



*The Women's Bar Association  
of the State of New York*

*presents*

*Convention 2023  
Continuing Legal Education Series*

**Strengthening Your Business with  
Employment-based Immigration**

June 2, 2023  
3:45 pm - 4:45 pm

Presenter:     Jennifer Behm, Esq.

## Summary of Employment-Based Immigration Terms & Resource Links

### I. Nonimmigrant Visa Categories (Sponsorship NOT Required)

- **B-1/B-2 Visitors**

Visitor visas are nonimmigrant visas for persons who want to enter the United States temporarily for business (visa category B-1), for tourism (visa category B-2), or for a combination of both purposes (B-1/B-2).

- <https://travel.state.gov/content/travel/en/us-visas/tourism-visit.html>
- <https://www.cbp.gov/travel/international-visitors>
- <https://www.uscis.gov/working-in-the-united-states/temporary-visitors-for-business>

- **Visa Waiver Program (VWP)**

The Visa Waiver Program (VWP) enables most citizens or nationals *of participating countries\** to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa. Travelers must have a valid Electronic System for Travel Authorization (ESTA) approval prior to travel and meet all requirements.

- <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>

- **F-1 Students + Work Authorization: CPT, OPT, STEM OPT**

You must have a student visa to study in the United States. Your course of study and the type of school you plan to attend determine whether you need an F visa (academic) or an M visa (vocational).

- <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment>
- <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/optional-practical-training-opt-for-f-1-students>
- <https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html>

## II. Nonimmigrant Visa Categories (Requires Sponsorship)

To work in the United States temporarily as a lawful nonimmigrant, temporary workers must qualify for the available visa category based on the planned employment purpose. The steps in the process before applying for a visa vary.

- <https://www.uscis.gov/working-in-the-united-states/temporary-nonimmigrant-workers>
- <https://travel.state.gov/content/travel/en/us-visas/employment.html>
- **TN Category for NAFTA Professionals**
  - The North American Free Trade Agreement (NAFTA) created special economic and trade relationships for the United States, Canada, and Mexico. The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level.
  - <https://www.uscis.gov/working-in-the-united-states/temporary-workers/tn-nafta-professionals>
  - <https://travel.state.gov/content/travel/en/us-visas/employment/visas-canadian-mexican-nafta-professional-workers.html>
- **L-1 Intracompany Transferees**
  - The L-1A nonimmigrant classification enables a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to one of its offices in the United States. This classification also enables a foreign company that does not yet have an affiliated U.S. office to send an executive or manager to the United States with the purpose of establishing one.
  - <https://www.uscis.gov/working-in-the-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager>
  - <https://www.uscis.gov/forms/explore-my-options/l-visas-l-1a-and-l-1b-for-temporary-workers>
- **E-1 Treaty Traders**
  - The E-1 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation, or which the United States maintains a qualifying international agreement, or which has been deemed a qualifying country by legislation) to be admitted to the United States solely to engage in international trade on his or

her own behalf. Certain employees of such a person or of a qualifying organization may also be eligible for this classification.

- <https://www.uscis.gov/working-in-the-united-states/temporary-workers/e-1-treaty-traders>
- <https://travel.state.gov/content/travel/en/us-visas/employment/treaty-trader-investor-visa-e.html>

- **E-2 Treaty Investors**

- The E-2 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation, or with which the United States maintains a qualifying international agreement, or which has been deemed a qualifying country by legislation) to be admitted to the United States when investing a substantial amount of capital in a U.S. business. Certain employees of such a person or of a qualifying organization may also be eligible for this classification.
- <https://www.uscis.gov/working-in-the-united-states/temporary-workers/e-2-treaty-investors>
- <https://travel.state.gov/content/travel/en/us-visas/employment/treaty-trader-investor-visa-e.html>

- **H-1B Professionals in Specialty Occupations**

- This nonimmigrant classification applies to people who wish to perform services in a specialty occupation, services of exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project, or services as a fashion model of distinguished merit or ability.
- <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion>

