



# Work Visa Options After Graduation

---

**David E. Gluckman, Esquire**  
**Phone: (804) 775-3826**  
**Email: [dgluckman@lawmh.com](mailto:dgluckman@lawmh.com)**

**McCandlish Holton, PC**  
**Website: [www.lawmh.com](http://www.lawmh.com)**

**February 21, 2024**



# Introduction to U.S. Immigration Law

---

- Permanent Resident Green Cards:
  - Live forever in the United States
  - Ease of employment
  - Ease of travel
  - Only limited ways to obtain / lengthy processing
- Temporary Nonimmigrant Visas:
  - Many categories (A – V)
  - Few allow employment
  - Categories most relevant for post-graduation work:
    - F-1 – OPT
    - H-1B

# Typical Post-Completion Employment Path



---

- F-1 - Optional Practical Training (12 or 36 months)



- H-1B – Most common work visa (6 years of work eligibility)



- Green card (family- or employment-based)



# F-1 Optional Practical Training

---

- **Generally, 12 months of OPT post-graduation**
  - Allows work in any job related to degree
  - Cannot work until receive work card (Employment Authorization Document); application fee is \$410 (increasing to \$470-\$520 on April 1)
  - Can apply for card up to 90 days before completion of program, or up to 60 days after completion
  - Must apply within 30 days of OPT authorization from Foreign Student Advisor
  - 3-5 month “regular” processing time
    - Optional “premium processing” (30-day processing)
  - No more than 90 days of unemployment permitted
- **Consult with international student office before traveling while on OPT**



# F-1 OPT STEM Extension

---

- Students with qualifying “STEM” degree eligible for an additional 24 months of work authorization
  - 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
- Qualifying STEM degrees
  - 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



# H-1B Visa

---

- **Most Common Work Visa**

- Employer must “sponsor” (offer a job that requires a degree)
- Beneficiary 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

---

- **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

---

- **Cost - Who Pays?**

- Legal Fee

- USCIS Filing Fees

- H-1B registration fee - \$10 (will be \$215 next yr.)

- Base fee - \$460-\$780\*

- "Asylum Program Fee" - \$0, \$300, or \$600\*

- Fraud Prevention Fee - \$500

- "Training Fee" - \$1,500 (\$750 for employers with 25 employees or less)

- Optional Premium Processing Fee (15 days) - \$2,805

\*depends on whether employer is nonprofit or has 25 or fewer full-time employees





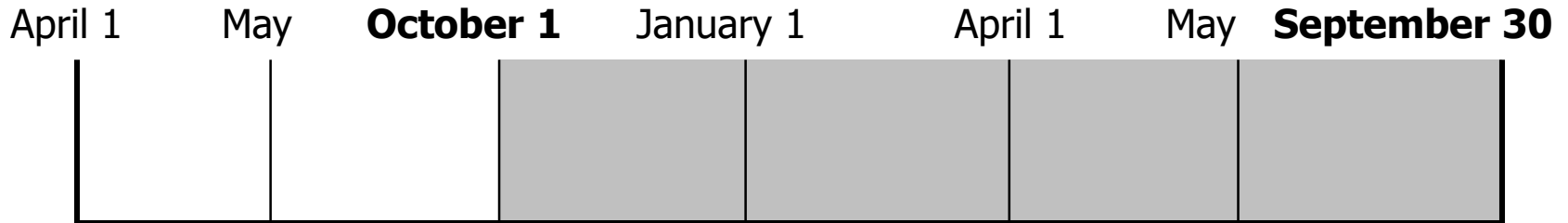
# H-1B Quotas

---

- **USCIS FISCAL YEAR:** October 1 – September 30
- **Quotas:**
  - 85,000 new H-1Bs available each fiscal year
  - Applicants with U.S. advanced degrees – 20,000
  - All other degrees – 65,000
  - New law improves lottery chances for U.S. advanced-degree grads
- **Current availability:** ?



