

# Immigration 101: Options After The F-1

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# U.S. Immigration Basic Concepts

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- Non-Immigrant Visa
- Lawful Permanent Resident/Immigrant Visa (Green Card)
- Citizenship (Naturalization)



# Overview of U.S. Immigration Process



- B-1/2 Visitor for Business/Pleasure
- E-1/2 Treaty Trader/Investor
- E-3 Specialty worker – Austr.
- F -1 Student - OPT
- H-1B Specialty worker
- H-2 Temporary Worker
- H-3 Trainee
- J-1 Exchange Visitor
- L-1 Intracompany Transferee
- O-1 Alien of Extraordinary Ability
- R-1/2 Religious Worker
- TN Trade NAFTA

## FAMILY-BASED CATEGORIES

- IR Immediate relatives
- FB-1 Unmarried sons/daughters of USCs
- FB-2 Spouses/children of LPR
- FB-3 Married sons/daughters of USCs
- FB-4 Brothers/sisters of USC

## EMPLOYMENT-BASED CATEGORIES

- EB-1 Outstanding researchers  
Aliens of extraordinary ability  
Multinational managers
- EB-2 Advanced degrees/NIW
- EB-3 Professionals  
2 yrs. experience  
Other workers
- EB-4 Special immigrants/religious
- EB-5 Investors

3 yrs. if by marriage to  
U.S. citizen

5 yrs. for everyone else

# The H-1B Visa: Professionals

REQUIREMENTS	APPLICATION STEPS	TIMETABLE	DURATION
1. Job must require BA/BS degree or equiv. as minimum entry-level requirement  2. Applicant must have degree equivalent to U.S. BA/BS, or equiv. experience  3. Employer must pay at least prevailing wage for the position in geographic area  <b>NO TEST OF U.S. LABOR MARKET REQUIRED; NO ADVERTISING; NO RECRUITMENT</b>	1. Determine prevailing wage for position  2. Post Labor Condition Application (LCA) at employer's workplace  3. File LCA with U.S. Dept. of Labor; wait 7 days for certification  4. File visa petition with USCIS  5. Change of status with petition if in US  US consular processing overseas if out of status or overseas  Canadians can apply at U.S. border	3-6 months - <b>Variable!</b>  Premium processing: decision in 15 days  H-1B portability: May work as soon as filed if already holding H-1B visa  <b>WATCH OUT FOR GAPS IN STATUS</b>	Granted for 3 years Renewable for 3 years  Extend beyond 6 years if GC or PERM pending one year before H maxes out.
			<b>COSTS (04/01/2024 change)</b>
			\$780 USCIS filing fee \$500 Antifraud fee \$750 (25 or fewer EEs) or \$1,500 ACWIA fee (> 25 EEs)  - Credentials evaluation (\$75-500) - Premium processing (\$2,805)

# H-1B Basics

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- “Specialty Occupation” – job must require BA/BS or equivalent in a specific field for entry-level requirement
  - And employee must have a degree related to the specialty occupation
- Employer-employee relationship
  - W-2 employee
  - Employer-specific – no moonlighting, but can have concurrent H-1Bs
  - Off-site employment permitted if petitioner retains control over work, salary, etc.
- Granted for up to 3 years at a time; maximum of 6 years in H-1B status
- Employer must pay all costs/fees associated with H-1B petition process – by law, employees/beneficiaries are prohibited from paying these costs, even if they want to

# H-1B Visas – The Numerical Cap

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For Non-Exempt/Private Employers

H-1B Visas Currently Capped at 65,000 per year

- Cap exemptions for colleges, universities and some non-profit/government research institutions
- Fiscal Year (FY) begins in October

Advanced Degree Allocation

- Additional 20,000 visas reserved for graduates of Masters or higher degree programs from U.S. colleges

