



U.S. WORK VISA OPTIONS AFTER GRADUATION

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DISCLAIMER

- The information provided in this presentation is for educational purposes only. The opinions expressed in this presentation are solely those of the presenters. No attorney-client relationship is created or intended to be created by virtue of this presentation.
- Immigration law is complex and nuanced. This presentation provides information in general terms. Please seek individualized guidance from a competent professional before taking any action.
- The information presented today is current as of today. However, immigration statutes, rules, policies and procedures change frequently. Accordingly, before taking any action, it is imperative to seek guidance from a licensed attorney.



AGENDA

- Overview of U.S. Immigration Categories
- Immigration Concepts
- Employment and F-1 status
- Post OPT Work Visas Options
- Overview of Green Card Pathways (Permanent Residency)
- Q&A



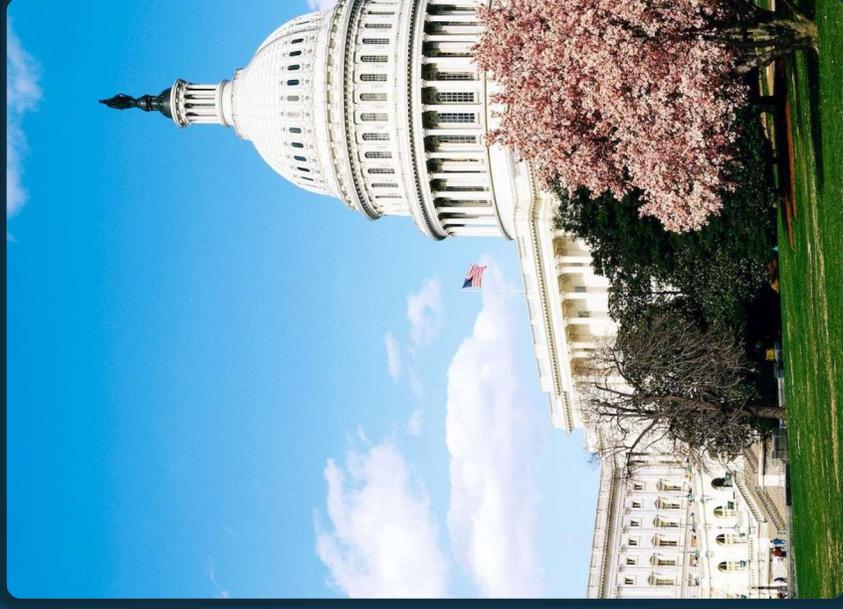
U.S. IMMIGRATION CATEGORIES

U.S. Citizens

- At Birth (law of the soil and law of blood)
- Through Naturalization

Non-Citizens

- Immigrants: Lawful Permanent Residents (“green card holders”)
- Nonimmigrants: Persons Permitted in U.S. for Temporary Stay
- Humanitarian Categories: Refugees; Asylees; Temporary Protected Status (TPS); Deferred Action for Childhood Arrivals (DACA); Parolees
- Persons present without lawful status



KEY IMMIGRATION AGENCIES

- U.S. Department of State (DOS) issues visas at embassies
- U.S. Department of Homeland Security (DHS) controls actual admission & stay in U.S.
 - U.S. Citizenship and Immigration Services (USCIS)
 - Customs and Border Protection control admissions and airports/land borders
 - Immigration and Customs Enforcement (ICE) manages SEVIS
- U.S. Department of Labor
 - Office of Foreign Labor Certification

EMPLOYMENT IN F-1 STATUS

During school:

Limited activities possible under F-1 status—must be pre-approved and related to curriculum (CPT) or as Pre-Completion OPT

Must secure permission from school's International Office—*in advance!*

Post-Graduation Optional Practical Training (OPT):

Start-up and self-employment permitted during regular OPT

Must be directly related to degree field

Must be able to demonstrate active work on a business venture: business license, incorporations documents, etc.

Always ask first!

Work closely with your International Office to ensure activity requires work authorization and proper filing for CPT and OPT approval.



