

After Graduation: Visa and Permanent Residence Options for International Students and Exchange Visitors

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Elise A. Fialkowski
Partner

Elise Fialkowski has been providing immigration assistance and solutions to leading universities, research institutions, multinational corporations, startups, entrepreneurs and individuals for over 25 years.

Elise has long been active in the American Immigration Lawyers Association (AILA) and currently serves on AILA's Verification and Documentation Liaison Committee and on the Philadelphia Customs and Border Protection Liaison Committee. She has served on many other committees at the local and national level.

Elise has been named in *Best Lawyers in America*®, *Pennsylvania SuperLawyers*, *The International Who's Who of Corporate Immigration Lawyers* and the *International Who's Who of Business Lawyers*. A Phi Beta Kappa graduate of the University of North Carolina at Chapel Hill, Elise received her law degree from the Villanova University School of Law (J.D., magna cum laude, 1991).

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Natalia Gouz is responsible for providing strategic and comprehensive business immigration solutions for the firm's corporate clients. Her experience is far-reaching on an array of immigrant and nonimmigrant matters ranging from a high-volume of routine cases to complex issues requiring creative solutions.

For temporary employment-based visas, Natalia has considerable experience in obtaining a diverse roster of nonimmigrant visas, including H-1B, L-1, TN, O-1, E-1 and E-2, and E-3. She also has significant experience handling immigrant worker petitions (green cards) for professionals, advanced-degree individuals, multinational managers and executives, as well as skilled workers.

Natalia has also volunteered her time to the Safe Passage Project at New York Law School, which addresses the legal needs of indigent immigrant youth living in New York.

Natalia is a graduate of New York Law School (J.D.), where she served as Staff Editor for the *New York Law School Law Review*. Natalia received her Bachelor's degree in Political Science from Pace University. Natalia is fluent in Ukrainian and conversational in Russian.



Natalia Gouz
Senior Associate



The Current Immigration Climate

- Unprecedented restrictive immigration policies
 “Buy American – Hire American”
- Strong economy = more job offers
- H-1B quota issues
- Legislative inaction

Unlawful Presence Memo

- F, M, and J nonimmigrant visas (August 2018)
- Unlawful presence can start to accrue with earliest status violation
- Extends to dependent spouses and minor children
- Enjoined – Successful litigation
- Nevertheless – USCIS continues to focus on status maintenance (RFE, Green Card interviews)

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Post Graduation Employment 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 University of Delaware 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-Graduation and Post-OPT Employment

- The alphabet soup:
 - H-1B
 - L-1A/B
 - O-1
 - E-3
 - 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
- Procedure and processing time
 - File Labor Condition Application with DOL
 - File H-1B petition with USCIS
 - Assuming lottery
 - Change of status or consular visa issuance
 - Processing time
 - 4 to 6 months or more
 - Premium processing to expedite

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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 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
 - October 1 start date
- Process for last several years
 - April 1 filing date
 - 201,000 petitions submitted last year

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H-1B Quota

(cont'd)

- NEW Registration Process This Year!
 - Registration is March 1 to March 20
 - USCIS has reserved right to suspend registration and go back to usual process
 - Lottery will be conducted based upon registrations unless USCIS suspends registration

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Quota-Exempt Employment

- 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

- Filing multiple years
- Filing properly
- Using 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 a “Research” position, such as postdoctoral researcher or other company research position. Staff/administrative positions not allowed
- Category is “Research Scholar”
- Available for 5 years

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O-1 Visas

- **O-1 Alien of Extraordinary Ability**
 - Requires an employer willing to sponsor
 - No prevailing wage requirement
 - Renewable indefinitely
 - Very high standard for “extraordinary ability”
- **Factors Considered in Initial Evaluation**
 - Original contributions of “major significance”
 - 1st authored articles/impact factors, chapters, conferences
 - Review of the work of others
 - Citations and application of your original contributions by others

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Permanent Resident Status

- Family
- Employment
- Investment
- Asylum
- Lottery

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Permanent Resident Status Employment

- 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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Visa Bulletin for March 2020

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	01MAR19	01JUN17	01MAR19	01MAR15	01MAR19	01MAR19	01MAR19
2nd	C	15AUG15	C	22MAY09	C	C	C
3rd	01JAN17	22MAR16	01JAN17	15JAN09	01JAN17	01JAN17	01JAN17
Other Workers	01JAN17	01JUN08	01JAN17	15JAN09	01JAN17	01JAN17	01JAN17
4th	C	C	15JUL16	C	15NOV17	C	C
Certain Religious Workers	C	C	15JUL16	C	15NOV17	C	C
5th Non-Regional Center (C5 and T5)	C	15MAY15	C	22OCT18	C	C	15JAN17
5th Regional Center (I5 and R5)	C	15MAY15	C	22OCT18	C	C	15JAN17

Permanent Resident Status Employment *(cont'd)*

- Self-Sponsored
 - Extraordinary ability
 - EB-1
 - Extensive documentation required
 - Reference letters critical
 - Standard is: "One of the small percentage at the top of the field"
 - National or international recognition
 - Same standard as O-1

Permanent Resident Status Employment *(cont'd)*

- Employer-Sponsored
 - Outstanding Professor/Researcher
 - EB-1
 - Extensive documentation required
 - Reference letters critical
 - Standard is: “internationally recognized as outstanding”
 - Requires a qualifying job offer
 - Requires 3 years of experience

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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)*

- 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)

- Amount of investment
 - \$1.8 million or
 - \$900,000 in “targeted employment area”
- 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
 - Indirect employment creation ok
 - 90-95% of all EB-5 applications
- Lawful source of funds
 - Extensive documentation required
 - Can be gift
 - Must prove giftor's source of funds

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Questions?



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For Further Information

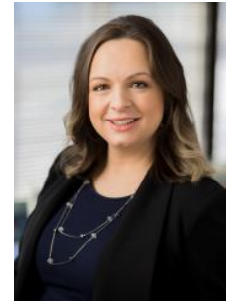


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