- **E-3 Australians**

- The E-3 classification applies only to nationals of Australia. You must be coming to the United States solely to perform services in a specialty occupation. The specialty occupation requires theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.
- <https://www.uscis.gov/working-in-the-united-states/temporary-workers/e-3-specialty-occupation-workers-from-australia>
- <https://www.ustraveldocs.com/au/au-niv-typee3.asp>

- **O-1 Foreign Nationals Extraordinary Ability/Achievement**
    - The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry and has been recognized nationally or internationally for those achievements.
    - <https://www.uscis.gov/working-in-the-united-states/temporary-workers/o-1-visa-individuals-with-extraordinary-ability-or-achievement>
  - **P-1 Professional Athletes & Entertainers**
    - The P-1A classification applies to you if you are coming temporarily to the United States solely for the purpose of performing at a specific athletic competition.
    - <https://www.uscis.gov/working-in-the-united-states/temporary-workers/p-1a-athlete>
  - **H-2 Workers: Agricultural (H-1A) and Non-Agricultural (H-2B)**
    - H-1A: Agricultural:
      - The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. Employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle, and requires labor levels above what is necessary for ongoing operations.
      - <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers>
      - <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2a>
    - H-2B: Non-Agricultural:
      - The H-2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary nonagricultural jobs. The employment must be of a temporary nature for a limited period of time such as a one-time occurrence, seasonal need, peakload need or intermittent need.
      - <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers>
      - <https://www.dol.gov/agencies/whd/immigration/h2b>
-

## Other Misc. Forms/Benefits (Nonimmigrant)

- Form I-539, Application to Change or Extend Nonimmigrant Status (e.g. dependents, visitors)
  - <https://www.uscis.gov/forms/explore-my-options/change-my-nonimmigrant-status>
  - <https://www.uscis.gov/forms/explore-my-options/extend-my-nonimmigrant-stay>
- Form I-765, Application for Employment Authorization (e.g. dependent spouse if eligible)
  - <https://www.uscis.gov/forms/explore-my-options/applying-for-an-employment-authorization-document>

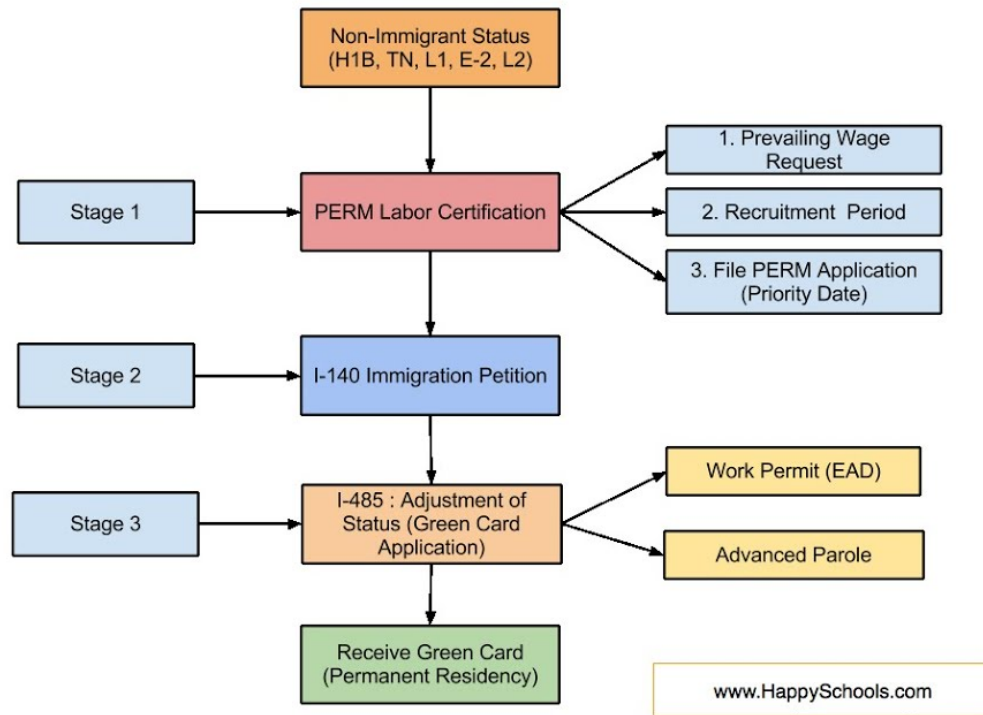
## III. Employment Based Perm Green Card Process

A green card is the permanent ability to live or work in the United States. If you have a job offer from a U.S. employer or you are a U.S. company seeking to sponsor a foreign national for a green card, there are several options under the current immigration laws. All categories are designated with the EB title, which stands for employment-based.

