Life after OPT

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CPT and OPT

• On-campus employment okay (20 hrs/week)
• Curricular Practical Training (CPT)
  – Allows work/study, internship, or any other type of internship offered by sponsoring employers through cooperative agreements with the school. Must be a part of an established curriculum.
• Optional Practical Training (OPT) – 1 year
  – Training must be in major field of study
  – Full-time employment after graduation and only 20 hours per week while still in school
  – Must wait for EAD card to start working
• Make sure your I-20 is endorsed for employment
OPT

• Don’t forget to apply!
  – 90 days prior to program end date; or
  – 60 days after program end date
  – Always check with your school for exact filing dates and program end dates as they vary greatly.

• Use it as a stepping stone to find that H-1B employer!
OPT

• Unemployment periods
  – 90 days of unemployment = out of status (regular 12-month OPT)
  – 120 days of unemployment = out of status (STEM 29-month OPT)

• How to avoid periods of “unemployment”
  – Volunteer – minimum 20 hours in your field of study

• Tip: Stay in close contact with your ISO

• 60 day grace period once OPT ends (or once your change of status petition is denied/revoked/withdrawn).
OPT STEM EXTENSION

• 17-Month Extension of OPT (total of 29 months)
  – STEM degree graduates only (Science, Technology, Engineering, Mathematics)
  – ICE expanded list of designated STEM degree programs to include other related fields so make sure you check the list, your degree may qualify. You can check the list at: www.ice.gov/sevis.
  – Job must directly relate to degree major
  – Employer must be registered with E-Verify
  – Must apply while in OPT period.
  – Okay to change employers while on STEM extension but new employer must also be registered in E-Verify.
OPT STEM EXTENSION - Updates

- On **February 5, 2016**, DHS sent the final STEM OPT rule to OMB for review. This is the last phase of review before the rule is published in the Federal Register. DHS had previously announced an intention to have an effective date 60 days after the Federal Register publication date. The final rule would have to be published by about **March 10, 2016** to accommodate the May 10, 2016 vacatur date of the current rule.

- On **January 23, 2016**, the District Court granted DHS's motion to extend the stay of the vacatur of the STEM OPT rule from February 12, 2016 **until May 10, 2016**.
Life After OPT: What Are Your Options?

• **H-1B Professional Occupation Visa**
  – Job must be one that requires *at least* a Bachelor’s degree in that field to perform the job (E.g. Financial Analyst, Accountant, Engineer, Account Executive, Operations Analyst, Computer Scientist, Software Engineer, Graphic Designer, etc.)
  – Employer-specific
  – Part-time or full time
  – Concurrent H-1B for multiple employers
  – 6 year maximum; granted in 3 year increments
  – Portability – can transfer H-1B to new employer at any time - not subject to H-1B cap again (already counted as part of the H-1B cap)
The H-1B Quota

- Fiscal Year (FY) October 1 to September 30
- H-1B Quota/Cap – *private employers only*
  - 65,000 per fiscal year
    - 5,400 Singapore
    - 1,400 Chile
  - Additional 20,000 for U.S. graduates with MA or higher degree
- How early can you file an H-1B? *April 1*
H-1B Cap – *Timing Issues*:

**History:**
- October 1, 2003 – 2009 *March Madness*
  - *H-1B computer generated lottery to select petitions*
- FY 2010 – cap reached December 21, 2009
- FY 2012 – cap reached November 22, 2011
- FY 2014 – present – back to the lottery
- FY 2015 – 172,500 received

**FY 2016:** On April 13, 2015 USCIS announced that the H-1B cap was reached and a lottery was conducted. USCIS received approx. 233,000 H-1B petitions.
F-1/H-1B Cap-Gap Relief

Graduation June 2016 → OPT starts July 2016 → File H-1B April 1, 2017 → OPT ends July 2017 → October 1 2017 (H-1 starts)

- If selected for H-1B – cap-gap relief until September 30
- H-1B starts on October 1 – no gap! 😊
- If not selected, cap-gap relief ends upon rejection, denial or revocation (60 day grace period from notification)
Overview of H-1B Process

• Agencies involved: USCIS and Department of Labor (DOL)

• Department of Labor steps:
  1. Verify Federal Employer Identification Number (FEIN) – 3-5 days.
  2. Labor Condition Application (LCA)
     • Submit LCA to DOL online, takes one week to be certified.

