



# WORK VISA OPTIONS FOR FOREIGN STUDENTS

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# VISA CATEGORIES FOR STUDENTS



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- F-1 – Foreign students attending academic college or university
- J-1 – “Exchange visitor” or trainee often used for graduate students, medical residents, etc.

Dependent Visas – Students whose parents are in the U.S. on a work visa such as H-1B (H-4), L-1 (L-2), E Visa, etc.

# PRE-GRADUATION WORK (F-1)

1. **On-campus employment**
2. **Curricular Practical Training (CPT)** – Integral part of established program (work/study)
3. **Optional Practical Training (OPT)** – 12 months of OPT for F-1; use during degree program or after graduation
4. **Economic Hardship** – Extreme, unforeseen economic hardship such as loss of parents, currency crisis, political unrest
5. **Designated International Organizations** – Certain organizations are permitted to hire F-1 students for work experience (United Nations, IMF, World Bank, etc.)
6. **Volunteer** – Almost never an option



# POST-GRADUATION EMPLOYMENT

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- Employers like qualities of international students - - smart, independent, motivated
- Employers do not understand visas
- Students must understand the immigration process, and be able to explain

# TYPICAL POST- COMPLETION EMPLOYMENT PATH



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- F-1 - Optional Practical Training (12 or 36 months)
  - or
- J-1 – Academic Training (18 or 36 months)
  - then
- H-1B – Most common work visa (6 years of work eligibility)
- Then Green Card (if desired)
  - Family-based
  - Employment-based



# INTRODUCTION TO U.S. IMMIGRATION LAW

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- Permanent Resident Green Cards:
  - Live forever in the United States
  - Ease of Employment
  - Ease of Travel
  - Only limited ways to obtain / lengthy processing
  
- Temporary Non-Immigrant Visas:
  - Many categories (A – V)
  - Few allow employment
  - Focus on:
    - F-1 – OPT
    - H-1B



# EMPLOYER CONCERNS

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- Cost
- Timing
- Obligations and Responsibilities



# WORK AFTER GRADUATION

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- **Optional Practical Training (F-1)**

12 months of OPT post-graduation (reduced by OPT used pre-graduation)

- Allows work for any job related to degree
- Must get work card (Employment Authorization Document)
- Can apply for card up to 90 days before completion of program, or up to 60 days post-completion
- Must apply within 30 days of OPT authorization from Foreign Student Advisor
- Can make card effective up to 60 days post-completion
- 90 – 120 day processing time
- No more than 90 days of unemployment permitted





# “STEM” OPT EXTENSION

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- **24 months of post-graduation employment AFTER completion of initial 12 months of OPT**
  - F-1 student must have obtained qualifying Science, Technology, Engineering or Math (STEM) degree
  - Must apply before initial OPT expires and within 60 days of Foreign Student Advisor’s authorization for STEM extension
  - Employer **MUST** be enrolled in E-Verify
  - Students/employers must prepare a “Training Plan”
  - No more than 150 total days of unemployment, including any time during initial 12 months of OPT
  - Reporting obligations to DSO for students and employers



# E-VERIFY

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- **Internet-based system for verifying work authorization**
  - Employer must be enrolled in order for student to apply for 24-month STEM extension
  - Required for companies that have federal contracts or subcontracts and in some states
  - For others, it is generally voluntary (for now)



# QUALIFYING “STEM” DEGREES

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- Compare CIP Code on Form I-20 with the “STEM Designated Degree Program List”
- U.S. degrees obtained within the last 10 years generally can be used as a basis for the STEM OPT extension, as long as program is on current STEM list
  - But, job must relate to that prior degree
  - Prior degrees cannot be used to obtain two consecutive STEM OPT extensions



# TRAVEL ON OPT

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- ANY travel by an F-1 student is risky because you MUST show intent to return to home country
- If you choose to travel, you will need
  - Endorsed I-20
  - Valid Visa
  - Employment Authorization Document (EAD)
  - Employment letter
- Absence of ANY presents additional risk
  - Travel after applying for H-1B is not advised



# WORK AFTER GRADUATION

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- **H-1B – Most Common Work Visa**
  - Employer must “sponsor” (offer a job that requires a degree)
  - Applicant must have degree
  - Degree must relate to the job
  - Employer must pay “prevailing wage”
  - No need to advertise for U.S. workers



# H-1B ISSUES

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## ■ **Duration**

- 3 years initially
- 3 year extension
- 6 year maximum

## ■ **Scope of H-1B Authorization**

- Can only work for this employer, doing what was described on the petition in the location described on the petition

## ■ **Change Employer**

- New employer must file new petition
- But can begin working as soon as new petition is filed without waiting for approval



# H-1B ISSUES

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- **Cost - Who Pays?**

- Attorney Fee

- CIS Filing Fees

- Base fee - \$460 (as of 12/23/2016)
- Fraud Prevention Fee - \$500
- “Training Fee” - \$1500 (\$750 for 25 employees or less)
- Optional Premium Processing Fee (15 days) - \$1410
- Additional \$4000 fee for companies with 50 or more employees, and 50% or more of workforce is H-1B or L.