The employer's job position and the applicant's educational and experiential background will determine which employment based-category is right for the applicant.

- EB-1A Extraordinary Ability in Sciences, Arts, Education, Business, or Athletics
- EB-1C Multinational Managers & Executives
- EB-2/EB-3 PERM Labor Certification

*TYPICAL PATH FOR EMPLOYMENT-BASED GREEN CARD PROCESS:*



- <https://travel.state.gov/content/travel/en/us-visas/immigrate/employment-based-immigrant-visas.html>
- <https://www.uscis.gov/forms/explore-my-options/become-a-lawful-permanent-resident-green-card-holder-through-a-job-offer>

## IV. Family Based Green Card Process

There are two types of family-based immigrant visas:

- 1) **Immediate Relative** – these visas are based on a close family relationship with a U.S. citizen, such as a spouse, child or parent. The number of immigrants in these categories is not limited each fiscal year.
- 2) **Family Preference** – these visas are for specific, more distant, family relationships with a U.S. citizen and some specified relationships with a Lawful Permanent Resident (LPR). The number of immigrants in these categories is limited each fiscal year.

Keep in mind that U.S. citizens can file an immigrant visa petition for their: <ul style="list-style-type: none"> <li>• Spouse</li> <li>• Son or daughter</li> </ul>	U.S. Lawful Permanent Residents (aka green card holders) can only file an immigrant visa petition for their: <ul style="list-style-type: none"> <li>• Spouse</li> </ul>
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<ul style="list-style-type: none"> <li>• Parent</li> <li>• Brother or sister</li> </ul>	<ul style="list-style-type: none"> <li>• Unmarried son or daughter</li> </ul>
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#### PROCESS:

- 1) Form I-130, Petition for Immediate Relative filed with USCIS
- 2) Form I-485, Adjustment of Status (in U.S.) or Consular Processing (outside U.S.)

## V. U.S. Citizenship

- **Naturalization** is the process by which U.S. citizenship is granted to a lawful permanent resident after meeting the requirements established by Congress in the Immigration and Nationality Act (INA).

The most common path to U.S. citizenship through naturalization is being a lawful permanent resident (LPR) for at least five years.

Apply for U.S. citizenship by submitting Form N-400, Application for Naturalization with USCIS. This form is available to file online. There are exceptions and modifications to the naturalization requirements that are available to those who qualify. USCIS also provides accommodations for individuals with disabilities.

- **Acquisition** of citizenship is obtained through U.S. citizenship parents either at birth or after birth, but before the age of 18.

— <https://www.uscis.gov/forms/explore-my-options/become-a-us-citizen-through-naturalization>

— <https://www.uscis.gov/citizenship/learn-about-citizenship>



## 1. General Resources for Immigration Law

Below is a non-exhaustive list of resources to consult when you have questions about a specific case or topic in immigration law.

### i. Immigration and Nationality Act (INA)

#### a. 8 U.S.C. 1101

- i. <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>

### ii. Code of Federal Regulations (CFR)

#### a. Title 8 – Aliens and Nationality

- i. <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>

### iii. Foreign Affairs Manual (FAM)

#### a. <https://fam.state.gov/>

### iv. USCIS Policy Manual

#### a. <https://www.uscis.gov/policy-manual>

### v. Case Law

- a. <https://www.uscis.gov/administrative-appeals/aa-o-decisions>
- b. <https://www.justice.gov/eoir/board-of-immigration-appeals>
- c. <https://www.justice.gov/eoir/bia-precedent-chart>

