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.

• 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
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