

Life After Student Status: Immigration Workshop For International Students

Lucy G. Cheung, Esq.
Michael J. Goldstein, Esq.

Goldstein and Cheung LLP
80 Maiden Lane, Suite 1008, New York, NY 10038
212-374-1544 contact@gcimmigrationlaw.com
www.gcimmigrationlaw.com

Disclaimer

- The topics discussed in these materials may overlap many areas of law, including, but not limited to, corporate law, immigration law, and accounting.
- No legal advice is being offered at this workshop, or through these materials. Rather, the information presented is general. Reviewing these materials does not create a client-attorney relationship.
- Should you wish to discuss your specific situation, please contact our office to schedule a consultation.

Choosing an Immigration Lawyer

◎ Five Tips

- #1: Lawyer Should be a Member of AILA
 - American Immigration Lawyers Assoc.
- #2: Only Immigration Law
- #3: Student Should Pick a Lawyer Via Reliable Reference
- #4: Confidentiality (exception in H-1B context – dual representation)
- #5: Generally Pay a Fixed Legal Fee



Where to get the Right Advice?

- Foreign Student Advisors or DSOs
- The Appropriate Lawyer
 - Cheapest is not the best.
 - Don't choose lawyers who advertise for general practice.
- New York City Bar Legal Referral Service
 - 212-626-7373 or www.iLawyer.com
- Beware of Mistaken Perception of New Laws and Online Materials
- Pitfalls in Social Media (Facebook, LinkedIn, Craigslist, online materials)

The Various Federal Agencies:

- DOS (Department of State) through its Visa Office and the U.S. Consulates issue Visas.
- CBP (Customs and Border Protection) – the “Gatekeeper”, they stamp you in.
 - This is the first point of contact at airports or other ports of entry.
- USCIS (United States Citizenship and Immigration Services) -
 - Decides motions to reinstate, changes of status, and employment cards (OPT/STEM) – and maybe one day, green cards.
- ICE (Immigration and Customs Enforcement) – The immigration police who manage SEVIS and enforce compliance.
- USDOL, HHS, Social Security

What is a Visa? What is Status?

◎ Visa:

- The Key to Enter the U.S.
- This is a Travel Document
- Consulate Laminates into Passport

◎ Status:

- F-1: I-20
- J-1: DS-2019
- Passport Stamp at Entry, Electronic I-94
- Change by USCIS while in the U.S. if in status
- Note → OPT/AT is Under F-1/J-1 Status

You Are Going To
Graduate.

Now What?

General Issues

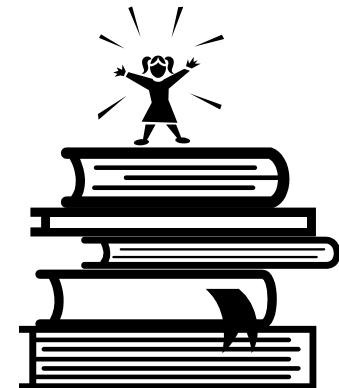
- Finding a Job
 - **Employers CAN Discriminate Against International Students.**
 - What to Say in the Job Interview?
 - Should I disclose that I will need to be “sponsored”?
 - What should I say?
 - Sell Yourself.
 - Please call my very reputable lawyer.
 - The employer does not need to advertise for the H-1B category.
 - Beware of employer’s misconception relating to H-1B petitions and green card petitions.
 - Hiring Cycle

H-1B – Specialty Occupation Petition

- Specialty Occupation = Professional
 - 4 year degree or higher (abroad or U.S.)
 - Equivalency OK
 - Major/Classes from Degree Must Match Job Duties
 - Not What you Have – But What the Job Needs:



- For example: Registered Nurses are not professional as job requires only a 2 year degree.
- For example: Specialty or head nurse does qualify as job requires B.S. degree.
- Full Time (40 hr+) vs. Part Time (less than 35 hrs per week-but must be able to support yourself)