WARNING: CONSEQUENCES OF UNAUTHORIZED EMPLOYMENT

- ✓ No concrete definition of “employment”
- ✓ Generally, DHS considers employment as encompassing any service rendered in exchange for remuneration—cash, tuition, fees, books, supplies, room, food, or any other benefit
- ✓ Bona-fide volunteer activity is not generally employment – civic/humanitarian activity in which there is no expectation of remuneration
- ✓ Some services rendered without cash payment for an activity that would normally be compensable can be construed as employment
- ✓ Most “passive investments” are permitted
- ✓ **Severe** consequences for unauthorized employment
- ✓ Loss of status and potential ineligibility for work visas and green card status



WARNING: BEWARE OF SIDE HUSTLES

- Gig work for ride share app
- Buying and Selling on online auctions and marketplaces
- Open Coding
- Crowdsourcing or Fundraising for your business
- Campus Representative for a product, company, etc.
- Blog editor
- Publications / Creative Works
- Day trading
- Investing in start-ups
- Investing other people's money



IMPACT OF SOCIAL MEDIA & DIGITAL FOOTPRINT

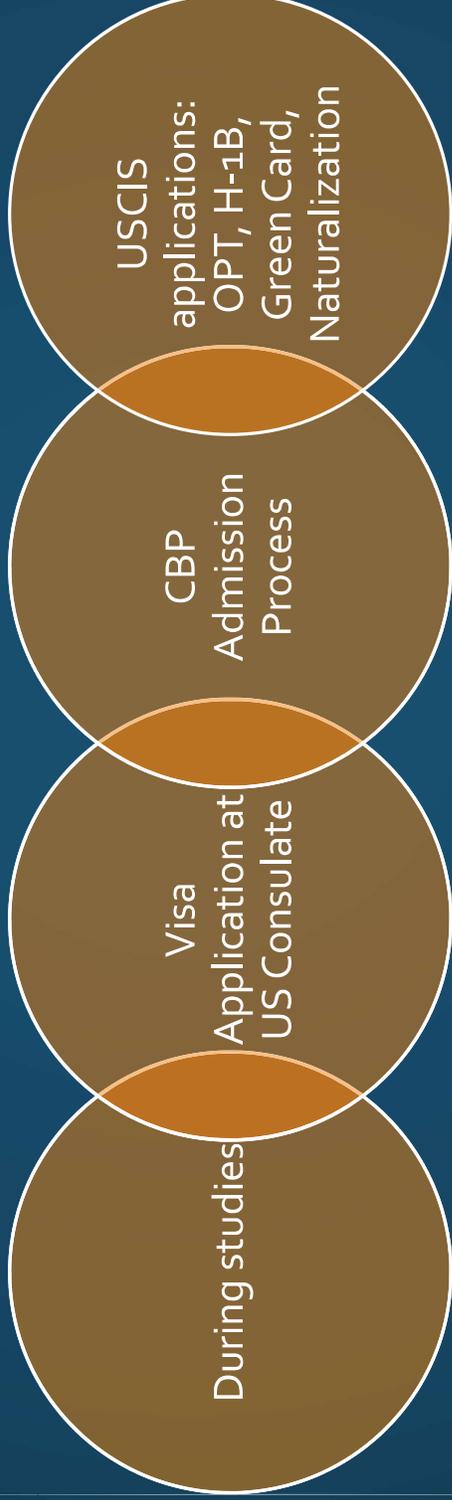
Department of State reviews social media via Form DS-160, Nonimmigrant Visa Application

- Must provide all identifiers used for all listed platforms.
- Consular officers will not request passwords.
- Not listing an account could be considered “lying to secure an immigrant benefit.”

