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Post-Graduation Immigration Options

Fordham University
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Involved Government Agencies

- **Department of Homeland Security (DHS)**
 - United States Citizenship & Immigration Services - USCIS
 - Immigration & Customs Enforcement – ICE
 - Customs & Border Protection – CBP
- **Department of Labor (DOL)**
 - Office of Foreign Labor Certification
 - PERM Processing Centers
 - National Prevailing Wage Center (NPWC)
 - State Workforce Agencies (SWAs)
- **Department of State (DOS)**
 - Bureau of Consular Affairs
 - U.S. Embassies and Consulates

Nonimmigrants

- Foreign nationals coming to the U.S. temporarily
- Must retain residence abroad in most cases
- Some are permitted to have “dual intent”
 - May enter as a non-immigrant and pursue permanent residence
 - Available to H-1Bs and L-1s only
- “Alphabet Soup” of nonimmigrant classifications, from A to V

Business Visas

- Common business categories:
 - Business visitors (B-1)
 - Professionals (H-1B, TN, E-3, H-1B1)
 - Intracompany transferees (L-1)
 - Foreign nationals of extraordinary ability (O-1)
 - Treaty traders and investors (E-1 & E-2)

B-1 Business Visitors

- Foreign national entering to perform legitimate business activities
 - Business meetings, conferences, joint development projects
 - Activities in the U.S. must benefit the foreign employer
 - Foreign national must remain on foreign payroll
- Duration of B-1 stay:
 - Up to 1 year, depending on duration of activities
 - 3-6 months is typical, though border officers have wide discretion to grant shorter stays
- No USCIS petition needed; foreign national applies for visa at U.S. consulate

Business Visitors: The Visa Waiver Program

- VWP allows visa-free entry for business and tourism stays of up to 90 days
- Available to nationals of 39 countries:
 - Andorra, Australia, Austria, Belgium, Brunei, the Czech Republic, Chile, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Liechtenstein, Latvia, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan and the United Kingdom
 - BUT VWP travel restriction on:
 - Nationals of VWP countries, who, since March 2011 have traveled to Iran, Iraq, Libya, North Korea, Somalia, Sudan, Syria, Yemen, or any country of concern designated by DHS; and
 - Dual nationals of a VWP country and Iran, Iraq, North Korea, Sudan, Syria or any other such country of concern designated by DHS
- Traveler needs ESTA advance online approval to travel under VWP
 - <https://esta.cbp.dhs.gov/esta/>

H-1B Specialty Professionals

- H-1B category is open to professionals working in a “specialty occupation”
 - Minimum entry-level requirement for job is Bachelor’s degree or equivalent
 - 3 for 1 rule: 3 yrs. experience = 1 yr. of college
- Six-year maximum stay (can extend beyond 6 years under certain circumstances if pursuing permanent residence)
- 65,000 annual cap on new H-1Bs
 - Up to 6,800 are set aside for professionals from Chile and Singapore
 - 20,000 additional slots allocated to holders of U.S. advanced degrees
 - Cap filing season begins each year in April for employment in the following fiscal year
- Cap-Exempt organizations
 - Institution of higher education
 - Nonprofit research organizations or government research organization
 - A non-profit organization associated/affiliated with a higher education institution
- Dependent spouses eligible for work authorization in limited instances

Country-Specific Categories Similar to H-1B

- **TN for Canadian and Mexican professionals**
 - Created under North American Free Trade Agreement (NAFTA) now USMCA
 - FN must be coming to work in occupation listed in USMCA
 - 3-year initial period of stay; renewable in 3-year increments
 - Canadians apply at port of entry or Service Center, Mexicans at consulate
- **E-3 for Australian professionals**
 - 10,500 visas per year; apply at consulate, no USCIS filing but LCA is required
 - Job offered must be in specialty occupation, like H-1B
 - 2-year initial period of stay, renewable indefinitely
 - Spouses are work authorized
- **H-1B1 for Chilean and Singaporean professionals**
 - 6,800 visas per year, carved from overall H-1B cap
 - USCIS petition not required; apply at consulate, but LCA is required
 - Job offered must be in specialty occupation, like H-1B
 - 1-year initial period of stay; renewable in 1-yr increments
 - No dual intent, unlike standard H-1B

L-1 Intracompany Transferees

- L-1 category allows sponsor to transfer employees from overseas to related company in the U.S.
- Types of L-1s:
 - L-1A: executives and managers
 - L-1B: specialized knowledge workers
- There must be a qualifying relationship between the U.S. sponsor and overseas company
 - Parent, subsidiary, affiliate, branch or joint venture
- FN must have prior employment abroad:
 - 1 year of overseas employment with qualifying company in 3 years preceding transfer to U.S.
- Duration of stay:
 - L-1A = 7 years maximum, L-1B = 5 years maximum
- Spouses can apply for work authorization

E Treaty Traders and Investors

- Available to business owners, managers, executives and employees who will oversee or work in an enterprise engaged in trade between the U.S. and a foreign country or that represents a major investment in the U.S.
- A treaty of commerce and navigation or a bilateral investment treaty must exist between the U.S. and the foreign state
- Majority ownership/control of the trading or investing company must be held by nationals of a treaty country
- Foreign national seeking E status must hold citizenship in the treaty country.
- Two subcategories:
 - E-1 treaty traders: FN must serve the company in a managerial or essential skills capacity
 - E-2 treaty investors: FN must fill a key role with the company, as the investor or a qualified manager or highly qualified and specially trained employee
- Spouses are work authorized