H-1B – Specialty Occupation Petition

- 6 Year Limit (3+3, 2+2+2, etc.)
- Must be Outside U.S. for One Year Before Reenter in New H-1B Cycle
- Reclaim Time Spent Outside U.S.
 - Prove with Entry/Exit Stamps, Boarding Passes, Frequent Flier Records, Etc.
- AC21 Extension if Pending Employment-Based Green Card Applications for 1 Year

Employer Files on Behalf of Employee

◎ H-1B Specific To Employer:

- Each Employer Must Petition
 - One Employer/One Petition, Or
 - Multiple Employers/Multiple Petitions.
- Employer signs all paperwork
- USCIS expects a valid Employer-Employee relationship
 - No Independent Contractors
- Can change employers, but only after approval and you have actually worked for your first petitioner

H-1B Cap

- 65,000 +/-
 - Plus 20,000 Advanced U.S. Degrees from Public/Nonprofit institutions
- Government Fiscal Year is 10/1 – 9/30
- ***New*** Company Registration from 3/1 – 3/18/22 noon EST
 - Company pays \$10 Registration fee per beneficiary
 - If selected, the company will be invited to submit the entire H-1B petition.
 - Will have at least 90 days to file the petition with USCIS
- Earliest H-1B becomes effective is 10/1
- Cap-Gap – Only for spring graduates
 - Must file H-1B Change of Status petition prior to OPT expiration date.
 - OPT extended to 10/1 H-1B start date with employment – but no travel.
- If no Cap-Gap – cannot begin work until Oct 1st or when petition is approved – whichever is later.

H-1B Employers/Petitioners Exempted from the Cap

- Employment at a U.S. Institution of Higher Education (Colleges or Universities – Public or Nonprofit) or a Related/Affiliated Non-Profit Entity.
- Employment at a Non-Profit Organizations that engage primarily in research or certain types of Government Research Organizations.

What is in an H-1B petition?

- Labor Condition Application – LCA
 - Not Labor Certification – No Newspaper Advertising
- I-129
- H-Supplements (Statistics, Fee Exemption), Explanation Letter, Supporting Documents (Credentials, Employer Bona Fides)
- Costs =
 - Filing Fee \$460
 - Fraud Detection Fee \$500 by **Employer**
 - Training Fee \$750 (for companies of 25 employees or less/\$1,500 if 26 employees or more) by **Employer**
 - Premium Processing Fee \$2,500 (optional)
 - Best practice is to have employer pay all of these fees

Change Status in the U.S. or Consular Notice Abroad?

◎ Change of Status

- While in the U.S.
- Still in Status

◎ Consular Notice

- To Obtain Visa
Outside the U.S.
- If Out of Status



Intent: to stay or to go?

- Non-immigrant intent: intent to return home
- Immigrant intent: intent to stay in the US
- Beware of what you are telling USCIS, CBP, and DOS by what you are filing or have filed.
 - If there are conflicts or inconsistency in your statements/actions and your paperwork, it could be construed as visa fraud.
- Beware of filing of immigrant petition before changing status from F-1/J-1.

Other Categories

If H-1B is Unavailable or Not Appropriate:

- E-1: Treaty Trader
- E-2: Treaty Investor
- E-3: Specialty Occupation Professional - Australia
- H-1B1 Free Trade - Chile, Singapore
- L-1: Intracompany Transferee
- O-1: Extraordinary Individual
- P-1: Entertainment Group
- TN: USMCA (formerly NAFTA) - Mexico, Canada
- A: Diplomat
- G: Non-Government Diplomat
 - Ex: International Monetary Fund, U.N., World Bank, etc.
- I: Journalist

Immigration Workshop For International Students (F-1 & J-1)

Contact Information:

Goldstein and Cheung LLP

80 Maiden Lane, Suite 1008

New York, NY 10038

(212) 374-1544

contact@gcimmigrationlaw.com

www.gcimmigrationlaw.com