CBP can also look up your social media presence during admission at port of entry



HOW WILL THEY KNOW?? CONSUL & DHS OFFICERS MAY INVESTIGATE



CONSEQUENCES OF VIOLATION OF FEDERAL CONTROLLED SUBSTANCE REGULATIONS & DUI

- ✓ Controlled Substances Regulations at State and Federal Level are different
- ✓ Activities that are lawful at State level can be unlawful under Federal law
- ✓ Federal Immigration Rules generally bar admission of non-citizens who are convicted of OR admit to acts in violation of any drug law whether state, federal, or foreign
- ✓ Cannabis use, possession, or trafficking by non-citizen can lead to loss of status, deportation, and ineligibility to naturalization
- ✓ **Work in cannabis industry** by non-citizen can lead to loss of status, deportation, and ineligibility to naturalization
- ✓ Other: DUIs (automatic cancellation of visa) – If you face any arrest, you must obtain criminal defense counsel versed in “crimmigration law”/or also consult with an immigration attorney



COMMON WORK VISA OPTIONS

- B-1: Visitors for Business
 - Not a work visa!
- F-1: Students
 - Not a work visa but some limited employment options may be permitted and may lead to post-graduation work authorization
- O-1B: Persons of Extraordinary Ability in the Arts
- H-1B: Specialty Occupation Professionals
- E-1: Treaty Trader
- E-2: Treaty Investors
- L-1: Intra-Company Transferees
- TN: Canadian & Mexican Professionals
- H-1B1: Singaporean/Chilean Specialty Occupation Professionals
- E-3: Australian Specialty Occupation Professionals

H-1B VISA PROGRAM

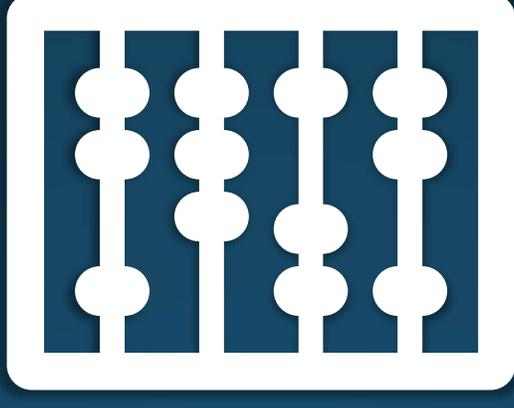
Basic Criteria

Benefits and Limitations

Annual Quota & Timing

Unique issues for Gig Workers, Entrepreneurs & Start-ups

Alternatives to the H-1B



BASIC H-1B CRITERIA

- Sponsorship by U.S. Employer – No contract or gig work
- “Specialty Occupation” = Requires at least a bachelor’s degree in a specific field directly related to job duties
- Required Wage
 - Employer must provide public notice of intent to hire H-1B worker and rate of pay
- Ability to Pay
 - Employer must show ability to pay the prevailing wage
 - Wages vary dramatically based on occupation and worksite location
- Candidate must possess required degree or equivalent at time of filing

H-1B VISA BENEFITS

- Permits up to 6 years of work status
- Full-time or part-time H-1B is allowed
- Concurrent employment allowed--separate petition by each employer required
- Part-time study allowed
- Non-competitive: Do not have to be the best or only candidate
- Dependents eligible for H-4 status
- *Discretionary 60-day grace period available for job loss or change of employer*

H-1B LIMITATIONS

- **No self-employment or contract work**
- Employer must demonstrate *bona fide professional job*
 - Critical issue for new employers and entrepreneurs
- Annual quota ("cap") limits number of H-1B positions and requires a lottery
- New weighted lottery strongly favors higher paid workers

ANNUAL H-1B QUOTA & TIMING

- Applies to Cap-Subject employers (i.e., private industry)
 - Limited employers are exempt from the annual quota and can apply for an unlimited amount of visas
- Annual, national quota (“cap”) of 65,000 new H-1B positions
- Additional 20,000 H-1Bs for holders of a U.S. Master’s degree or higher
- Visas become available October 1st each year

ADVANCED ONLINE REGISTRATION

- Employer enters a lottery registration online
 - This year: March 4 (noon EST) to March 19 (noon EST)
- New for 2026: Weighted Selection Based on Wage Offered and Prevailing Wage Level
 - Level 4 (highest wage): 4 chances
 - Level 3: 3 chances
 - Level 2: 2 chances
 - Level 1 (lowest wage): 1 chance
- New Weighted Selection incentivizes higher wages, but would make it significantly harder for persons offered salary at low-end for occupation and place of employment
- Results announced by the end of March 31st
- ***If registration is selected, Employer must submit H-1B petition to USCIS between April 1 to June 30***

