



# Visa and Permanent Residence Options for MBA Students

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**H. Ronald Klasko**  
Partner

Ron Klasko is the Managing Partner of [Klasko Immigration Law Partners, LLP](http://www.klaskolaw.com) and has been providing immigration assistance and solutions to universities for over 30 years.



Ron is a past National President of the American Immigration Lawyers Association and served for 3 years as the bar association's General Counsel. His firm is the first immigration law firm global partner of NAFSA: Association of International Educators. Mr. Klasko has been invited by more than 30 universities and hospitals to address students and scholars.

Ron is the only lawyer chosen on two occasions to receive the American Immigration Lawyers Association's Founders Award for his contribution to the advancement of immigration law. He is selected annually for inclusion in *Best Lawyers in America* ©. The *International Who's Who of Business Lawyers* selected Ron as the "most highly regarded" immigration lawyer in the world. He is a frequent author and lecturer on business and university-related immigration law topics and is a former Adjunct Professor of Immigration Law at Villanova University Law School.

Ron is a graduate of the University of Pennsylvania School of Law. He has helped thousands of students navigate the complicated process of obtaining working visas and green cards.

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## Current Issues

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- Unprecedented restrictions and delays during Trump Administration slowly reversed under Biden Administration
- Delays remain rampant
- Travel hazardous
  - Consuls closed or emergencies only
  - Extreme backlog of appointments
  - Regional travel bans should end November 1

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## Current Issues

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- H-1B quota issues worsening
- Obama support for entrepreneurs withdrawn under Trump
  - No action yet under Biden
- Future of EB-5 program uncertain

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## Employment Options for the F-1 Student

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- 20 hours per week on campus
- OPT after complete studies
- Options for the entrepreneur
  - On-campus employment must be services for students
  - OPT employment must be related to studies
- Starting company while a student
- See “Murky F-1 Employment Issues” & “Moving the Goalposts: Name, Image, and Likeness Compensation for Foreign Student Athletes”
- <http://www.klaskolaw.com>

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## General H-1B Issues

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- Employer preconceptions and misconceptions
- Employer requirements
  - U.S. employer
  - Pay fees
  - Post notice
  - Keep public examination file

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## H-1B Visas

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- Basic requirements
  - Job Offer
    - Part-time or full-time
  - Bachelors or higher degree
  - Specialty occupation
    - Job requires bachelors or higher degree in specific field
    - Issues in 2020
  - Prevailing wage

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## H-1B Visas

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Cont'd

- Procedure and processing time
  - Register for lottery
  - File Labor Condition Application with DOL
  - File H-1B petition with CIS
  - Change of status or consular visa issuance
  - Processing time?

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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.
    - 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

- Allows work for petitioning employer only
- 60-day grace period if leave or terminated

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## H-1B Visas

Cont'd

- H-1B portability
  - Present H-1B status, including grace period
  - Commence employment upon new employer filing petition
- Spouses
  - H-4 limited employment authorization
- Travel
  - Dual intent

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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
- Separate options for Canada, Mexico, Australia, Chile and Singapore
  - TN-1, E-3, H-1B1
- Timing
  - March registration
  - April 1 – first day to file if selected in lottery
  - October 1 start date
- Likely chances of being selected in the lottery

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## Quota-Exempt Employment

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

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

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- Filing multiple years
- Filing first day
- Using previously-obtained degree
- Start your own business
  - Apply as H-1B employee?

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## Travel and Status Issues for H-1B Approvals

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

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## H-1B Issues for Startup Business

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- Difficult, but not impossible
- Must establish company with employer tax I.D. number
- Can company be owned by H-1B employee?
  - Must be W-2 employee
  - Company separate entity from owner/employee
    - Company right of control over employee
    - Independent Board of Directors or other mechanism

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## H-1B Issues for Startup Business

Cont'd

- Company must prove
  - Financial ability to pay salary
    - Profits and/or capitalization
  - Real job to be done by H-1B
  - Place of business
  - Specialty occupation

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## H-1B Issues for Startup Business

Cont'd

- 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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## Other Visa Options

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- F-1
  - 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
- Country-Specific Options: TN-1, E-3, H-1B1

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## Other Nonimmigrant (Temporary) Options

### Treaty (E) Visas

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- Must be national of treaty country
  - <http://www.travel.state.gov/visa>
- Company must be owned at least 50% by treaty country nationals
- Option of citizenship by investment to obtain treaty country nationality
  - e.g. Grenada and Turkey

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## Other Nonimmigrant (Temporary) Options

### Treaty (E) Visas Cont'd

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- Visa for 1 to 5 years
  - Each entry limited to two years
  - Visa and entry can be extended indefinitely
- No quota
- Spouse can work

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## Other Nonimmigrant (Temporary) Options

### Treaty (E) Visas Cont'd

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- Treaty investors (E-2)
  - “Substantial” investment
    - No exact amount
    - Varies depending upon type of investment
    - Relevant issues
      - Amount of investment
      - Number of employees
      - Needs of business
      - Likely profitability and growth potential
    - Business plan and financial projections critical

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## Other Nonimmigrant (Temporary) Options Treaty (E) Visas

Cont'd

- Visa applicant can be
  - Investor or
  - Manager, supervisor or essential employee

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## Intracompany Transferee (L-1) Visas

- National of any country
- No quota
- Length of visa
  - Start up 1 year
  - Established business 3 years
  - Maximum length 7 years

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## Intracompany Transferee (L-1) Visas

Cont'd

- Spouse can work
- Must be “international” business
  - Business outside U.S. with at least 50% common ownership
  - Must be employed by that business one year
- Type of employment (in U.S. and overseas companies)
  - Manager or executive
  - “Specialized knowledge” employee

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## Intracompany Transferee (L-1) Visas

