Employment Options for International Students Before and After Graduation

May 19, 2020

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Session Goals

• Maintain Valid F-1 Status
• Work Authorization for F-1 Students
• Work Authorization for J-1 Students
• H-1B And TN Work Status
• Other Potential Work Visas
• Overview of Green Card Process
• Q&A

Disclaimer: This presentation is for information only and should not be construed as legal advice. No attorney-client relationship has been formed based on this presentation.
Maintain Valid F-1 Status – DO’s

• Work closely with DSO (Designated School Official)
• Maintain full course of study:
  • Undergraduate students: 12 hours of credits per semester
  • Graduate students: certified by DSO
  • Reduced course load possible, must see DSO first
  • One-time only, unless for medical reasons
  • Cannot reduce to less than 50% of full course load
Maintain Valid F-1 Status – DON’Ts

- Work without proper authorization
- Travel without a valid visa and properly endorsed I-20
- Get arrested - Be very careful with crimes and misdemeanors: DUI, underage drinking, shoplifting, and owning firearms
Work Authorization for F-1 Students

- On-Campus Employment
- Curricular Practical Training (CPT)
- Optional Practical Training – 12 months (OPT)
- STEM OPT Extension – 24 months
On-Campus Employment

• First academic year prohibition not applicable

• Work needs to be either:
  • On school campus, including commercial business, such as bookstore or cafeteria
  • Off campus locations educationally affiliated with the school

• 20 hours per week during school year

• Full time okay when school is not in session
Curricular Practical Training (CPT)

• Permitted before graduation
• Must be authorized by DSO on I-20
• Must be an integral part of an established curriculum
• Not usually allowed during first year of study (exception applies to some graduate students)
• 12 months or more F/T CPT disqualifies student for any post-graduation OPT, but CPT for less than 12 months does not reduce OPT time
Optional Practical Training (OPT)

- Must be related to major
- Okay with self-employment
- Valid for 12 months, including both pre- and post-graduation
- Apply up to 90 days before and no later than 60 days after graduation
- Hot Topic: I-765 must be received by USCIS within 30 days after DSO recommendation

- Careful planning with international travel during OPT
- Cannot have more than 90 days of unemployment
- Get new OPT with new level of education
STEM OPT Extension

• 24-month OPT extension permitted if:
  • STEM students (science, technology, engineering and mathematics)
  • Employer uses E-Verify
  • [https://www.ice.gov/sevis/stemlist.htm](https://www.ice.gov/sevis/stemlist.htm)
  • Complete I-983 by employer and student
  • Employer to provide formal training plan, regular evaluation, and notification to DHS
  • Student responsible to return complete I-983 to DSO and provide annual report on pages 3 to 6

Hot Topic: Keep evidence that STEM OPT is appropriate – USCIS has raised that in subsequent H-1B submission
OPT Reporting Requirements

• F-1 must report change in employment to DSO – ASAP or within 10 business days.

• Changes: new job, change of employer, multiple “short-term gigs,” self-employment, change of address, or unemployed for more than 10 days.

• If there is a change of employer, the F-1 must report to the DSO and confirm new employer’s E-Verify participation

• Don’t start employment before receiving authorization
J-1 Exchange Visitors and Students

• Academic Training: Exchange visitors that intend to participate in an approved program for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training

• Allowed to stay in U.S. for duration of program

• May be subject to a 2-year foreign residency requirement; may obtain waiver for it
Work Authorization for J-1 Students

• Undergraduate and Pre-doctorate: Can engage in Academic Training for up to 18 months, or the length of time you have engaged in coursework, whichever is less

• Cannot begin J-1 program with Academic Training

• Must begin Academic Training within 30 days of end of program

• Does not require an EAD card – Must have letter of approval from dean or advisor and a DS-2019.

• The letter from RO serves in place of an EAD
H-1B Specialty Occupations
H-1B Basics

• Specialty occupation only
• Position must require specific degree
• Employee has the degree
• Example: chemist, biologist, engineer, physicist, software developer, systems analyst, accountant, economist, architect.
• Occupations not usually eligible for H1B: nurses, pilots, Wal-Mart managers
• Issued up to 3 years – total of 6 years
H-1B Annual Quota/Cap

• USCIS fiscal year: 10/1 to 09/30 (must file 6 months in advance on 4/1)
• “Regular” cap/quota: 65,000
• “Master’s” cap/quota: 20,000
• Exempt from quota:
  • extensions, change of employer,
  • exempt employers (universities, non-profits affiliated with universities, research organizations)
H-1B Registration

- March 1 to March 20: Employer registers online for employee
- March 21 to March 30: USCIS makes lottery selection
- March 27, 2020: We began to find out result
- First lottery of 65,000: All people who registered
- Second lottery of 20,000: Only people with U.S. master’s degree
- 2020: About 270,000 total registration
- Disqualify: Duplicate registration
- Try not to make any mistake in the registration process
- People selected can file H1B before 6/30/2020 (or when OPT EAD expires, whichever happens earlier)
F-1 OPT “Cap Gap” Extension

- “Cap-Gap” extension of both F1 status and OPT work authorization - if EAD expires after 4/1
- “Cap-Gap” extension of only F1 status: if OPT EAD expires before 4/1
- DSO must issue I-20 to cover “Cap Gap” and update SEVIS
- Do not travel internationally during “Cap-Gap” time
Other Important H-1B Issues

• Employer must pay “prevailing wage” as determined by DOL.
• Regulations state that employer is responsible for all legal fees and costs (filing fees, legal fees).
• No labor market test or need to prove U.S. worker shortage.
• Material changes in employer or position may necessitate amended or new petition.
Recent H1B challenges (BAHA)

Buy American, Hire American
• Level 1 wage challenges from USCIS
• Specialty Occupation challenges from USCIS
• Beneficiary’s qualifications
• Degree matching specialty or duties
TN (NAFTA) Status

- A Mexican or Canadian national in a listed profession may enter the U.S. for up to three years to work for a U.S. employer in that profession.