# The H-1B Cap

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- **Insufficient H-1B Visas In Every Year Since 2004**
  - Some years: hit the cap AFTER the start of the FY
  - Other years: hit the cap between filing & start of the FY
  - 2008, 2009, 2014, 2015, 2016, 2017: hit the cap on April 1
  - 2014: 124,000 cases filed for 85,000 visas (68% chance)
  - 2015: 174,000 cases filed for 85,000 visas (48% chance)
  - 2016: 233,000+ cases for 85,000 (36% chance)
  - 2017: 199,000 cases for 85,000 visas (43% chance)
  - 2018: 190,098 cases for 85,000 visas (95,885 AD – 21% chance; 94,213 Bachelor's 38%)
  - 2022: 308,613 registrations; 87,500 selected

# H-1B Employer Registration

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- USCIS has implemented an Employer Registration process from which to conduct the “lottery” or selection for H-1B processing
- March 1 – March 20 Employers can register (via their attorney representative) into the online account. Selections will be randomly made by end of March
- As of April 1, if selected in the on-line lottery, the Employer can then file the full H-1B petition on behalf of their H-1B employee
- 90-day window to file the H-1B petition



# H-1Bs Cap Subject vs. Cap Exempt

- Numerical cap
  - H-1B limited to 65,000 visas per year plus 20,000 extra for those who possess Master's degrees from U.S. institutions
  - NO numerical cap for:
    - Employees of institutions of higher education as defined by Higher Education Act of 1965
    - Organizations related to/affiliated with institutions of higher education
- Fee Exemption
  - H-1B government fees normally
    - \$1,500 Workforce Training Fee (\$750- for entities under 25 employees)
    - \$500 Anti-Fraud fee
    - \$780 I-129 Form fee
  - Fee exemption for institutions of higher education
    - No \$1500 Workforce Training Fee
    - \$500 Anti-Fraud fee still required
    - \$780 I-129 Form fee still required



# Alternatives to the H-1B

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- TN (Trade NAFTA) for Canadians and Mexicans in specified professions (including faculty members)
- Special Free Trade Hs for Chileans and Singaporeans
- E-3s for Australian professionals
- O-1s (Aliens of Extraordinary Ability)
- F-1 students (CPT and OPT)
- H-2Bs for temporary need (usually unskilled workers)
- J-1s for exchange visitors
- H-3s, Ps, Qs, etc.



# J-1 Cultural Exchange Visas

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- INTENDED AS A ‘CULTURAL EXCHANGE’ OPPORTUNITY
  - Administration through U.S. Dept. of State
  - Employer must be authorized by DOS to sponsor J-1 visas themselves
  - (universities, hotel chains, medical centers) OR
  - Employer must work through approved sponsoring agencies for defined
  - categories: J-1 Trainees, Summer Work Study, etc.
  - Approved sponsors listed on DOS website (<http://j1visa.state.gov>)
- MANY CATEGORIES OF J-1 VISAS:
  - Professor / Research Scholar (5 years)
  - Specialist (12 months)
  - Short-Term Scholar (6 months)
  - Trainee (18 months) / Intern (12 months)
  - Au pair (2 years) / Camp counselors (4 months)
  - Teachers – primary & secondary (3 years)



J1VISA.STATE.GOV

# J-1 Visas: Exchange Visitors

REQUIREMENTS	APPLICATION STEPS	TIMETABLE	DURATION
<ol style="list-style-type: none"> <li>1. Must be sponsored by organization with approved J-1 program</li> <li>2. Must fall within sponsor's defined program: e.g., <i>research scholars, trainees, professors, specialists, etc.</i></li> <li>3. Some participants are subject to mandatory two-year home residency requirement. Waiver of requirement can be difficult or impossible.</li> </ol>	<ol style="list-style-type: none"> <li>1. Approved J-1 sponsor organization issues DS-2019 to applicant</li> <li>2. Issuance of J visa               <ul style="list-style-type: none"> <li>- If in U.S., change status via USCIS</li> <li>- If overseas, apply for J-1 entry visa stamp at U.S. consulate overseas</li> </ul> </li> <li>3. Applicant may start work when has I-94 with J-1 stamp in hand</li> </ol>	<p>30 days for DS-2019</p> <p>2 weeks - 3 mos. for consular processing</p> <p><b>OR</b></p> <p>At least 12 months for change of status</p>	<p>Depends on category: 1 month to six years</p> <p>Research scholars: 3 years</p> <p>Trainees: 18 months</p> <p>Specialists: 1 year</p> <hr/> <p><b>COSTS</b></p> <p>DS-2019: depends on umbrella organization, if used</p> <p>Visa application fees at consulate or \$370 for change of status</p>