### vi. Department of Labor Resources

- a. *Occupational Outlook Handbook*
  - i. <https://www.bls.gov/ooh/>
- b. *O\*NET OnLine*
  - i. <https://www.onetonline.org/>
- c. Misc. resources
  - i. <https://www.dol.gov/general/topic/discrimination/immdisc>
  - ii. <https://www.dol.gov/agencies/whd/immigration>

### vii. USCIS Website

- i. <https://www.uscis.gov/>

### viii. CBP

- i. <https://www.cbp.gov/>

ix. **Department of State Website**

- a. <https://www.state.gov/>

x. **U.S. Embassy/Consulate Websites** – each country has its own DOS site.

- a. Canada
  - i. <https://ca.usembassy.gov/>
- b. United Kingdom
  - i. <https://uk.usembassy.gov/>



# The Employment-Based Immigration Process: Visas, Green Cards and Hiring Foreign Nationals

WBASNY CONVENTION 2023

HERSHEY, PA | JUNE 2, 2023

JENNIFER BEHM, ESQ.

# INTRODUCTION



## **Jennifer Behm, Esq. - Adjunct Professor**

- UB Law Grad (2011)
- Partner at Berardi Immigration Law in Buffalo, NY
- Advises multinational companies and individual clients in all aspects of immigration law, including nonimmigrant visas, family and employment-based green cards, NAFTA matters, and criminal waivers.
- Former experience with immigration team at large corporate firm in Philadelphia, PA + Immigration and Customs Enforcement (“ICE”) in Buffalo, NY.
- AILA Member
- [jebehm@usimmlawyer.com](mailto:jebehm@usimmlawyer.com)

# U.S. Immigration System

## Family-Based

- For permanent residence only
- Immediate relatives of USC or LPR, children (married or unmarried), siblings

## Employment Based

- Temporary sponsorship (nonimmigrant visa categories)
- Permanent sponsorship for Lawful Permanent Residency ("green card")

## Humanitarian

- Asylum/Refugee

## Diversity

- Diversity Lottery

# Making a “Case” for Business Immigration

- ▶ Increasingly globalized economy
- ▶ Employers need **best talent available** at competitive compensation rates, whether from within or outside the U.S.
- ▶ Unemployment rates → Employers have unfilled positions for skilled and unskilled laborers
- ▶ U.S. **workforce continues to age and skills gap** continues to widen. Not enough graduates in STEM. Workforce not interested in unskilled jobs.
- ▶ Restriction → further decentralization of our labor force and the loss of tax dollars for jobs which would otherwise remain in the U.S.

# System of Sponsorship

A foreign national seeking to **live and work in the U.S.** must generally be:

1. **Sponsored** by a U.S. citizen or LPR immediate relative(s), **or prospective U.S. employer, and**
2. Have an **approved petition** by USCIS, **and**
3. Apply for and be **approved a visa** (nonimmigrant or immigrant) by attending an in-person interview at Consulate or Embassy abroad.



# “Alphabet Soup”

- ▶ Business/Pleasure visitors (B-1/B-2)
- ▶ Intracompany transferees (L-1)
- ▶ Treaty Traders and Investors (E-1 & E-2)
- ▶ Professional Visa for Australians (E-3)
- ▶ Professionals in Specialty Occupations (H-1B)
- ▶ NAFTA Professionals (TN)
- ▶ Individuals with Extraordinary Ability (O-1) & Athletes (P-1)
- ▶ Trainees (J-1 & H-3)
- ▶ Students on Practical Training (F-1 & J-1)
- ▶ Dependent Family Members (L-2, H-4, TD, O-3, J-2, F-2, etc.)

