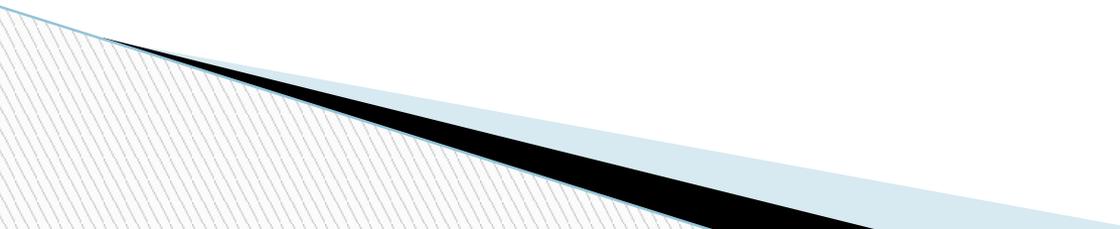


# **Life After Student Status: Immigration Workshop For International Students**

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# 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.
  - Travel bans/restrictions will not be addressed in the following slides.
  - Should you wish to discuss your specific situation, please contact our office to schedule a consultation.
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# 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](http://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

# General Employment 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

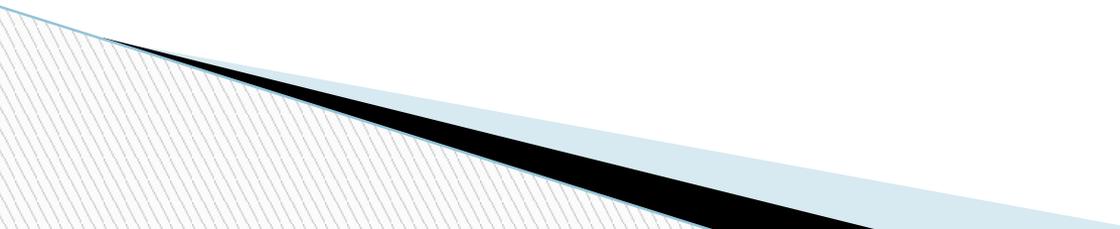
# Employer Files on Behalf of Employee

- H-1B Specific To Employer:
  - Each Employer Must Petition
    - One Employer/One Petition, Or
    - Multiple Employers/Multiple Petitions.
  - Employer signs all paperwork
  - USCIS expects an Employer-Employee relationship
    - No Independent Contractors
  - Can change employers, but only after approval and you have actually worked for your first petitioner

# H-1 B 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 – 3/17/2023
  - Company pays \$10 Registration fee per beneficiary
  - If selected, the company will be invited to submit the entire H-1 B petition.
  - Will have up to 90 days to file the petition with USCIS
- Earliest H-1 B becomes effective is 10/1
- Cap-Gap – Only for spring graduates
  - Must file H-1 B Change of Status petition prior to OPT expiration date.
  - OPT extended to 10/1 H-1 B start date with employment – but no travel.
- If no Cap-Gap – cannot begin work until Oct 1<sup>st</sup> or when petition is approved – whichever is later.

# H-1B Petitioners Exempted from 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-1 B 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 =
  - Registration Fee \$10
  - 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?

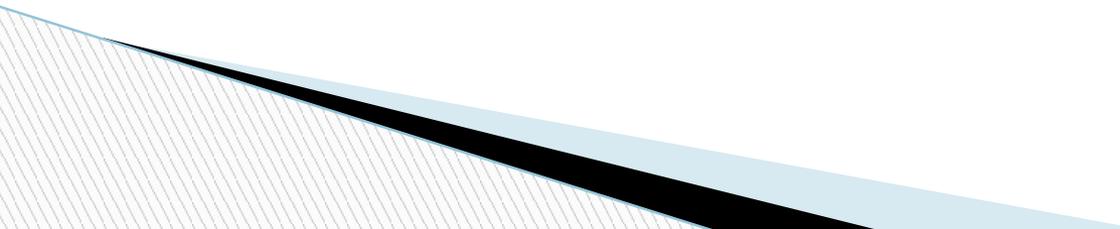
- Non-immigrant intent: intent to depart the US.
- Immigrant intent: intent to stay in the US
- Beware of what you are telling USCIS, CBP, and DOS by what you are filing or have filed.
  - If there are conflicts or inconsistency in your statements/actions and your paperwork, it could be construed as 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

# Green Card Categories

- Family-Based
  - Employment-Based
- 

# Green Card Quotas

- ◉ Limited Number of Places Each Year for Specific Family and Employment Categories.
- ◉ Place in Line Set by Petition Filing Date (aka Priority Date).
- ◉ Changes Each Month – Check the Visa Bulletin Website  
[http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)
- ◉ There Could be Long Quota Delays.
- ◉ In Order to Adjust Status in U.S., Must Remain in Lawful Status.

# Family-Based Green Card (I-130)

- Immediate Relative (Above the Quotas):
  - Marriage to US Citizen – must be *bona fide*
  - Parents of USC (USC must be over 21)
- Preference Categories:
  - Unmarried Sons and Daughters (Over 21) of USC (Age Out Provisions - CSPA)
  - Spouses, Children and Unmarried Sons and Daughter (Over 21) of LPR.
  - Married Sons and Daughters of USC
  - Siblings of Adult USC
- To Adjust Status in U.S. – Remain in Lawful Status.
- If Unable to Adjust Status in U.S. – Consular Process if Able.

# VAWA:

## Violence Against Women Act

- Relationships must be bona fide.
- Relief is available for spousal abuse
- VAWA Applies to Both Women and Men.
  - Go to hospital
  - Call police
  - Take photos of injuries
- Private Agencies:
  - Sanctuary for Families
    - 24hr Hotline □ (800) 621 – HOPE
    - NYC □ (212) 349 – 6009
- New York State:
  - New York State's 24-hour Domestic Violence Hotline:  
(800) 942-6906 (English) (800) 942-6908  
(Spanish)

# EMPLOYMENT Green Card Categories (The I-140)

## □ EB-1

- Extraordinary Ability
  - (No sponsor required)
- Outstanding Professor or Researcher
- International Transferees
  - (Managers & Executives only)
- Investors \$\$\$

# EMPLOYMENT Green Card Categories

## ◎ EB-2:

- For jobs requiring Master's degree or equivalent
- Exceptional
- National Interest Waiver
  - Waiver of Labor Certification if:
    - Work in National Interest
    - First Among Equals - Able to Make *Unique* Impact
    - No Petitioner Required

## ◎ EB-3:

- For jobs that require a Bachelor's degree or no degree

# EMPLOYMENT Green Card Categories

## ○ Labor Certification

### ● PERM

### ● U.S. Job Offer:

- Objectively describe duties, experience, education.
- Requirements must be open to U.S. workers, not particularized to applicants' skills.
- Must show no U.S. worker is able, willing, qualified or available at the prevailing wage.

### ● Delays

# EMPLOYMENT (cont.)

## □ Quotas

- Limited Pool of Places Each Year by Category and by Country.
- Fewer Places in EB3, Therefore Delays Up to Many Years
- EB-2 Delays for China and India
- If in Lawful Status in US, then Adjust Status in U.S.
- If Out of Status, Consular Process, but, may be Banned for 3 or 10 Years If Unlawfully Present (180 days before 3 yr bar is triggered)
  - Generally exempt From Unlawful Presence if D/S.

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