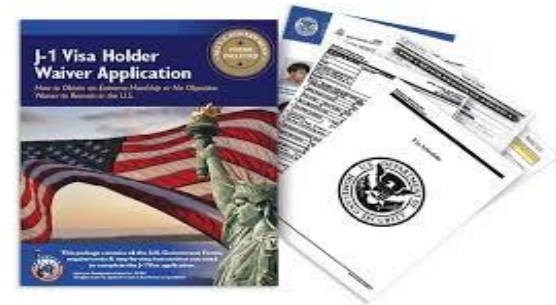
# J-1 Risk: Home Residency Requirement

## ■ TWO-YEAR HOME RESIDENCY REQUIREMENT

- Some participants in full-time programs must go to home country before change to H or L visa, or 'green card'.
- Two-year home residency requirement applies if:
  - Either U.S. or home government paid for the sojourn in the US OR
  - Country has filed Skills List with DOS designating study areas which are needed in country – no matter who paid for the study.
  - Participant has engaged in Graduate Medical Education in US
  - “Home country” = country of citizenship or last residence at time of J grant

## ■ WAIVER OF HOME RESIDENCY REQUIREMENT BY DOS POSSIBLE

- 4 statutory grounds for waiver application; decision is ALWAYS discretionary
- Some situations where waivers are almost NEVER granted: Fulbright, AID
- Medical graduates: special alternatives, service in medically-underserved areas



# TN Visas : Trade NAFTA

- (United States-Mexico-Canada Agreement [USMCA]: new trade deal replacing NAFTA; not expected to have any impact on NAFTA's immigration/visa provisions)

REQUIREMENTS	APPLICATION STEPS	TIMETABLE	DURATION
<p><b>Canadian or Mexican citizen:</b> Job on list of TN professions, e.g.: Teacher (high school &amp; univ.) Mgmt. consultants Science/engineering Systems analysts Medical professionals</p> <p>Must have req'd education or training: usually BA/BS and/or license. Exceptions include: Mgmt. consultants Scientific technicians Systems analysts (2 yr. degree min.)</p>	<p><b>Canadians:</b> Apply at U.S. border or airport port of entry: processed on the spot</p> <p>No visa petition or USCIS preprocessing required</p> <p><b>Mexicans:</b> Apply at U.S. consulate in Mexico; fast processing</p>	<p><b>Canadians:</b> Almost immediate Avoid processing at high-traffic or holiday weekends</p> <p><b>Mexicans:</b> 2-3 weeks: Must make appt. at consulate</p>	<p>May be granted up to 3 years</p> <p>Renewable without set limitation</p>
			<b>COSTS</b>
			<p>Border fees: \$56+\$6 per I-94</p>