• USCIS steps:
  1. Submit application via mail to USCIS: Support Letter with job description; Forms, Government Filing Fees, support docs
  2. Approval/RFE/Denial?
H-1B Portability

• Can “port” or transfer H-1B to new employer at any time
  ▪ not subject to H-1B cap again (already counted as part of the H-1B cap)

• Portability allows commencement of new job upon “filing” of new petition
  ▪ No need to wait for approval
  ▪ No need to pay for premium processing (unless travel issue)
H-1B Extensions/Recapture

- 6 year maximum (AC21 exception)
- H-1B Extensions: The H-1B cap does not apply to extensions.
- H-1B Remainder Option – previously held H-1B status and did not use 6 year maximum?
Beyond the sixth year!

- Recapture time spent abroad
- 2 ways to extend H-1B beyond 6 years
  - I-140 or labor cert pending for more than 1 year (one-year increments)
  - I-140 approved and cannot file I-485 application because of backlogs or “retrogression” (three-year increments)
Employer Obligations

• Must pay prevailing wage – you can find this at: http://www.flcdatacenter.com/

• No benching (just b/c it’s a “slow season” at work, employer can’t withhold work and pay) – but voluntary leave of absence or maternity leave okay.

• Termination
  • must offer reasonable costs of transportation home
  • must notify USCIS and withdraw LCA and petition
Who is Responsible for the Fees?

- Employer should pay all fees, BUT, if foreign national pays *any* fees - MUST STILL BE PAID PREVAILING WAGE
  - E.g. Prevailing wage is $60,000; alien salary is $60,000. If alien pays for any of legal fees or government filing fees – salary will drop below PW.
    - Fraud fee ($500) and Training fee *must* be paid by employer ($750/$1500) – fee only applies to private employers. No reimbursements.
  - Other govt. filing fees *may* be paid by alien or employer ($325 I-129 fee, *optional* $1,225 premium processing fee)
  - Legal fees can be paid by FN or employer (*as long as FN is paid that much above PW*)
H-1B Audits and Enforcement

- Increase in fraud investigations and unannounced worksite visits
- USCIS hired 1,500 investigators to conduct 30,000 worksite visits – created FDNS (Fraud Detection and National Security).
- An agent can show up and ask to speak with you and supervisor, make sure you are performing in H-1B job, can ask to see payroll records.
- Must be paid prevailing wage as stated on LCA.
H-4 Spouses and Children

- No employment authorization (some limited exceptions)
- Can go to school
- If H-4 spouse wants to work, must apply for own visa
H-1B Issues for Start-Up Business

- Must establish company with employer tax I.D. number
- Company can be 100% owned by H-1B employee
  - Must be W-2 employee of the company
  - Company must be wholly separate entity from owner/employee
  - Independent Board of Directors or other mechanism to show employee does not have control over company
H-1B Issues for Start-Up Business

- Company must prove
  - Financial ability to pay salary
    - Profits and/or capitalization
  - Real job to be done by H-1B worker
  - Place of business – office
Top 10 Myths About the H-1B Visa

1. No H-1B for small company or start-up
2. Must advertise H-1B position and show there is no qualified U.S. worker
3. Cannot change employer if H-1B cap reached
4. New 6-year period if change employers
5. 10-day grace period after lay-off
   • If laid off, status terminates immediately
6. Cannot go to school part-time on H-1B
7. OK to file under MA cap before completing higher degree
8. Premium Processing increases chances of approval
9. No one will check if you are actually working in the H-1B position.
10. Must have a U.S. degree to qualify – foreign degrees okay as long as evaluated and found to be the equivalent of a U.S. bachelor’s or higher.
The Cap has been met, now what?