O-1 Persons of Extraordinary Ability

- Open to foreign nationals of extraordinary ability in the sciences, education, arts, business and athletics
- Three different standards of eligibility:
 - Sciences, education, business and athletics:
 - Foreign national must be one of a small percentage who have risen to the top of the field
 - Must demonstrate sustained national or international acclaim and recognition for achievements in his/her field
 - Motion picture or TV industry
 - Foreign national must be recognized as outstanding, notable or leading in the motion picture or TV field
 - Arts:
 - Covers fields of creative endeavor including fine, visual and performing arts
 - Foreign national must be prominent, leading or well-known in the field

The Nonimmigrant Process & Documents

- Employer files petition for nonimmigrant classification with USCIS
 - Most employment-based nonimmigrant classifications require Form I-129 nonimmigrant worker petition
 - Some categories don't require USCIS petition; foreign national applies directly at consulate or, if Canadian, at U.S. port of entry
 - If required for NIV classification, employer may also need labor condition application from Department of Labor
- If petition is approved, USCIS issues Form I-797 Notice of Action
- Foreign national submits a visa application to a U.S. consulate, unless s/he is visa-exempt

The Nonimmigrant Process & Documents

- Foreign national travels to the United States and is inspected at the U.S. port of entry by CBP
 - CBP admits FN and places admission stamp in passport, containing nonimmigrant category and “admitted until” date
 - CBP creates online Form I-94 Arrival-Departure Record
 - Foreign national must visit www.cbp.gov/i-94 to print out I-94 admission record
 - Admission stamp and I-94 are proof of legal status and control period of authorized stay in the U.S.

Maintaining Nonimmigrant Status

- Valid visa is not necessary to maintain nonimmigrant status
- BUT the foreign national must have valid admission stamp and I-94 record
- Consequences of overstaying the I-94 expiration date:
 - Overstay results in cancellation of visa; future visas must be obtained in home country
 - Bars on return to U.S. after departure
 - More than 180-day overstay: 3-year bar
 - 1-year overstay: 10-year bar
- Is the foreign national changing his/her U.S. address?
 - File Form AR-11 or complete online change of address at USCIS website within 10 days of the move

Immigrants

- “Green card holders” = “permanent residents” = “immigrants”
- Foreign national is coming to U.S. permanently
- There are limits on the number of foreign nationals who can attain permanent residence in a given year
 - 675,000 overall cap on permanent immigration each year
- State Department’s monthly visa bulletin controls flow of immigrant visas, based on:
 - Foreign national’s immigration category
 - Foreign national’s country of birth
 - Priority date: the date a preference petition or labor certification (if required) was filed on foreign national’s behalf
 - Overall demand for immigrant visas, whether others with earlier priority dates are waiting in the queue

Bases of Permanent Residence

- Family-based
 - Foreign national is sponsored by a qualifying family member who is a U.S. citizen or permanent resident
 - Limited to 480,000 immigrant visas each year
- Employment-based
 - Foreign national is sponsored by an employer on the basis of a job offer
 - Foreign national may self-sponsor in some cases
 - Limited to approximately 140,000 per year
- Investment-based
 - EB-5 Immigrant Investor Program
- Diversity visa lottery
 - Foreign national enters online State Department lottery during designated timeframe
 - If chosen, foreign national can submit permanent residence application the following fiscal year
 - Limited to 50,000 each year

Family-Based Permanent Residence

- Immediate relatives
 - Spouses and minor children (under 21) of U.S. citizens
 - Parents of U.S. citizens 21 or over
 - Not subject to immigrant visa quotas or waiting periods
- Other close family members of citizens or permanent residents, including:
 - Unmarried sons & daughters (over age 21) of citizens
 - Married sons & daughters of citizens
 - Spouses, children & unmarried sons/daughters of permanent residents
 - Brothers & sisters of citizens
 - Subject to immigrant visa quotas and waiting periods

Employment-Based Permanent Residence

Two- or three-step process (~normally 2-3 years from beginning to end):

(1) Labor certification (where required)

- Filed with Dept. of Labor by employer on behalf of foreign national
- Processed under PERM system

(2) Immigrant preference petition

- Form I-140 immigrant worker petition filed by employer or, in some cases, by foreign national
- Processed by USCIS

(3) Adjustment of status or consular processing

- Adjustment or immigrant visa application filed by the foreign national and family members
- Adjustment of status processed by USCIS
- Consular processing application processed by State Dept

Investment-Based Permanent Residence (EB-5)

- Investing in a commercial enterprise in the US can form a path to green card:
 - Does not require a US job offer for the investor
 - Requires certain job creation (10 FT jobs for US workers)
 - Cannot be property purchase
- Process:
 - Regional center vs direct
 - Investment amount: \$800k or \$1.05 million
 - Return of capital – 7 years typically
 - Timeline is 3-4 years for most and concurrent filing exists

Adjustment of Status

- Application for permanent residence filed by foreign national who is lawfully in the U.S.
- In order to file, immigrant visa must be available for foreign national's preference category and country of birth / chargeability
 - Each month, DOS determines whether unused immigrant visa numbers remain available for the fiscal year
 - If so, DOS Visa Bulletin determines priority date cut-off dates and USCIS Visa Bulletin website announces whether those with a priority date current for filing can submit an adjustment application in the coming month
 - Can file for adjustment concurrently with preference petition if foreign national's priority date is current



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QUESTIONS?

THANK YOU!