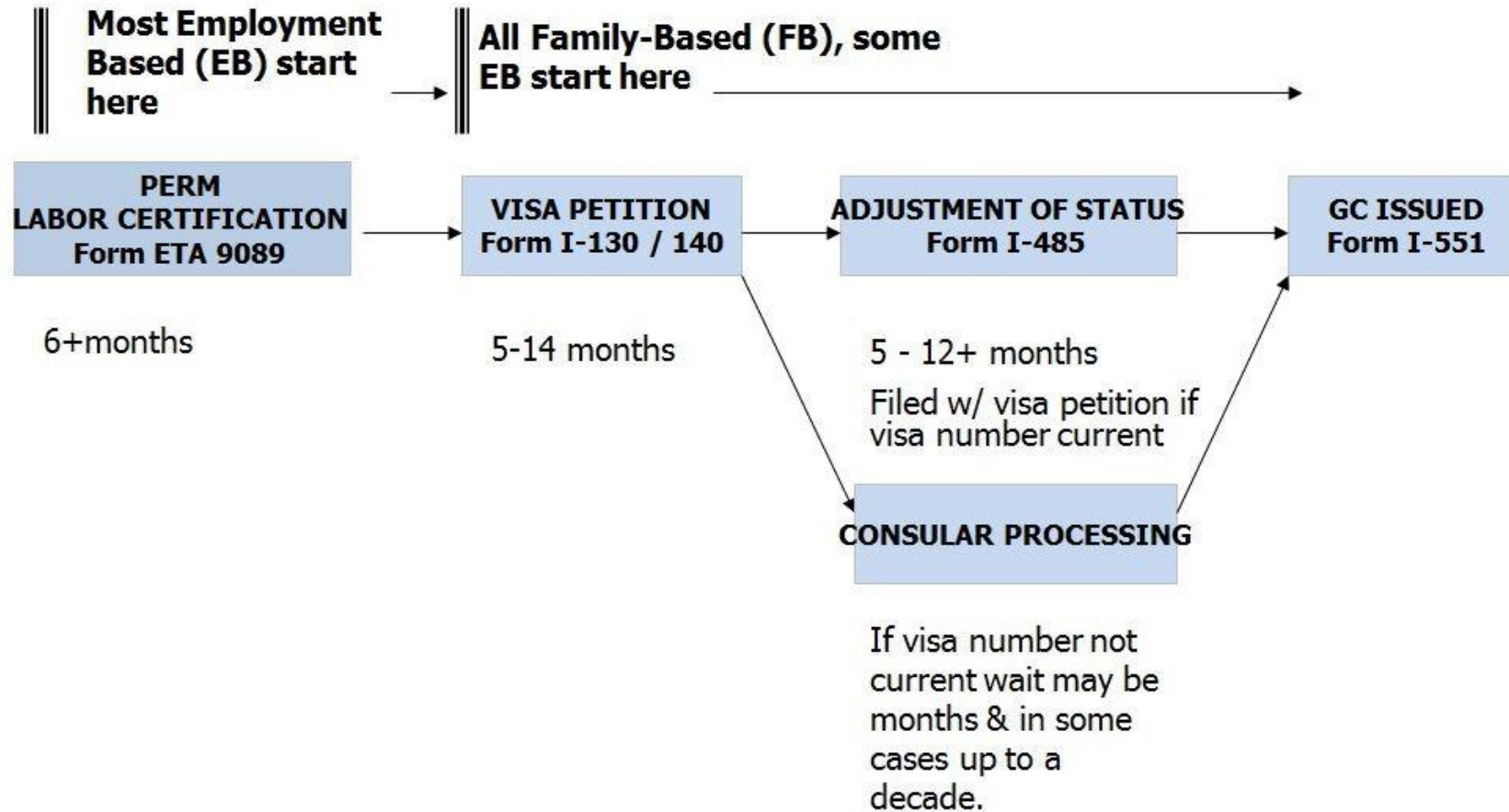
# O-1A Visas

## Individuals with Extraordinary Ability or Achievement

- Science, Education, Business or Athletics
- National or International Acclaim
  - Letters of support
  - Publication
  - High salary
  - Media, citations, press
  - Judge work
  - Awards, critical acclaim
  - Selective professional memberships
  
- Available to J-1 holders who are subject to home residence requirement



# Overview: Green Card Process





# Quotas and Priority Dates

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## **LIMITS ON NUMBER OF GREEN CARDS PER YEAR**

- Each type of green card (preference category) have numerical limits: numbers vary by year and by usage
- Approximately 140,000 EB-based GCs in all categories
- Approximately 226,000 FB-based GCs in all categories
- Each country is also limited to a ceiling number of visas, regardless of demand
- When either preference group or country quotas are met, waiting lists build

## **PRIORITY DATE DETERMINES PLACE ON WAITING LIST**

- When waiting lists build, cases are processed in priority date order
- Priority date established at the first official filing date of the paperwork (USCIS, DOL)

## **GLOBAL VS. COUNTRY WAITING LISTS**

- Country which hits country ceiling taken out of the worldwide visa pool and given its own separate pool of visas (approximately 7% of total available)
- Ensures even distribution of visas across all GC categories.
- Leads to longer waits in many categories.
- The Visa Bulletin ([www.travel.state.gov](http://www.travel.state.gov)): priority dates for each month.