*Other* options:

- **H-1B for Cap-exempt organizations (i.e. employer is not subject to the H-1B cap can file anytime)**
  - Institutes of higher education, i.e. universities and colleges
  - Non-profit organization affiliated with institute of higher education
  - Non-profit research organization
  - Government research organization

- **Cap-exempt employer to cap-subject employer** (university to private industry)
  - Your are subject to H-1B cap (never been counted)
Other Nonimmigrant Visa Options

- Free Trade Agreement Visas (requires professional occupation and degree)
  - H-1B1’s for Chile and Singapore - There are still H-1B1s for Chileans and Singaporeans.
  - TN NAFTA visas for Canadians and Mexicans
    - Check TN Appendix 1603.D.1
    - Canadians can apply at POE, Mexicans apply for visa at U.S. Embassy in Mexico
  - E-3 visas for Australian professionals
Other Nonimmigrant Visa Options

L-1A Multinational Executive/Manager Visa or L-1B Specialized Knowledge

• One-year abroad at parent, affiliate or subsidiary as an executive, manager or specialized knowledge individual
• Must be coming to U.S. to fill executive, managerial or specialized knowledge position
• Based on corporate relationship of foreign entity and U.S. entity (parent, subsidiary, affiliate, etc.)
Intracompany Transferee (L-1) Visas

- National of any country
- No quota
- Length of visa
  - Start up 1 year
  - Established business 3 years
  - Maximum length 7 years
- Good basis for green card – EB-1-3
Intracompany Transferee (L-1) Visas

- New office / Start-up issues
- “New office” L for new companies – only good for 1 year. Good option for start-up. Must show continued revenue/business to renew.
  - Place of business
    - Employees
    - Capitalization
    - Need for “manager”
    - Business plan and financial projections
Dependents?

• Spouses and children receive L-2 visa
• Spouses may apply for work permit – unrestricted employment
• Good basis for EB-13 green card
E Visas

- Must have treaty between U.S. and Treaty country (check Treaty Country list at https://travel.state.gov/content/visas/en/fees/treaty.html)
- At least 50% of company must be owned by Treaty country
- Can start-up company or buy company as E-1 or E-2
E Visas

- **E-1 Treaty Trader**
  - 50% trade must be between Treaty Country and U.S.
  - Import-export

- **E-2 Investor Visa**
  - Must make substantial investment
  - Must be executive, manager or essential employee -- must have nationality of treaty country. (E.g. Company in U.S. is 50% Australian owned; can hire Australian under E visa)

- Spouses and children receive E-1/E-2 dependent visas
- Spouses can apply for work permit – unrestricted employment
**O Visas**

- **O-1 Visas – Extraordinary Ability**
  - **Classifications:**
    - **O-1A:** Science, Education, Business or Athletics (and fashion models!)
    - **O-1B:** Arts or Motion Picture/TV
      - Arts (Artists, Musicians, VFX Artists, Graphic Designer, Dancer, Stylists, Art Director, Creative Director, Sound Engineer, etc.)
      - Motion Picture/TV (Actors, Writers, Cinematographer, Directors, Producers, etc.) – *extraordinary achievement*

- **O-2 Visas – Essential Support Personnel**
- **O-3 Visas – Dependents** (No work authorization)
O-1 Visa Standards

- **O-1A (Business, Education, Science, Athletics):** Extraordinary ability demonstrated by a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

- **O-1B (Arts):** “Distinction” – Extraordinary ability demonstrated by a high level of achievement in the field as evidenced by a degree of skill & recognition substantially above that ordinarily encountered.

- **O-1B (Film/TV):** Extraordinary achievement demonstrated by a very high level of accomplishment evidenced by a degree of skill/recognition significantly above that ordinarily encountered.
O-1 criteria and types of evidence:

• Lesser national or international prizes of awards, Major awards (including nominations)
• Membership in associations requiring outstanding achievements
• Press or Published materials or mainstream media written by others about the alien
• Participation, individually or on a panel, as the judge of the work of others
• Original contributions of major significance
• Authorship of books or articles
• Conference presentations
• Critical role for distinguished organizations or productions/events
• High compensation/salary
• Commercial success
• Display of work at exhibitions, film festivals
• Reference letters from prominent people in the industry (experts)
• Online evidence / press (music charts, IMDB printouts, etc.)
Immigrant Visa (“Green Card”) Options