NAFTA Professions include:
- Architects
- Accountants
- Systems Analysts
- Engineers
- Lawyers
- Scientists in most disciplines
- Graphic Artists
- Management Consultants
- Hotel Managers
- Professors
- Others
TN (NAFTA) Status

• Canadian nationals—border adjudication (Canadians are visa-exempt).
• Mexican nationals apply at consular posts.
• May also file petitions if in the U.S.
• TN’s must have temporary, nonimmigrant intent
• No prevailing wage requirement.
• Most positions require relevant degree
Other Potential Work Visas

• O-1 Visa: Individuals with Extraordinary Ability or Achievement
• E-1 Treaty Trader & E-2 Treaty Investor Visas
• L-1 Intracompany Transferee Visa
• Special visas for Chileans, Singaporeans, and Australians
Evidence for O-1

- Receipt of a major, internationally-recognized award, such as a Nobel Prize, or evidence of at least (3) three of the following:
  - Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
  - Membership in associations in the field for which classification is sought which require outstanding achievements,
  - Published material in professional or major trade publications, newspapers or other major media about the beneficiary and the beneficiary’s work
  - Original scientific, scholarly, or business-related contributions of major significance in the field
  - Authorship of scholarly articles in professional journals or other major media
  - A high salary or other remuneration
  - Participation on a panel, or individually, as a judge of the work of others in the same or in a field of specialization allied to that field for which classification is sought
  - Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation
O-1 Visa

• Build your resume
• Volunteer for opportunities
• Talk to professors
• Get credits for things you have done
• Potential EB-1
E-1 Treaty Trader & E-2 Treaty Investor Visas

- Treaty
- Some treaties allow both E-1 and E-2, but some don’t
- No life-time limit
- No specific investment amount requirement
- Substantial
- Non-marginal
- Manage the business and has qualification
- E2 spouse can work
- Not a green card
- Non-immigrant intent
L-1 Intracompany Transferee Visa

• Transfer key employees to U.S. affiliates or branches (new or existing)
• Must have one year of work experience with non-US entity
• Approved for 1 to 3 years (new company – only 1 year)
• Extension requires show of viability of company – invoices, accounting records, inventory, rental agreement, photos of premises, payrolls, expenses reports, etc.
• L1A executive and managers
  • 7 years maximum
• L1B employee with specialized knowledge
  • Must know something unique about the company
  • 5 years maximum
• L2 spouse can apply for a work permit
Overview of “Green Card” Options
Four Ways to Become Permanent Resident (Green Card)

- Family Based
  - Marriage
- Employment Based
  - Create employment
  - Sponsored by an employer
- Diversity Visa Program
  - Green Card Lottery
- Asylum or Refugee
Family Based Green Card (Marriage)

- I-130/I-485 Application
- Receive EAD and AP in 4-6 months
- Interview with USCIS
- 2-year conditional green card
What Does Immigration Look For In A Marriage Case?

Living together
- Joint rental agreement, utility bills, mails
- House keys, floor plan

Share Financial Resources Together
- Joint bank and credit card accounts – with activities
- Joint tax returns
- Bills, mortgage, car payment
- Insurance (health, auto, life)

Flags
- Large age gap
- Vast differences in religious background
- Don’t seem to speak a common language
- Complicated non-immigrant history
- Don’t look right together
Employment Based Green Card
Three Steps

1. Labor Certification (PERM)

2. I-140 Immigrant Petition

3. I-485 application (AOS)

   - Interview with USCIS
   - Receive EAD and AP in 6-7 months

   - 10-year Permanent Resident Card (Green card)
Employment Based Green Card

• EB1: Individuals with extraordinary ability, outstanding researcher
• EB2: Individuals in occupations which require the person has at least a Master’s degree or Bachelor’s degree plus 5 years of progressive experience in the same field
• EB3: Professional positions requiring at least a Bachelor’s degree
Preparation and Participation

• Publication
• Speaking and presentation
• Membership in organizations requiring merits
• Cited by others
## Green Card Backlog – Visa Bulletin (May 2020)

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<th>Employment-based</th>
<th>All Chargeability Areas Except Those Listed</th>
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Executive Orders and Trends

- Travel ban of specific countries
- Covid-19 related travel ban
- Covid-19 consulates and embassies closure worldwide
- Covid-19 USCIS closed to public for interview and biometric appointment
- President April 22 Proclamation
  - Students not affected
- Removal of immigration violators and immigrants with criminal records
- General tightening of immigration policies
- Enforcement driven
- Maintaining valid status is critical
- DACA Cancellation
- TPS Cancellation
Questions?

Thank You Very Much

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