H-1B LOTTERY EXEMPTIONS

- Employment by college or university
- Employment by non-profit organization CLOSELY affiliated with college or university
- Employment by non-profit or governmental research organization
- Part-time or full-time employment by university/college with concurrent employment by for-profit enterprise (each employer must file separate petition)
- Employment by for-profit enterprise where work location is “at” university/college

H-1B FOR ENTREPRENEURS

- Biden Administration final rules on H-1B Entrepreneurs went into effect January 17, 2025
- Much more streamlined pathway for entrepreneurs- but shorter period- 18 months for first and second filing
- If entrepreneur holds a controlling interest in company, must show:
 - Entrepreneur will spend majority of time performing duties of the specialty occupation
 - May devote balance of time to directing and managing company
- Historically, USCIS has closely scrutinizes petitions involving entrepreneurs and founders

H-1B PROCLAMATION

September 19, 2025 - President signed Presidential Proclamation: "Restriction on Entry of Certain Nonimmigrant Workers"

September 21, 2025 - Effective date

What it does:

The Proclamation restricts the entry of H-1B nonimmigrants into the United States *and* restricts decisions on H-1B petitions filed with U.S. Citizenship and Immigration Services (USCIS) unless "accompanied or supplemented" with a \$100,000 payment.

Who it applies to:

The \$100K fee applies to new H-1B petitions filed on or after September 21, 2025;

A **September 20, 2025 [CBP memo](#)** states that the proclamation "does not impact aliens who are the beneficiaries of currently approved petitions, any petitions filed prior to 12:01 AM ET on September 21, 2025, or aliens in possession of validly issued H-1B non-immigrant visas." National Interest Waiver will be available in certain circumstances