- DV Green Card Lottery ([www.travel.state.gov](http://www.travel.state.gov))
  - Diversity Immigrant Visa Program – aka DV lottery
  - 50,000 green cards – APPLY!!!
  - **Registration period is October - November each year**
  - **FREE - no application fee**
  - Must be eligible to participate

**DV-2015 program – 14,397,781 qualified entries with derivatives**
Green Card Lottery

- Based on country of birth (not citizenship)
- Natives of countries who have sent more than 50,000 immigrants to the U.S. over the past 5 years are not eligible:
  - BANGLADESH, BRAZIL, CANADA, CHINA (mainland-born), COLOMBIA, DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, HAITI, INDIA, JAMAICA, MEXICO, PAKISTAN, PERU, PHILIPPINES, SOUTH KOREA, UNITED KINGDOM (except Northern Ireland) and its dependent territories, and VIETNAM.
  - Persons born in Guatemala, Hong Kong SAR, Macau SAR, and Taiwan are eligible.
- “Cross-charge” to spouse’s country of birth
Family Based Green Cards

- Immediate Relative of USC: spouse, parent, minor children of U.S. citizens
  - Immediate benefits – work permit and travel document within 2-3 months
  - 6-8 month processing
  - Conditional 2 year green card (marriage cases)
  - Adult child must be 21 years old to sponsor parent
Family Based Green Cards

- Unmarried Adult Children of U.S. citizens (F1) (8 year backlog)
- Spouse/Child of Legal Permanent Resident (LPR) (F2A)
- Unmarried adult children of LPR (F2B) (7 year backlog)
- Married adult children of U.S. citizens (F3) (12 year backlog)
- Brothers and sisters of U.S. citizens (F4) (13 year backlog)

***Check https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html for most recent Visa Bulletin and dates***
Employment Based Green Cards (EB-1 through EB-5)

• **EB-1 (First Preference)**
  - Aliens of Extraordinary Ability (EB-11)
    • May self sponsor – which is popular in the arts
  - Outstanding Researchers/Professors (EB-12)
    • International recognition for outstanding achievements
    • 3 years experience in teaching/research
  - Multinational Executives and Managers (EB-13)
    • Higher standards
    • Faster processing and wait times
Employment Based Green Cards

• **EB-2 (Second Preference)**
  – PERM for Advanced Degree Holders
    • Masters or higher degree or foreign equivalent
    • BA plus five years progressive experience
  – Schedule A, Group II Alien of Exceptional Ability in Arts, Sciences or Performing Arts
  – National Interest Waiver (NIW)

• **EB-3 (Third Preference) – PERM**
  – Professionals with BA degree or foreign equivalent
  – Skilled Workers with 2 years experience
  – Other Workers
PERM-Based Green Card Process

- **Step 1: PERM Labor Certification process**
  - Employer must conduct “good faith” recruitment efforts and show there is no qualified U.S. worker to do the job

- **Step 2: I-140 Immigrant visa petition**
  - Employer must show “ability to pay”

- **Step 3: I-485 Application to Adjust Status to Permanent Residence (AOS)**
  - Can only be filed once your priority date becomes “current”
  - Receive work and travel authorization within 60-90 days of filing AOS
PERM Issues

• Deciding between EB-2 and EB-3
  – NOT based on alien’s educational background
  – Based on actual minimum requirements for job

• Tricks that don’t work:
  – Tailoring minimum job requirements to your experience or education
  – Foreign language requirements

• Generally cannot use employment experience gained with sponsoring employer – unless 50% different

• When to Start Green Card Process?
  • 4 years into H-1B...
  • Make sure you like the employer and vice versa
Other Green Card Options

- EB-4
  - Religious Worker visas

- EB-5
  - Million Dollar Investor Green Card
  - $500,000 in area of high unemployment
    - Must create 10 jobs

- EB-5 Regional Programs
  - $500,000 in pre-approved program
  - Pooled investment
Naturalization

• Employment-based and family-based green card
  – 4 years and 9 months
• Spouses of U.S. citizens
  – 2 years and 9 months
• Must be physically present for at least half the time
• Dual citizenship - varies per country
Q & A

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