# Visa Bulletin: Employment

- VISA BULLETIN April 2024 [www.travel.state.gov](http://www.travel.state.gov)
- Annual employment-based immigration: 140,000
- Employment-based immigrant visa cases with priority dates before the stated dates are eligible for final action:

**A. FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES**

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01SEP22	01MAR21	C	C
2nd	15JAN23	01FEB20	15APR12	15JAN23	15JAN23
3rd	22NOV22	01SEP20	15AUG12	22NOV22	22NOV22
Other Workers	08OCT20	01JAN17	15AUG12	08OCT20	01MAY20
4th	01NOV20	01NOV20	01NOV20	01NOV20	01NOV20
Certain Religious Workers	U	U	U	U	U

# Why are waiting lists a problem?

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Core Issue: Cannot file adjustment of status until priority date is current

- Labor certification and I-140 can be filed without regard to priority date
- Cannot file adjustment of status or consular process an immigrant visa unless a priority date is current.

Deprives applicants of AOS-related benefits

- Obtaining EADs and Advance Parole earlier in process
- Eliminating the need for H-1B visa renewals; visa stamp processing, etc.
- Minor children can “age out”, i.e., turn 21 & fall off parents’ applications



# PERM Labor Certification

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## MOST COMMON EMPLOYMENT-BASED GREEN CARD PROCESS:

- Application by employer to USDOL to certify individual and position after statutorily mandated recruitment campaign
- Nearly all positions qualify
- Process requires significant employer involvement, including payment of legal fees and all associated costs

# PERM Labor Certification (cont.)

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## PROCEDURES/ADVERTISING:

- Define job and skills on DOL forms in compliance with DOL requirements
- Obtain DOL prevailing wage determination (these are taking 7-9 months!)
- Advertise two Sundays in paper of general circulation
- Professional positions: 3 additional recruitment steps (job fairs, web ads, etc.)
- Interview and evaluate applicants; prepare recruitment report
- Submit ETA 9089 to DOL with recruitment results
- DOL reviews and approves or audits
- Possible audits in 30% of cases (??)

Requirements simplified for university faculty under “Special Handling”

- Only 1 national journal advertisement required
- “Most qualified” standard as opposed to minimally qualified



# Other Employment Based Green Card Options

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- Extraordinary Ability Alien (EB-1A)
- Outstanding Researcher (EB-1B)
- Multinational Manager (EB-1C)
- National Interest Waiver (EB-2)

\*All of the above are exempt from the labor certification requirement

## EB-1B Outstanding Researcher or Professor

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**Intended to accommodate prospective *immigrants* who** are recognized nationally or internationally for their outstanding achievement in their field. An employer must submit this petition on behalf of a prospective permanent resident.

USCIS regulations provide that applicant must demonstrate international recognition for outstanding achievements in a particular academic field, as well as at least 3 years' experience in teaching or research in that academic area.

Applicant must be entering the United States in order to pursue tenure or tenure track teaching or comparable research position at a university or other institution of higher education.

## EB-1B Evidence Requirements

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**Documentary Evidence must include at least 2 of the following:**

- Evidence of receipt of major prizes or awards for outstanding achievement
- Evidence of membership in associations that require their members to demonstrate outstanding achievement
- Evidence of published material in professional publications written by others about the alien's work in the academic field
- Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
- Evidence of original scientific or scholarly research contributions in the field
- Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field



# Useful Resources

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- Immigration and Customs Enforcement ([www.ice.gov](http://www.ice.gov))
- NAFSA: Association of International Educators ([www.nafsa.org](http://www.nafsa.org))
- U.S. Citizenship and Immigration Services ([www.uscis.gov](http://www.uscis.gov))
- Immigration Attorney

# Contact Information

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