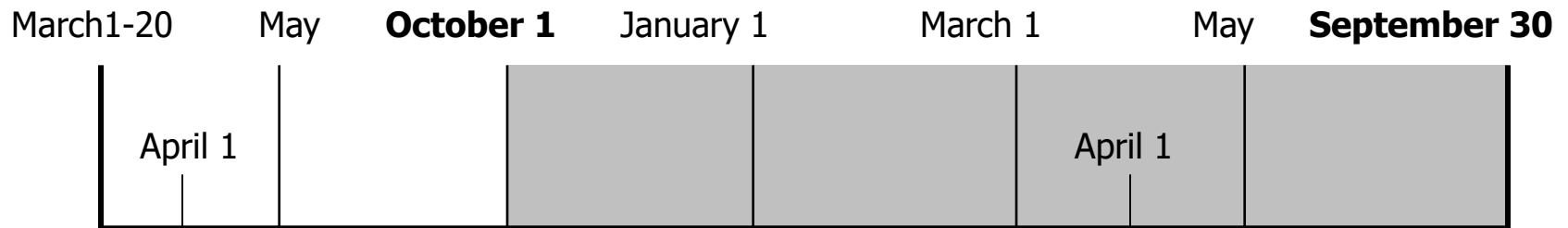
# H-1B QUOTAS

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- **CIS FISCAL YEAR:** October 1 – September 30
- **Quotas:**
  - 85,000 H-1Bs available
  - U.S. Advanced Degree Applicants – 20,000
  - All Degrees – 65,000
- **Current availability:** ?



# BEAT THE H-1B CAP



- October 1 – new quota released
- March 1-20 – pre-registration for new quota
  - Lottery Selection: 90 days to file H-1B petition
- May/Dec – graduation & OPT



# DEGREE REQUIREMENT

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- Advanced Degree Quota: No need to have advanced degree for pre-registration filing.
  - Must have advanced degree at time of filing H-1B petition.
- Undergraduate Degree: No need to have undergraduate degree for pre-registration filing?
  - Must have degree at time of filing H-1B petition.



# H-1B "CAP GAP" RELIEF

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- If you are selected in the lottery and you file an H-1B petition,
- AND
- OPT is still valid at the time of filing,
- THEN
- OPT is extended until September 30



# H-1B EXEMPT ORGANIZATIONS

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- Universities
- Non-profit organizations affiliated with universities (such as research facilities or hospitals)
- Non-profit research organizations, engaged primarily in basic or applied research
- Governmental research organizations (federal, state, or local government)



# H-1B ALTERNATIVES

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- Canada, Mexico, Chile, Singapore, Australia
- L-1 Manager / Executive / Specialized Knowledge. Work overseas for one year; now working for affiliate in United States
- E treaty investor/trader (not China, India) working for companies owned by citizens of your country in the United States
- Re-enroll in full-time study (F-1 or J-1)
- Other possible options are very limited (O-1, Q, J-1). Consult qualified immigration specialist



# GREEN CARD

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- Limited Ways to Obtain
  - Family Relationships
  - Lottery
  - Employment/Special Skills
    - EB-1 – Extraordinary / Outstanding / Multi-national
    - EB-2 - Advance Degree / Exceptional
    - EB-3 - Bachelor's Degree/ Skilled worker
  - PERM Processing – lengthy
  - Must maintain non-immigrant status

# EXTEND H-1B BEYOND 6 YEARS



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- Normal length of H-1B – 6 years
- Can Extend for the following:
  - Recapture time outside the U.S.
  - Green card pending at least 1 year – can extend H-1B in 1 year increments
  - Approved I-140, but no quota number to adjust - - 3 year extension



# CHOOSING AN ATTORNEY

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- Location - Irrelevant
  - Immigration law is federal, not state specific
  - All H-1B filings are done centrally in California or Vermont
- Knowledge and Experience – Very Relevant
  - Cheaper is NOT better
  - One chance to file





# RESOURCES

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- [www.lawmh.com](http://www.lawmh.com)
  - Practice Areas
  - Immigration
- *Mark Rhoads*  
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