Cont'd

- Start-up issues
  - Place of business
  - Employees
  - Capitalization
  - Need for “manager”
  - Business plan and financial projections

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## Extraordinary Ability (O-1) Visas

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- National or international renown
- “One of a few at the top of his peers”
- Must be employer or agent
  - Can be own company
- Length of visa
  - 3 years
  - 1 year extensions
  - Can extend indefinitely

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## Trainee (H-3) Visa

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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

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## Permanent Resident Status

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- Family
- Employment
- Investment
- Asylum
- Lottery

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## Family

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- Spouse of U.S. citizen
  - No quota wait
  - EAD and AP within 3 months
- All other relationships
  - Long quota wait
  - No interim benefits

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## Asylum

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- Individualized fear of persecution
- Race, religion, nationality, political opinion, social group, sexual persuasion

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## Lottery

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- Only specific countries
- One year window
- [www.travel.state.gov](http://www.travel.state.gov)

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## Permanent Resident Status Employment

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

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## Permanent Resident Status Employment

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Cont'd

- Self-Sponsored
  - Extraordinary ability
    - EB-1
    - Extensive documentation required
    - Reference letters critical
    - "One of a few at the top of his peers"
    - National or international recognition
    - Same standard as O-1

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## Permanent Resident Status Employment

Cont'd

- National Interest Waiver
  - EB-2
  - Standard
    - Exceptional ability or advanced degree
    - National priority
      - Examples: increasing employment; increasing exports; new technology
    - Entrepreneurship recognized as national interest
- Extensive documentation required
- Reference letters critical

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## Permanent Resident Status Employment

Cont'd

- Multinational Manager
  - EB-1
  - Same as L-1 except must be manager or executive overseas

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## Permanent Resident Status Employment

Cont'd

- Labor Certification Application (PERM)
  - EB-2 or EB-3
  - Employer must:
    - Pay attorney fees and advertising costs
    - Define “minimum requirements”
    - Engage in required recruitment
    - Interview U.S. worker applicants
    - Prove unavailability of qualified, interested, and available U.S. worker
    - Pay prevailing wage
  - Not available to owner of business

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## Permanent Resident Status Employment

Cont'd

- Timing
  - Electronic filing
  - Possibility of audit
  - First of three steps

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## Permanent Resident Status Investment (EB-5)

Cont'd

- Amount of investment (per USCIS regulation)
  - \$1,800,000 or
  - \$900,000 in “targeted employment area”
  
- Amount of investment (following court decision)
  - \$1 million or
  - \$500,000 in “targeted employment area”

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## Permanent Resident Status Investment (EB-5)

Cont'd

- Two possibilities
  - Individual investment
    - Requires 10 full time US citizen or permanent resident employees
  - Regional center investment
    - Indirect employment creation ok
    - 90-95% of all EB-5 applications

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## Permanent Resident Status Investment (EB-5)

Cont'd

- 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

- Nature of investor's relationship to business
  - Do not have to be employee (but can)
  - Do not have to be owner (but can)

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## Options for Entrepreneurs

	H-1B	E-2	L-1	EB-5
AMOUNT OF INVESTMENT	N/A	Any amount, but usually over \$100,000	N/A	\$900,000 or \$1,800,000
MUST CREATE JOBS?	None required; better if some	Can be small number	Can be small number	10
ENTREPRENEUR'S EMPLOYMENT	Specialty occupation	Manager or essential skills, unless investor	Manager or Specialized Knowledge	Limited partner, member of LLC or equity owner

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## Options for Entrepreneurs

	H-1B	E-2	L-1	EB-5
TIMING	Can be < 15 business days if premium processing reinstated	1-2 months or more	Can be < 15 business days with premium processing	2 years or more
PROCEDURE	CIS – can be change of status	Can go direct to consul	CIS 1st, unless blanket	CIS, then consul or I-485
CAN YOUR SPOUSE WORK?	(unless PR long pending)	Yes	Yes	3 months after I-485

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## Options for Entrepreneurs

	H-1B	E-2	L-1	EB-5
PERMANENT RESIDENCE	No direct path	Can be EB-1 after 1 year	Can be EB-1 after 1 year	File after I-526 approved
CAN FAMILY ATTEND SCHOOL?	Yes	Yes	Yes	Only when CPR
EMPLOYMENT AUTHORIZATION	Prior H-1B – immediate; New H-1B – October 1	Immediate	Immediate	3 months after I-485 or when enter as CPR

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## Options for Entrepreneurs

	H-1B	E-2	L-1	EB-5
EXPEDITE	Premium Process	Depends on consul or premium process	Premium Process	No (with limited exceptions)
RELEVANCE OF COUNTRY	Not relevant	Only Treaty country	Not relevant	Source and tracing of funds issue
NECESSITY OF OVERSEAS COMPANY	No	No	Yes	No

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## Options for Entrepreneurs

	H-1B	E-2	L-1	EB-5
PRIOR EMPLOYMENT OVERSEAS REQUIRED?	No	No	Yes, 1 year	No
INITIAL LENGTH OF VISA	3 years	Up to 5 years	1 year start-up	2 year conditional permanent residence, then permanent residence
MAXIMUM PERIOD	6 years	Unlimited extensions available	5 or 7 years	Permanent

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## Questions?



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# For Further Information



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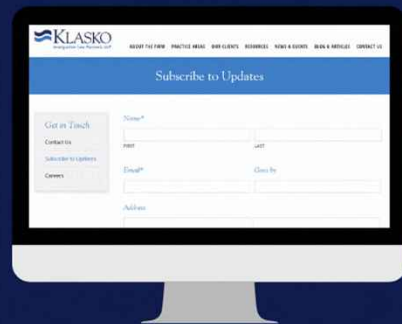
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