

EMPLOYMENT ELIGIBILITY VERIFICATION AND IMMIGRATION 101

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The New Enforcement Mentality

Enforcement emphasis running through all aspects of immigration:

- OLD approach: I-9 raids and round-ups
FOCUS: hospitality, agriculture, construction, manufacturing
- NOW: Worksite enforcement across all industries, states and company sizes
FOCUS: EMPLOYER LIABILITY

Enforcement initiatives expanding rapidly

- Worksite enforcement units embedded in Service Centers
- New ICE initiatives – Notices of Inspection (NOI) to broad range of employers
- New centralized unit to conduct I-9 inspections

Immigration Reform & Control Act of 1986

CHANGE IN APPROACH TO UNAUTHORIZED EMPLOYMENT

- Amnesty for illegal aliens who were long-term residents of the U.S., Allowed many to become legal residents
- **Trade-off:** Limit immigration by “employment magnet” US employers who hired unauthorized workers **Limit by future removing the illegal through sanctions for unauthorized**

▪ TWO COMPETING MANDATES

- ⑩ **Employment verification requirement on employers for new hires**
- ⑩ Sanctions for failure to complete or incorrectly complete verification form
- ⑩ Sanctions for hiring or continuing to employ illegal aliens
- **Penalties for employment discrimination based on citizenship or national origin**
- ⑩ Sanctions might cause discrimination against foreign-appearing workers
- ⑩ Can't discriminate in the employment verification process

Employment Eligibility Sanctions



Significant and increasing penalties: see Handbook for Employers

- Civil Penalties: Unlawful Employment:
 - Hiring/continuing to employ unauthorized aliens \$ 375 – \$16,000 per violation
 - Failing to comply with I-9 requirements: \$110 - \$1100
- Criminal penalties: - Pattern or practice of violations
 - Up to \$3,000 per employee and/or 6 months' imprisonment
- Document Fraud: Fraud or false statements or misuse of visas, immigration & identity documents
 - Civil fraud: \$375 - \$6500 per document
 - Criminal fraud: fines, imprisonment up to 5 years, forfeiture of assets
- Unlawful Discrimination: \$375 - \$16,000 per individual & other remedies
 - Recent IBM case: \$44,140 for citizenship preferences In ads

Fine calculation: six-figure assessments common, \$11 million Walmart fine

- Aggravating / mitigating factors: business size, good faith, seriousness of offense; if unauthorized aliens were employed, history of employer



Non-Discrimination Requirements

Immigrant and Employee Rights Section, U.S. Department of Justice

- Enforces the prohibitions on citizenship and nationality discrimination
- Policies on discrimination prevent employers from asking simple questions about work authorization

Beware of over-documentation!

- Can I ask to see the employee's green card if they say they have one?
- **** THE EMPLOYER MAY NEVER ASK TO SEE SPECIFIC DOCUMENTS ****
- Employer must accept documents if they appear to reasonably relate to the person and appear to be valid
- Exception: if a document presented does not appear to be valid or is expired
- Form M-396, *A Guide to Selected U.S. Travel and Identity Documents* (2008)

CONSISTENT PROCESS IS THE EMPLOYER'S PROTECTION



Discrimination

The prejudicial treatment or consideration of a person, racial group, minority, etc. based on category rather than individual characteristics of the members of the group.

The Hiring Process: The Problem

“U.S. Workers” are protected from employment discrimination based on national origin and citizenship, as well as other Title VII grounds.

Employers need to determine an applicant’s immigration status during the hiring process without potential liability for discrimination

*** *“Look at the Facts, Not at the Faces!”* ***

What you CANNOT Ask:

- Are you a U.S. Citizen?
- What country are you from?
- Do you have a “green card”?
- Do you have a social security card?
- If you’re not a USC, what visa do you hold?



The Hiring Process: Suggestions

DOJ Office of Special Counsel for Immigration-Related Unfair Employment Practices guidance disconnected from the reality of the actual hiring process

Official Version: Very Confusing:

“Do you have unrestricted work authorization for the U.S., i.e. are you a USC or national, a U.S. permanent resident, an asylee, a refugee, or a temporary resident of the US?”

Clearer Version:

“Do you currently have unrestricted work authorization for the US, or would you require sponsorship for a working visa?”

☐ I have unrestricted work authorization now and would NOT require sponsorship

☐ I have work authorization now but would need sponsorship in the future

☐ I would require sponsorship for a working visa



Employment Eligibility Verification Basics – The Form from Hell

CURRENT Form I-9 version: 7/17/2017

- Same information as before – but improved graphics and organization

No single document available to establish identity and work authorization

- Some visas include work authorization, others do not
- Some foreign employees need EADs, others do not
- Asylee / refugee paperwork may substitute for visa or EAD

Form I-9 must be completed within three days of hire

- Employee completes Part I on Day 1
- Employer completes Part II by end of Day 3 (the “Thursday rule”)
- For Part II, employee chooses and presents to employer documents from authorized list that establish
 - Identity
 - Employment eligibility

FORM I-9:

Section 1 - Employee Verification

Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.)*

Last Name (Family Name) ?		First Name (Given Name) ?		Middle Initial ?	Other Last Names Used (if any) ?	
Address (Street Number and Name) ?			Apt. Number ?	City or Town ?		State ? ▼
Date of Birth (mm/dd/yyyy) ?		U.S. Social Security Number ?		Employee's E-mail Address ?		Employee's Telephone Number ?

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

<input type="checkbox"/> 1. A citizen of the United States ?			
<input type="checkbox"/> 2. A noncitizen national of the United States <i>(See instructions)</i> ?			
<input type="checkbox"/> 3. A lawful permanent resident ? (Alien Registration Number/USCIS Number): ? _____			
<input type="checkbox"/> 4. An alien authorized to work ? until (expiration date, if applicable, mm/dd/yyyy): ? _____ Some aliens may write "N/A" in the expiration date field. <i>(See instructions)</i>			
<p><i>Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.</i></p> <p>1. Alien Registration Number/USCIS Number: ? _____ OR 2. Form I-94 Admission Number: ? _____ OR 3. Foreign Passport Number: ? _____ Country of Issuance: ? _____</p>			
<div style="border: 1px solid black; padding: 10px; text-align: center;"> QR Code - Section 1 Do Not Write In This Space </div>			
<table border="1" style="width: 100%;"> <tr> <td>Signature of Employee ?</td> <td>Today's Date (mm/dd/yyyy) ?</td> </tr> </table>		Signature of Employee ?	Today's Date (mm/dd/yyyy) ?
Signature of Employee ?	Today's Date (mm/dd/yyyy) ?		

- Must be completely filled out / MUST GIVE EMPLOYEE I-9 INSTRUCTIONS
- SSN box is OPTIONAL unless employer using E-Verify
- Employee attestation boxes CRITICAL: → re-verification date

Section 2 - Employer Verification

Employee Info from Section 1 ?		Last Name (Family Name) ?		First Name (Given Name) ?		M.I. ?		Citizenship/Immigration Status ? <input type="button" value="v"/>	
List A		OR		List B		AND		List C	
Identity and Employment Authorization				Identity				Employment Authorization	
Document Title ?				Document Title ?				Document Title ?	
Issuing Authority ?				Issuing Authority ?				Issuing Authority ?	
Document Number ?				Document Number ?				Document Number ?	
Expiration Date (if any)(mm/dd/yyyy) ?				Expiration Date (if any)(mm/dd/yyyy) ?				Expiration Date (if any)(mm/dd/yyyy) ?	
Document Title ? <input type="button" value="v"/>				Additional Information ? 				QR Code - Sections 2 & 3 Do Not Write In This Space	
Issuing Authority ? <input type="button" value="v"/>									
Document Number ?									
Expiration Date (if any)(mm/dd/yyyy) ?									
Document Title ? <input type="button" value="v"/>									
Issuing Authority ? <input type="button" value="v"/>									
Document Number ?									
Expiration Date (if any)(mm/dd/yyyy) ?									

- Some document expiration dates require re-verification; others do not
- Employer may have to complete AFTER start date if employee completes early
- Places for two documents do not mean two documents are required: sometimes need two documents working together to establish work authorization

FORM I-9:

Section 2 - Employer Verification

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): (See instructions for exemptions)

Signature of Employer or Authorized Representative <input type="text"/>	Today's Date(mm/dd/yyyy) <input type="text"/>	Title of Employer or Authorized Representative <input type="text"/>
Last Name of Employer or Authorized Representative <input type="text"/>	First Name of Employer or Authorized Representative <input type="text"/>	Employer's Business or Organization Name <input type="text"/>
Employer's Business or Organization Address (Street Number and Name) <input type="text"/>	City or Town <input type="text"/>	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">State <input type="text"/></div> <div style="width: 45%;">ZIP Code <input type="text"/></div> </div>

Still challenges to correct completion

- List B: Virtually no acceptable identity documents if no drivers' license
- E-Verify employers must remember to get List B document with photo

Employer **MUST** accept a document if:

- It appears to be genuine and
- It relates to the individual presenting it



FORM I-9: Section 3 - Reverification

Section 3. Reverification and Rehires *(To be completed and signed by employer or authorized representative.)*

A. New Name (if applicable) ?			B. Date of Rehire (if applicable)
Last Name (Family Name) ?	First Name (Given Name) ?	Middle Initial ?	Date (mm/dd/yyyy) ?

C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title ? <div style="text-align: right;">▼</div>	Document Number ?	Expiration Date (if any) (mm/dd/yyyy) ?
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative ?	Today's Date (mm/dd/yyyy) ?	Name of Employer or Authorized Representative ?
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- Re-verification pertains to work authorization ONLY
- May present a different work authorization document than originally presented
- Do not re-verify early, even if green card arrives or status changes
- Keep re-verification I-9s separate from others, in date order for re-verification
- Do not re-verify on expired Form I-9; must fill out NEW I-9

FORM I-9: General FAQ'S

CAN I COMPLETE AN I-9 EARLIER THAN DAY 1?

- Yes, but may NOT complete before a hiring decision is made
- May complete earlier if nondiscriminatory business purpose consistently applied

Example:

After hiring decision but before mandatory physical & drug test

FORM I-9: General FAQ'S

MAY I ACCEPT RECEIPTS?

- MAY ACCEPT A RECEIPT FOR AN IDENTITY DOCUMENT
- MAY NOT ACCEPT A RECEIPT FOR AN INITIAL WORK DOCUMENT
- MAY ACCEPT A RECEIPT FOR A LOST, STOLEN OR DESTROYED WORK DOCUMENT
- MAY ACCEPT RECEIPT FOR REWNAL OF CERTAIN EMPLOYMENT AUTHORIZATION DOCUMENTS (NOVEMBER 2016) FOR 180 DAYS.
- EXCEPTIONS FOR TPS, ASYLEES, REFUGEES
- MAY ACCEPT A RECEIPT FOR A OPT STEM EXTENSION

EXTENSIVE DISCUSSION IN HANDBOOK, P.7-8

FORM I-9: General FAQ'S

SHOULD I KEEP COPIES OF THE DOCUMENTS I LOOK AT?

Current View:
YES (IN MOST CASES)

- CURRENT USCIS GUIDANCE: MAKE COPIES
- REQUIRED IF AN E-VERIFY EMPLOYER AND EMPLOYEE PRESENTS A GC

Previously two schools of thought: avoiding documentation of errors vs. confirming correct process

FORM I-9: Common Pitfalls for the Employer



Most common mistakes by employers during the I-9 process:

- ✓ Employer specifies which document the employee is to produce (BUT sometimes this is unavoidable, e.g., H-1B transfers!)
- ✓ Employer requests or records too many documents (Eager new hires may volunteer too many documents: do not record!)
- ✓ Employer fills out the I-9 form too early, before hiring decision is documented
- ✓ Employer fills out Part I for the employee / lack of employee signature
- ✓ Employer fails to record expiration dates of work authorization documents to permit proper reverification

Documentation errors alone will not give rise to a claim of employment discrimination unless there is proof of an employer's intent to discriminate.

- Employer still at risk for unauthorized employment due to documentation errors
- Does not excuse failure to complete I-9 at all

FORM I-9: Common Problems



“Jose” completed his I-9 and presented documents which appear to be valid. I think he’s illegal, though. What should I do?

- NOTHING! You have complied with your obligations under the law
- Exception: if you have “constructive knowledge” from a reliable source that Jose is not work authorized, i.e., he asks for visa sponsorship

Maria told me Jose is illegal and that his GC was a fake. What should I do?

- Do you have “constructive knowledge” based on what Maria said? Is she reliable? Does she have reason to know? Do any other facts support her statement?
- If the documents appear valid, and no other indicators exist: do nothing.

FORM I-9: More Common Problems



I'm hiring independent contractors. Do I have to do their I-9s?

- No, but the company providing the IC's should do so. Company should provide assurances that I-9s have been correctly completed

Can I outsource completion of my I-9's?

- Yes, but employer assumes all liability (Employee must be physically present with examiner of documents)

I am employing a worker to perform work outside the U.S., do I need to complete an I-9?

- No, I-9 requirements only apply to work performed within the U.S.

A graphic with the text "IMMIGRATION COMPLIANCE" in large, bold, blue capital letters. The background of the graphic shows a blurred image of people in a workplace setting, with one person in a white shirt and blue tie pointing towards something off-camera.

IMMIGRATION COMPLIANCE

Basic I-9 Compliance: Best Practices

- The formal ICE Raid usually stems from initial I-9 Audit
- Require every new employee to complete Section I on first day of employment
- Employee must provide verification documents by end of 3rd work day or be terminated
- Employee may present any acceptable document(s) listed: do not request a specific document
- Make copies of both sides of all documents
- If employee not a USC, note the visa expiration date and calendar (90 days)
- Keep I-9's separate from other personnel/payroll records
- Train hiring managers on I-9 procedures regularly and document training

FORM I-9: Finding Answers



Handbook for Employers

Guidance for Completing Form I-9
(Employment Eligibility Verification Form)



M-274 (Rev. 04/30/13) N

USCIS *Handbook for Employers* (M-274): excellent current resource

- ✓ Examples of many types of documents used in I-9 process
- ✓ Answers questions not on I-9 instructions
- H-1B visas
 - Transfers/portability: original I-94 from previous H employment and proof of filing of I-129 for new employer, AC-21 annotation on the I-9
 - Extensions: timely filing extends work authorization 240 days, annotate extension in I-9 margin
- F-1 and J-1 issues
 - Documentation of CPT, OPT
 - Documentation of “cap gap” status for pending H-1B visas for F-1 students
- Employment “incident to status”
 - Some visas include work authorization, some don't: which is which??
 - Asylee may use I-94 or I-94A with asylee approval stamp as List C document

FORM I-9: Finding Answers



Handbook for Employers

Guidance for Completing Form I-9
(Employment Eligibility Verification Form)



U.S. Citizenship
and Immigration
Services

M-274 (Rev. 01/02/17)

- Green cards: Do not revalidate any GC with an expiration date
 - The CARD expires, but the STATUS does not
 - Should NOT revalidate Conditional GC's received through marriage
 - Must revalidate if presented with temporary GC stamp in passport

Check regularly for updates to the Handbook:
they are NOT announced

www.uscis.gov/files/form/m-274.pdf

FORM I-9: Maintaining Records



Maintain I-9 copies for statutory required period – Electronic or Hard Copies

- ✓ Keep I-9's for all CURRENT employees
- ✓ Once employment ends, keep I-9's at least 3 years from the date of employment or for 1 year after the employee leaves the job, whichever is later
- ✓ Employer should promptly delete I-9s when possible

Maintain I-9 forms separately from individual personnel records

- ✓ Keeping I-9s in personnel files compromises privacy of employees: allows government inspectors to review items unrelated to Form I-9
- ✓ Saves valuable time in case Forms I-9 are requested for audit (3 days' notice)
- ✓ Easier to conduct internal audits to ensure compliance with IRCA
- ✓ Easier to organize for re-verification as needed

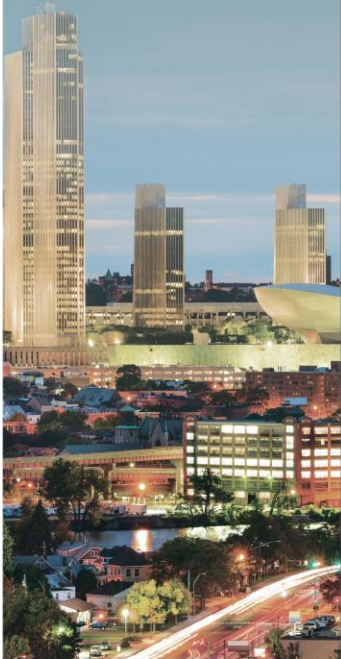
Create tickler system for timely I-9 reverification & record purging

Amendments: Never backdate, never ever hide a change

- ✓ Draw line through incorrect information - Initial and date all changes - note reason if possible
- ✓ If need to complete new I-9, attached old one to updated version

IMMIGRATION 101

EMPLOYMENT-BASED VISA OPTIONS



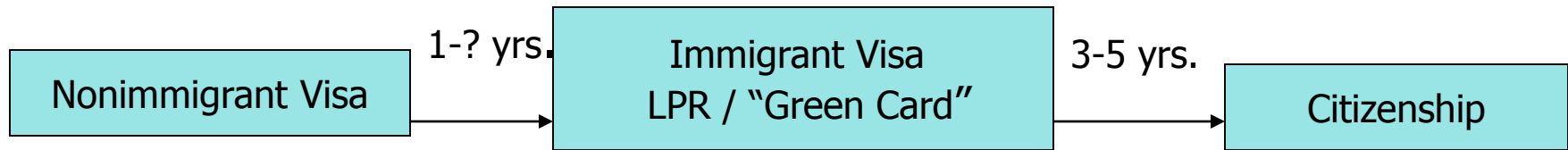
U.S. Immigration: Basic Concepts



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



Overview of U.S. Immigration Processes



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

3 yrs. if by marriage to U.S. citizen
5 yrs. for everyone else

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

Basic Structure



CATEGORY-BASED SYSTEM

- No visas for individuals who do not fit within a category – period.
- Nonimmigrant visas: school, work, training, cultural exchange, etc.
No categories for semi-skilled, skilled craft workers, technicians
- Immigrant visas: family, employment, investment, limited special categories

NATIONALITY-BLIND SYSTEM

- No quotas based on nationality
- Quotas may build based on DEMAND in a country
- Exceptions: trade agreements may = special advantages

IMMIGRATION / ENTRY DEPEND ON SPONSORSHIP

- Most visas depend on sponsorship by a qualifying business or person
- Exception: Visitor's visas (B-1 for business, B-2 for pleasure, Visa Waiver)
- Exception: Self-sponsorship for EB-2 national interest waiver, O visas

The H-1B Visa: Professionals



REQUIREMENTS	APPLICATION STEPS	TIMETABLE	DURATION
<ol style="list-style-type: none"> Job must require BA/BS degree or equiv. as minimum entry-level requirement Applicant must have degree equivalent to U.S. BA/BS, or equiv. experience Employer must pay at least prevailing wage for the position in geographic area <p>NO TEST OF U.S. LABOR MARKET REQUIRED; NO ADVERTISING; NO RECRUITMENT</p>	<ol style="list-style-type: none"> Determine prevailing wage for position Post Labor Condition Application (LCA) at employer's work place File LCA with U.S. Dept. of Labor; wait 7 days for certification File visa petition with USCIS Change of status with petition if in US <p>US consular processing overseas if out of status or overseas</p> <p>Canadians can apply at U.S. border</p>	<p>3-6 months - Variable!</p> <p>Premium processing: decision in 15 days</p> <p>H-1B portability: May work as soon as filed if already holding H-1B visa</p> <p>WATCH OUT FOR GAPS IN STATUS</p>	COSTS
			<p>Granted for 3 years Renewable for 3 years</p> <p>Extend beyond 6 years if GC or PERM pending one year before H maxes out.</p> <p>\$460* USCIS filing fee \$500 Antifraud fee \$750 (25 or fewer EEs) or \$1,500 ACWIA fee (> 25 EEs)</p> <p>- Credentials evaluation (\$75-500) - Premium processing (\$1,225)</p>

H-1B Basics



- “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

H-1B VISAS – THE NUMERICAL CAP

For Non-Exempt/Private Employers

H-1B VISAS CURRENTLY CAPPED AT 65,000 PER YEAR

- Cap exceptions for colleges, universities and some government research institutions
- Fiscal Year (FY) begins in October;
- Applicants for H-1Bs can apply 6 months in advance, or by April 1.

ADVANCED DEGREE ALLOCATION

- 20,000 visas reserved for Master or higher graduates of U.S. colleges



Barrier to Use: The H-1B Cap

H-1B VISAS CAPPED AT 85,000 PER YEAR

FY1990	Cap set at 65,000; hit for first time in 1997
FY1998-01	Raised to 115,000, then to 195,000
FY 2004	Fell back to original level of 65,000 visas
FY 2005	Added 20,000 visas for graduates of U.S. graduate schools

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: 174,500 cases filed for 85,000 visas (48% chance)
- 2016: 233,000+ cases for 85,000 visas (36% chance)
- 2017: 199,000 cases for 85,000 visas (43% chance)

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:
 - University Professors/Personnel - institutions of higher education as defined by Higher Education Act of 1965
 - Organizations related to 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
 - \$460 I-129 Form fee
 - Fee exemption for institutions of higher education
 - No \$1500 Workforce Training Fee
 - \$500 Anti-Fraud fee still required
 - \$460 I-129 Form fee required



H-1B Visa Flexibility

H-1B TRANSFERS:

- H-1B visa holder transfers to new employer by new employer filing an H-1B visa petition for the worker
- H-1B worker can go to work for new employer as soon as petition filed
- Very useful during H-1B cap: steal H-1B workers from others!

CAP EXEMPTION STRATEGIES

- Some employers exempt from H-1B cap: Universities, organizations affiliated with universities (= teaching hospitals); govt. & nonprofit research organizations
- Can be cap exempt if employed at, not just by, an exempt organization
- Caution: Cap-exempt H-1B status can make future transfers more difficult
- Cannot transfer from cap-exempt employer to cap-subject employer if cap has been met



Alternatives to the H-1B

- 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.

Free Trade Visas: H-1B1 and E-3



H-1B1 VISAS FOR CHILE AND SINGAPORE (6,800 cap never met)

- 1,400 for nationals of Chile, 5,400 for nationals of Singapore
- H-1B1 are for 18 months, renewable.
- No visa petition required if processed directly at consulate overseas

E-3 VISAS: AUSTRALIAN PROFESSIONALS (10,500 cap never met)

- Substantially equivalent to H-1B
 - Specialty workers' for jobs requiring BA degree
 - PW determination/LCA required, but no public access file
- Valid for two years, renewable
- Processed directly at a US Consulate in Australia: no petition required
Can also be processed by COS in the US – regulations notwithstanding

Free Trade Visas: H-1B1 and E-3



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 - Specialty workers' for jobs requiring BA degree
 - PW determination/LCA required, but no public access file
- Valid for two years, renewable
- Processed directly at a US Consulate in Australia: no petition required
Can also be processed by COS in the US – regulations notwithstanding

Free Trade Visas: TN



REQUIREMENTS	APPLICATION STEPS	TIMETABLE	DURATION
<p>Canadian or Mexican citizen</p> <p>Job on list of TN professions Appendix 1603.D.1 of NAFTA</p> <p>Teacher (College/university) Mgmt. consultants Science/engineering Systems analysts Medical professionals, etc.</p> <p>Required education or training: usually BA/BS and/or license.</p> <p>Exceptions include: Mgmt. consultants Technical assistants Systems analysts (2 yr. degree min.)</p>	<p>Canadians Apply at U.S. border POE or airport PFI. Processed on the spot NO USCIS PETITION</p> <p>Mexicans Apply at U.S. consulate in Mexico; fast processing</p> <p>Both: May change status or extend in US with petition to USCIS</p>	<p>1 day - 1 week</p> <p>2-3 weeks Must make appt. at consulate</p>	<p>Granted for up to 3 years</p> <p>Renewable without set limitation</p> <p>Mgmt. consultants may be limited to 2-3 years</p>
			COSTS
			<p>USCIS Filing Fees: \$ 50 + \$6 per I-94</p> <p>\$460 for I-129 Petition</p>

TN Details



LIMITED TO PROFESSIONS IN APPENDIX 1603.D.1 OF NAFTA

- Scientists in almost all fields
- Limited IT jobs: Computer Systems Analysts, Software Engineers
- Medical professionals, but MDS for research only
- Teachers: seminary, college, university (***No secondary or elementary***)
- Odd mix of other jobs: Interior designers, actuaries, urban planners, etc.

SIMPLE APPLICATION MATERIALS

- Employer letter confirming job and salary
- Proof of degree / qualifying education
- Proof of qualifying nationality

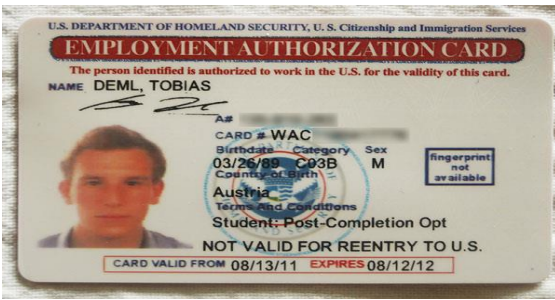
NOT A “DUAL INTENT” VISA:

- Usually have to change to other visa category for green card processing

F-1 Student Work Visas



REQUIREMENTS	APPLICATION STEPS	TIMETABLE	DURATION
<p>Curricular Practical Training (CPT) during school if work ties into curriculum</p> <p>Optional Practical Training (OPT) before or after graduation:</p> <ol style="list-style-type: none"> 1. Student has completed 12 months full-time study at U.S. university 2. No restrictions on employer: no employer petition to USCIS 3. E-Verify employer required for STEM extension 	<p>DSO endorses student I-20</p> <p>CPT: Student may start work after endorsement</p> <p>OPT: Student applies for EAD 90 – 120 days in advance of working</p> <p>Student may not work until EAD is issued</p> <p>STEM Ext.: Employer provides E-Verify # to DSO for I-20 endorsement</p> <p>Student applies for EAD extension</p> <p>On the chopping block under Trump administration</p>	<p>CPT: no wait</p> <p>OPT: 90 – 120 days for EAD</p> <p>STEM: may work while extension is pending</p>	<p>CPT: no limit, but no OPT if student worked 12+ months on CPT</p> <p>OPT: up to 12 months total before and after graduation</p> <p>STEM EXT.: 24 STEM Ext. if enrolled in E-Verify</p> <p>H-1B “cap gap” protection</p> <p>COSTS</p> <p>USCIS filing fee: \$410 for EAD</p> <p>No legal fees</p>



Special OPT Rules

STEM EXTENSION RULES IN TRANSITION

- Current regs allow 24 months (up from 17) = 36 months of STEP OPT
- Designed to allow STEM students more chances at H-1B lottery selection
 - Trump Administration views STEM as taking jobs from U.S. Workers – in process of eliminating STEM program

STEM EXTENSION E-VERIFY REQUIREMENT

- Employer must be registered with E-Verify
Provide E-Verify number on STEM extension paperwork

LIMITS ON EMPLOYMENT

- NO work during first academic year of studies except on-campus, rare CPT
- 20 hours/week during school term; 40 hours during vacation or no classes

LIMITS ON UNEMPLOYMENT

- Limited to 120 days during the full 36 months
- No more than 90 days during first 12 months

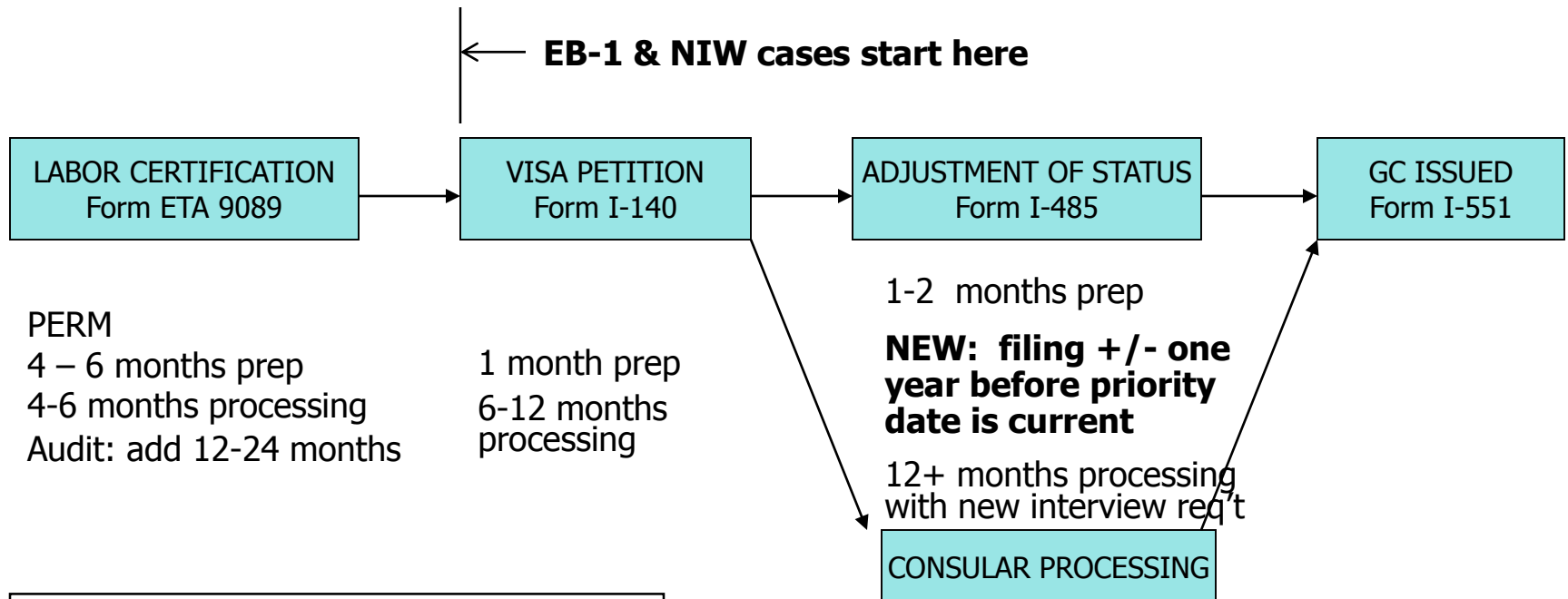


O-1A Visas

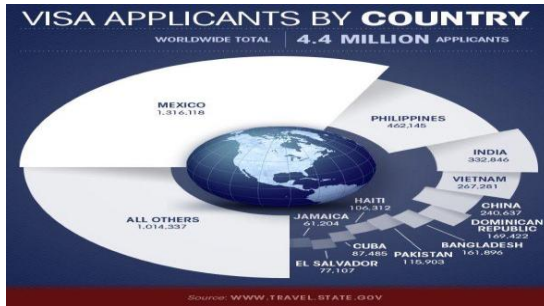
Individuals with Extraordinary Ability or Achievement

- 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

Employment-Based GC Process



WARNING: All processing times are **estimates** based on current data, and may change radically without notice. Check USCIS & DOS on-line processing time reports for updated information.



QUOTAS AND PRIORITY DATES

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): priority dates for each month.

Visa Bulletin: Employment

VISA BULLETIN November 2017

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:

Employment Categories	World-wide	China	El Salvador Guatemala. Honduras	India	Mexico	Philippines
EB-1	C	C	C	C	C	C
EB-2	C	08AUG13	C	22NOV08	C	C
EB-3 -BA	C	15APR14	C	01NOV06	C	15FEB16
EB-3 - other	C	22DEC06	C	01NOV06	C	15FEB16
EB-4	C	C	01NOV15	C	01APR16	C
Relig. Workers	C	C	01NOV15	C	01APR16	C
EB-5	C	01JUL14	C	C	C	C

Why are waiting lists a problem?



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

- 2003: USCIS began to allow concurrent filing of I-140 and AOS
- Allowed dependents to obtain EADs earlier in process
- Eliminated 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



MOST COMMON EMPLOYMENT-BASED GREEN CARD PROCESS:

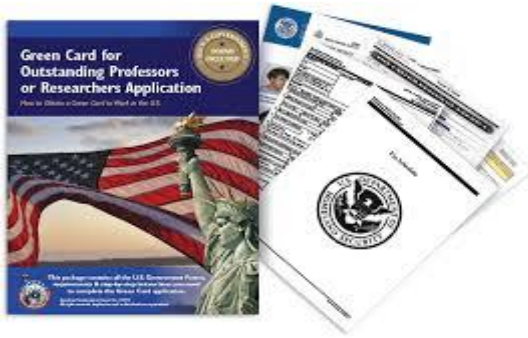
- Application by employer to USDOL to certify individual and position after statutorily mandated recruitment campaign
- Nearly all positions qualify, but substantial waiting periods for non-professional positions/short or no waiting for positions with higher requirements (Master's or Bachelor's degree plus five years experience is EB-2)
- Process requires significant employer involvement including payment of legal fees as of July 2007



OTHER EMPLOYMENT BASED GREEN CARD OPTIONS

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

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



OUTSTANDING RESEARCHER OR PROFESSOR

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.

OR EVIDENCE REQUIREMENTS



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

THE IMMIGRATION LANDSCAPE UNDER TRUMP





The Silent Wall

- “Buy American, Hire American”: Increase in USCIS Request for Evidence: up by 44% between January and August 2017
- H-1B/H-4: Most common work visa and often the only work visa for professionals
 - Complaints about H-1B: fraud in program, undercuts American wages, etc.
 - Visa is essential to innovation: researchers, professors, doctors, computer architects, etc.
 - Vehicle for foreign students: F-1 Student Visa - F-1 OPT – H-1B
 - Proposed changes under “Buy American, Hire American”: double wage, limit number of H-1Bs, minimum wage of 100K or 130K; eliminate 7th Year H-1B extension provisions
 - Elimination of H-4 EAD: proposed regulations released as early as February. Could dismantle H-4 EAD program by Summer.
- Possible changes to OPT/STEM extension: Executive order on “Protecting American Workers” calls for reforming practical training programs
 - F-1 students entitled to 12 months of post-completion Optional Practical Training (OPT) plus STEM extension: additional 24 months
 - Executive Orders indicate that STEM extension could be eliminated

USEFUL WEBSITES



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U.S. Citizenship & Immigration Services
(information for employers, forms,
I-9 Central).

www.uscis.gov

E-Verify Information through USCIS
(extensive information, FAQs, link to
sign up, manuals)

www.uscis.gov/everify

Social Security Administration

www.ssa.gov

Immigration & Customs Enforcement
(SEVIS, Guide to Documents, etc.)

www.ice.gov

Office of Special Counsel for immigration-
Related Unfair Employment Practices
U.S. Dept. of Justice

www.usdoj.gov/crt/osc

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The information in this presentation is intended as general background information on immigration law and employment/citizenship issues. It is not to be considered as legal advice with regard to any specific immigration issue. Immigration law changes often and information becomes rapidly outdated. Please consult your immigration counsel before taking action on immigration matters.

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