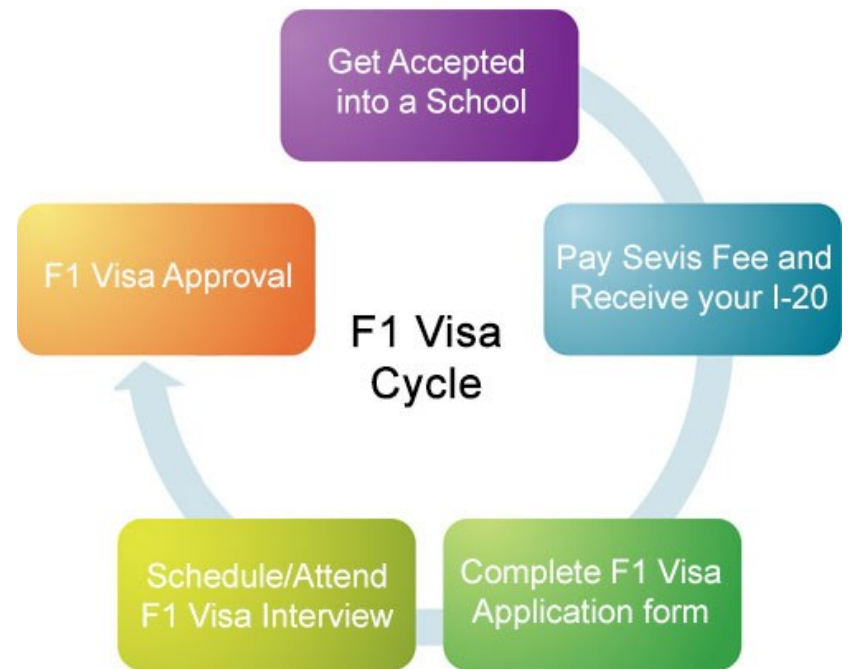




# Who is an F-1 Student?

## ► The F-1 Visa (Academic Student)

- **Full-time enrollment** (12+ credit hours) in a program or course of study that culminates in a degree, diploma, or certificate
- **Accredited** college, university, seminary, conservatory, academic high school, elementary school, or other academic institution, or in a language training program
- School must be **authorized** by the U.S. government to accept international students
- Work with Designated School Official (DSO) for I-20 Form



# Work Options for F-1 Students



- ▶ May not work off-campus during the first academic year
  - ▶ May accept on-campus employment subject to certain conditions
- ▶ After the first academic year, three types of off-campus employment:
  1. **Curricular Practical Training (CPT)**
  2. **Optional Practical Training (OPT) (pre-completion or post-completion)**
  3. **Extended Optional Practical Training for Science, Technology, Engineering and Math grads (STEM OPT)**

# STEM 24-Month Extension

- ▶ Be a recipient of a U.S. Bachelor's, Master's or Doctoral degree in a **STEM-designated degree program** (Science, Technology, Engineering, or Math)
- ▶ Be authorized for a period of post-completion OPT and have not exceeded 90 days of unemployment.
- ▶ Be employed or have a **job offer (directly related to your field of study)**
- ▶ Employer must participate in **E-Verify** and completes and **signs Form I-983**

Note: Two 24-month STEM extensions may be granted per lifetime, based on completion of an advanced degree level.



Science



Technology



Engineering



Mathematics

# H-1B Visa Category

- ▶ The H-1B nonimmigrant classification is for foreign nationals coming to the U.S. temporarily to perform services:
  1. **In a Specialty Occupation** – defined as:
    1. the prospective employee a Bachelors degree or equivalent; and
    2. is working in a field/position that requires that type of degree.
  2. As a Department of Defense worker
  3. As a Fashion Model (...?!)



# Definition of “Specialty Occupation”

- ▶ 8 C.F.R. § 214.2(h)(4)(iii)(A) : **Specialty occupation means an occupation** which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor **including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts**, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.



# Specialty Occupations

- ▶ Tools used to assess eligibility for H-1B category
  1. **Occupational Information Network (O\*NET)** list of occupations:  
<https://www.onetonline.org/find/family?f=0>
  2. **Occupational Outlook Handbook (OOH)** published by DOL:  
<https://www.bls.gov/ooh/occupation-finder.htm>
- ▶ “Typical” Professional Positions: Accountants, Software Developers, Engineers, Financial Analysts, Social Workers, high-level Managers and Executives
- ▶ Questionable: Computer System Analysts, Hotel Managers, Marketing and Sales jobs, jobs requiring “general business” degrees
- ▶ Not Qualified: Bookkeepers & Administrative, