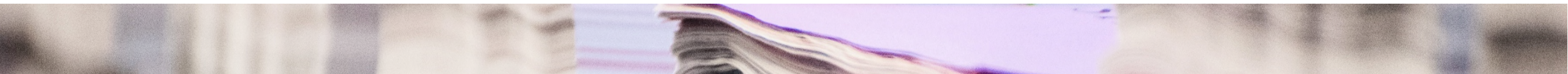


# Permanent Residence Quotas

(cont'd)

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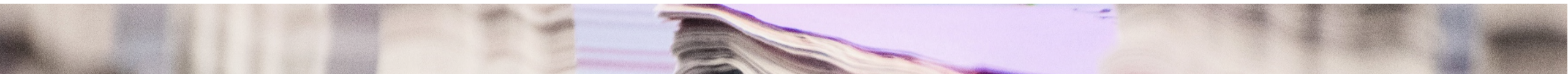
- Third Preference (EB-3)
  - Skilled Worker (2+ years experience)
  - Bachelor's Degree
- Fifth Preference (EB-5)
  - \$900,000 or \$1.8 Million Investment in the U.S. that creates at least 10 U.S. jobs



# 2020-2021 Issues

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- 2020: Unprecedented restrictive immigration policies
  - Increase in denials
  - Delays in processing cases
  - Bans on immigrants and nonimmigrants; H/Ls and other categories
  - Travel Issues
- 2020-2021: Consular closures
- New H-1B regulations published
  - Department of Labor wage regulation
  - H-1B Cap Program regulation



# Questions?

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# For Further Information

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**[wstock@klaskolaw.com](mailto:wstock@klaskolaw.com)**



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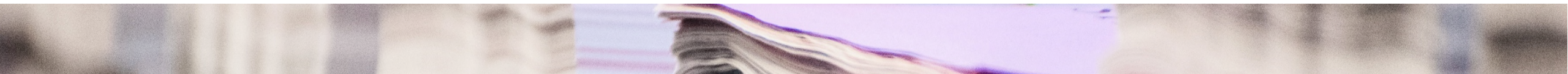
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