# Beat the H-1B Cap



- October 1 – new quota released
- March 6-22 – electronic pre-registration/lottery
- April 1 – 90-day filing window begins for cap lottery “winners”
- May/Dec – graduation & OPT



# Example #1

---

- Student graduates in May 2024.
- Employer submits registration in March 2024 and student was selected in lottery. Employer files for H-1B, effective October 1, 2024.
- Student works on OPT until September 30, 2024, then H-1B effective October 1, 2024.



## Example #2

---

- Student graduates in May 2024 without H-1B registration or lottery selection.
- Student works on OPT. Employer submits registration in March 2025 and student is selected in lottery. In April 2025, employer files for H-1B, effective October 1, 2025.
- But student's OPT expires in June 2025.
- What now?



# H-1B “Cap Gap” Relief

---

- If your employer files an H-1B petition on your behalf on or after April 1st,  
AND
- OPT is still valid at the time of filing,  
THEN
- OPT is extended until September 30th



# H-1B Cap-Exempt Organizations

---

- 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)



# H-1B Alternatives

---

- 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 (e.g., J-1). Consult qualified immigration specialist



# O-1 Extraordinary Ability

---

- Filed by an employer
- Small percentage at top of field
- Beneficiary is allowed to pay filing/legal fees
- Can be filed up to 1 year before start date
- Requirements:
  - Major international award (e.g., Nobel Prize)
  - or
  - At least 3 of 8 specific criteria





# O-1 Extraordinary Ability

---

## O-1 Criteria (need at least 3):

- Nationally or internationally recognized prizes or awards for excellence in field
- Membership in associations requiring outstanding achievement
- Published material about you or your work
- Judge of the work of others (peer review)
- Original contributions of major significance
- Authorship of scholarly articles
- Employed in critical or essential role for distinguished organizations
- High salary compared to others in the field



# Green Card

---

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



# Extending H-1B Beyond Six Years

---

- Normal length of H-1B – 6 years
- Can extend for the following:
  - Recapture time outside the U.S.
  - Employment-based green card process 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



# EB-1A Extraordinary Ability

---

- Self-sponsor (no job offer required)
- Small percentage at top of field
- Factors:
  - Major international award, or at least 3 of the following:
    - Lesser national or international awards
    - Membership in association requiring outstanding achievement
    - Published material about you or your work
    - Participation as judge of the work of others (peer review)
    - Original contributions of major significance
    - Authorship of scholarly articles
    - Leading or critical role for distinguished organizations
    - High salary compared to others in the field



# EB-1B Outstanding Professor/Researcher

---

- Employer-sponsored
- “Permanent” position (no definite end date)
- At least 3 years of teaching/research experience
- Factors: at least 2 of the following:
  - Major prizes or awards
  - Membership in associations requiring outstanding achievement
  - Published material about you or your work
  - Judge of the work of others (peer review)
  - Original research contributions
  - Authorship of scholarly articles



# EB-2 National Interest Waiver

---

- Self-sponsor (no job offer required)
- U.S. advanced degree (or equivalent) **or** at least 3 of the following factors:
  - Degree relating to area of exceptional ability
  - 10 years of full-time experience
  - License/certification for particular profession/occupation
  - High salary
  - Membership in professional association
  - Significant contributions/recognized achievements
- In addition, must demonstrate that it would be harmful to the national interest to require an employer to advertise to find U.S. workers



# PERM Labor Certification

---

- EB-2 or EB-3 (depending on requirements for position)
- Employer-sponsored
- “Permanent” position
- The “normal” PERM Labor Certification process requires employer to advertise and show that it cannot find “minimally qualified” U.S. workers
  - Separate process available for teaching positions at institutions of higher education



# Choosing an Attorney

---

- Location – Irrelevant
  - Immigration law is federal, not state specific
  - All filings are made at the same lockboxes and service centers
- Knowledge and Experience – Very Relevant





# RESOURCE

---

David E. Gluckman, Esq.  
dgluckman@lawmh.com  
(804) 775-3826

*Free consultations with students and employers*