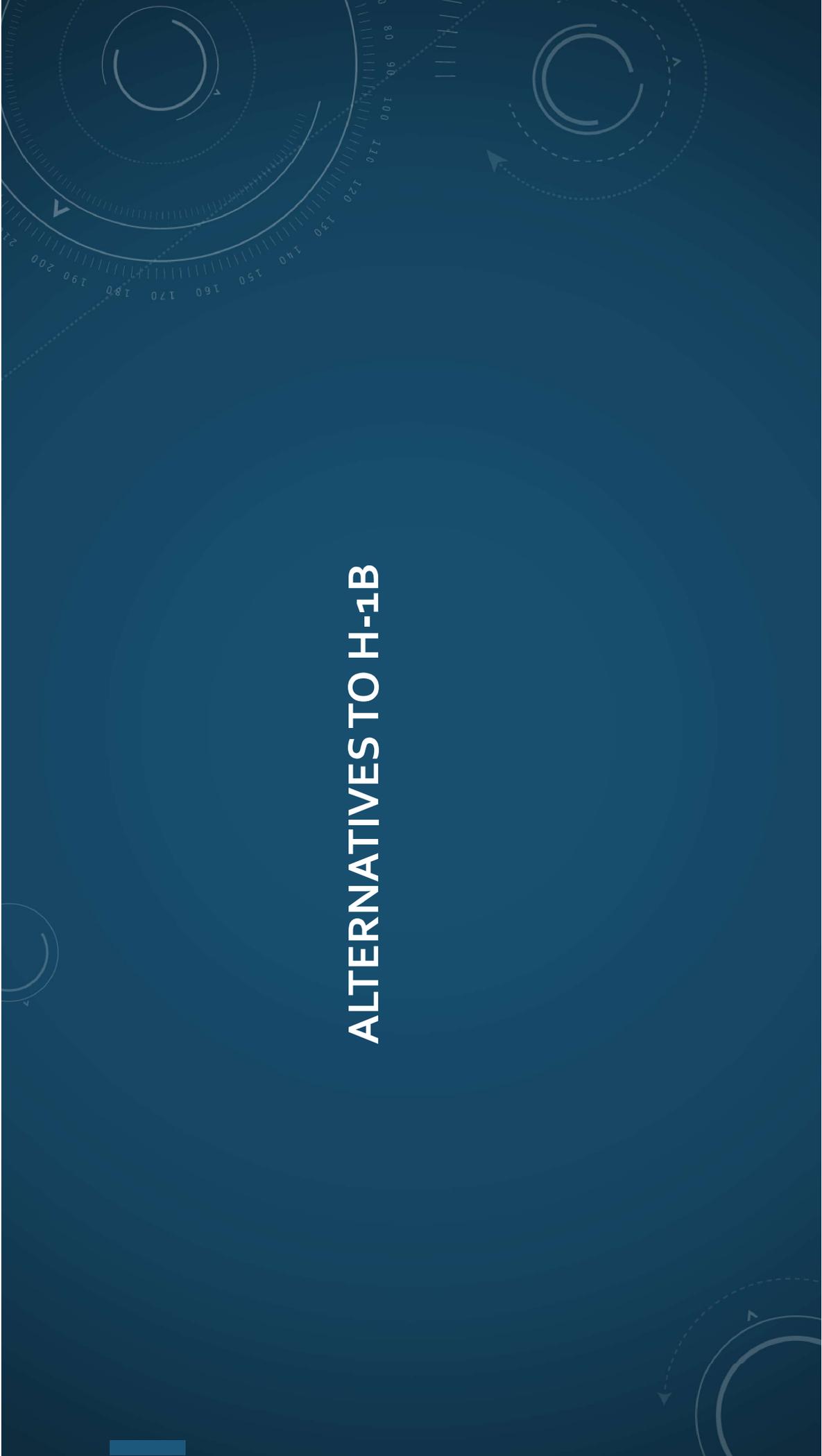
H-1B PROCLAMATION

USCIS and CBP memos issued on **September 20, 2025** clarify that proclamation does NOT apply to:

- Beneficiaries of approved H-1B petitions filed before September 21, 2025;
- Beneficiaries of H-1B petitions under review with USCIS as of September 21, 2025; and
- Individuals in the US as of September 21, 2025, with validly issued H-1B visas – these individuals are able to travel and are not subject to the \$100,000 payment requirement for entry.

[USCIS website update](#) on **September 21, 2025** states: the Proclamation “does not change any payments or fees required to be submitted in connection with any H-1B renewals.”

ALTERNATIVES TO H-1B



FREE TRADE AGREEMENT PROFESSIONALS

TN: Canadians & Mexicans Citizens

- No quota
- Valid for 3 years at a time
- Requires employment by U.S. employer.
- Offered job must be one that is identified by the treaty, approximately 63 occupations (mostly STEM like Engineering)

• H-1B1: Singapore & Chile

- Similar to H-1B
- High quota, low usage

• E-3: Australia

- Similar to H-1B
- Employer required to make wage attestations
- High quota, low usage
- *E-3 Spouse eligible for employment authorization*

E-1 TRADERS & E-2 INVESTORS

- Available to a citizen of a country that has a treaty of commerce and navigation (trade) with the U.S.
- U.S. employer must then also be owned $\geq 50\%$ by nationals of the same treaty country
 - Over 80 countries have either E-1 or E-2 or both types of treaties with U.S.:
<https://travel.state.gov/content/visas/en/fees/treaty.html>
- **E-1 Treaty Trader:**
 - Engaged in substantial trade with treaty country and U.S.
- **E-2 Treaty Investor:**
 - Substantial investment in the U.S.
- Typically, process is completed at a U.S. Embassy or Consulate but can also elect change of status without leaving the U.S.
- **Discretionary 60-day grace period available for job loss**

O-1 Person of Extraordinary Ability

Must prove sustained national or international acclaim

Receipt of major, internationally recognized award such as Noble Prize

OR

Three (3) of the following:

- Original scientific, scholarly, artistic, athletic, or business-related contributions of major significance having a widespread impact on the field
- Receipt of nationally or internationally recognized prizes or awards for excellence
- Membership in associations that demand outstanding achievement
- Published material about the scholar in professional publications
- Judged the work of others, either individually or on a panel
- Authorship of scholarly articles
- Performance of a leading or critical role in distinguished organizations
- Has commanded a high salary or will command a high salary
- Comparable Evidence (grant funding or patent)

O-1 TOTALITY OF THE EVIDENCE STANDARD

- Articles in particularly highly-ranked journals relative to other journals in the field, e.g. impact factor
- Published work is highly cited relative to others in the field
- High h-index-for the field
- Employment or research experience with leading institutions in the field, such as U.S. universities, or foreign universities with comparably high research activity, or highly regarded
- Receipt of unsolicited invitations to speak or present research at nationally or internationally recognized conferences in the field.
- O-1 Petition can be approved for up to 3 years
 - Only 1 year extensions if no changes to job

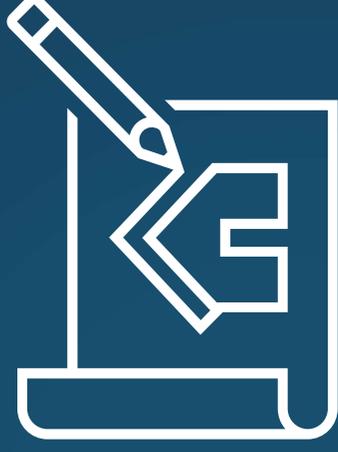
• ***Discretionary 60-day grace period available for job loss or change of employer***

L-1 INTRA-COMPANY TRANSFEREES

- Requires sponsorship by U.S. employer
- Employee must have worked abroad for a “qualifying employer” for 1 complete year in the last 3 years
 - Qualifying employer is the Parent, Branch, Subsidiary or Affiliate of the U.S. employer
 - Managers/Executives:
 - ✓ 7 years max
 - Specialized Knowledge Employees:
 - ✓ 5 years max
- **Discretionary 60-day grace period available for job loss**

PATHWAYS TO LAWFUL PERMANENT RESIDENCE

- Employment Based
- Family Based
- Diversity Lottery
- Investment
- Asylum/Refugee
- Others: Registry, Cuban Adjustment Act, other special statutes



TRANSITION TO GREEN CARD FROM NONIMMIGRANT VISA

Maintain Nonimmigrant Status

Examples:

- * H-1B (Ideal)
- * F-1
- * J-1
- * Etc.

Immigrant Petition Filed with USCIS

Different Employment-based categories (NOT A VISA):
EB1
EB2
EB3

File Green Card

May file Green Card application with immigrant petition, or after immigrant petition approved-- strategies involved.

CATEGORY & COUNTRY QUOTA BACKLOGS

- Annual Quota of ≈144,000 new green card numbers
 - Divided by Preference Categories (EB-1, EB-2, EB-3) and Nationality (country of **birth** not citizenship)
- Backlogs can occur in both **category** and **country** queues
- Significant backlogs in some categories and for some countries
- A monthly report is issued by the US Department of State (“Visa Bulletin”) which lists green card backlogs by category and country
- The date the first step toward your green card is filed establishes your **priority date** and potentially your place in the queue, if there is one.

VISA BULLETIN FEBRUARY 2026

FINAL ACTION DATES

EMPLOYMENT BASED CATEGORIES	ALL OTHER	CHINA	INDIA	PHILIPPINES	MEXICO
EB-1	Current	01 Feb 23	01 Feb 23	Current	Current
EB-2	01 Apr 24	01 Sep 21	15 Jul 13	01 Apr 24	01 Apr 24
EB-3	01 Jun 23	01 May 21	15 Nov 13	01 Jun 23	01 Jun 23

EMPLOYMENT-BASED GREEN CARD CATEGORIES

EB-1:

- EB-1A Persons of Extraordinary Ability (**Self-Sponsor** – similar to O-1A work visa)
- EB-1B Outstanding Professors & Researchers
- EB-1C Multinational Managers & Executives (**Similar to L-1 work visa**)

EB-2: Masters Degree or equivalent

- National Interest Waiver (NIW) (**Self-Sponsor**)
- **PERM (Labor Certification) – Majority Fall Into this Category**

EB-3: Bachelors Degree/Skilled Workers

- **PERM (Labor Certification) – All Fall Into this Category**

ALL CATEGORIES SUBJECT TO STRICT ANNUAL QUOTA —See *Visa Bulletin* for backlogs

SELF-SPONSORED OPTIONS



EB-1(A): PERSONS OF EXTRAORDINARY ABILITY

- Extraordinary ability in the sciences, arts, education, business or athletics
- May self-sponsor - Labor Certification **NOT REQUIRED**
- Sustained international acclaim & risen to the top percentage of your field
- Two Step Analysis (*Kazarian*)
 - **STEP 1:** Must present evidence of either:
 - Receipt of a major, internationally recognized award (Nobel Prize); **OR**
 - Meet at least **3** criteria from list of **11**



EB-1(A): PERSONS OF EXTRAORDINARY ABILITY (SELF-SPONSORSHIP)

- ✓ Original contributions of major significance (having a widespread impact on the field)
- ✓ Authorship of scholarly articles in professional or major trade publications or other major media
- ✓ Performance of a leading or critical role in distinguished organizations
- ✓ Judge of the work of others
- ✓ Lesser nationally or internationally recognized prizes
- ✓ Membership in associations which demand outstanding achievement of their members
- ✓ Published material about the candidate in major media
- ✓ Command of a high salary or other remuneration compared to others in the field
- ✓ Display of work at artistic exhibitions or showcases
- ✓ Evidence of commercial success in the performing arts
- ✓ Miscellaneous: Comparable evidence of eligibility may be submitted (i.e., patent or grant funding)

EB-1(A): PERSONS OF EXTRAORDINARY ABILITY

Step 2 - Final Merits Determination:

- After meeting 3+ criteria, USCIS conducts a **final merits review** to evaluate the **totality of the evidence**.
 - Key Considerations:
 - Is the evidence compelling enough to demonstrate **sustained national or international acclaim**?
 - Has the petitioner achieved a **level of expertise placing them at the top of their field**?
 - USCIS determines whether the petitioner qualifies as an individual of **extraordinary ability** based on the entire record. Even if USCIS admits you satisfy 3 or more criteria, they can deny the application based on the final merits determination.
 - **Even if Step 1 is met, USCIS will evaluate whether:**
 - ✓ The applicant's contributions have a lasting impact on their field.
 - ✓ Their recognition is consistent over time and not a one-time achievement.
 - ✓ Their influence extends beyond their employer and has industry-wide impact
 - ✓ They are among the top experts in their field, comparable to leading professionals.

EB-2: NATIONAL INTEREST WAIVER

Must have a Masters degree (or equivalent) or higher

USCIS may grant a national interest waiver if the Petitioner demonstrates:

- I. Proposed endeavor has both substantial merit and ***national*** importance
- II. Applicant is well positioned to advance the proposed endeavor
- III. On balance, beneficial to waive the job offer and labor certification requirements

Examples of work deemed to be in the “National Interest”

- Improve wages and working conditions
- Improve education and training programs for children and under-qualified workers
- Improve health care
- Provide more affordable housing for the young and/or old and poor

POLICY GUIDANCE FAVORABLE FOR STEM PH.D.'S & ENTREPRENEURS

In balancing potential benefits or applicant versus protection of US worker opportunities favorable factors include:

- Work furthering a critical and emerging technology
- Work furthering other STEM area important to U.S. competitiveness
- Work that has potential to support U.S. national security
- Work that will enhance U.S. economic competitiveness
- Petition is supported by letters from interested U.S. government agencies



EMPLOYER-SPONSORED OPTIONS

The background is a dark blue gradient. It features several abstract, light blue circular and semi-circular patterns. Some are solid lines, some are dashed, and some have arrows indicating a clockwise direction. A prominent feature is a scale or arc with numerical markings: 40, 150, 160, 170, 180, 200, 210, 220, 230, 240, and 250. The scale is curved and has small tick marks along its length. There are also some faint, larger circular shapes scattered throughout the design.

EB-1(C) INTRACOMPANY MANAGER/EXECUTIVE

- **Similar to the L-1A temporary work visa category**
- Allows Manager/Executive to skip the labor certification process
- Must prove was a manager/executive at a related company abroad for at least one year in the prior three years before coming to the U.S. (typically in L-1A status)
- Employer sponsorship required
- Related company – parent, subsidiary, or affiliate

LABOR CERTIFICATION (PERM) PROCESS FLOW

Step 1: PERM Labor Certification

Request prevailing wage determination from DOL (8+ months)

Test local labor market through advertisements and postings (2-3 months)

File application with DOL (14+ month review)

Step 2: Immigrant Visa Petition

Prove Ability to Pay Offered Wage

Demonstrate candidate fully qualifies for PERM or where PERM not involved fully qualifies for immigrant category

Step 3: Candidate's Application for Adjustment of Status

Must prove maintenance of status, no unauthorized employment, no unlawful presence, etc.

May file applications for interim employment and travel authorization

Spouse and minor unmarried children may file applications at same time as principal applicant.

IMPORTANT: PLAN EARLY....

Employment Based Summary of most common scenarios:

EB-1 – No Labor Certification Required; EB-1A Self-Petition

EB-2 -- NIW self-petition

EB-2 -- Master's degree, Requires Labor Certification

EB-3 -- Bachelor's degree, Requires Labor Certification

Must Maintain Legal Status to Bridge to Green Card

FAMILY-BASED IMMIGRANT CATEGORIES

Sponsored by U.S. Citizen:

- Parent – *no quota*
- Spouse – *no quota*
- Unmarried minor children – *no quota*
- Son or Daughter – married or unmarried – quota
- Sister or Brother – quota

Sponsored by Lawful Permanent Resident

- Spouse – quota
- Unmarried son or daughter – quota

“Spouse” includes same-sex married persons & trans persons of both the same and opposite sex

“Child” includes children adopted before 16 years of age and step-children where the step-relationship was created before 18 years of age

Family-Based Categories: subject to category & country quotas and backlogs — See Visa Bulletin



TRAVEL BAN

- Full Ban:
 - Afghanistan
 - Burkina Faso
 - Burma (Myanmar)
 - Chad
 - Equatorial Guinea
 - Eritrea
 - Haiti
 - Iran
 - Laos
 - Libya
 - Mali
 - Niger
 - Palestinian Authority Travel Documents
 - Republic of the Congo
 - Sierra Leone
 - Somalia
 - South Sudan
 - Sudan
 - Syria
 - Yemen
- Partial Ban:
 - Angola
 - Antigua and Barbuda
 - Benin
 - Burundi
 - Cote d'Ivoire
 - Cuba
 - Dominica
 - Gabon
 - The Gambia
 - Malawi
 - Mauritania
 - Nigeria
 - Senegal
 - Tanzania
 - Togo
 - Tonga
 - Turkmenistan**
 - Venezuela
 - Zambia
 - Zimbabwe

ALIEN REGISTRATION

- **Must carry evidence of lawful status (“show me your papers”)**
- **Everyone in U.S. with an I-94 record or lawful permanent resident has already registered and do not need to re-register.**
- Children under 14 who came to U.S. must re-register when they turn 14
- Failure to comply is “criminal” and enforcement priority for deportation/removal
- **Higher likelihood** of any non-citizen being asked about their immigration status
- **Non-citizens over age 18 must carry proof of registration when in public at all times**
 - **I-94 minimum (plus passport bio, REAL ID, or state ID combined with I-20 or DS-2019)**

STAY INFORMED ON LATEST DEVELOPMENTS...

- Sign up for Iandoli Desai & Cronin's free monthly newsletter at <http://iandoli.com/newsandupdates>.

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May request a consultation by emailing info@iandoli.com or requesting one directly on our website.

QUESTIONS



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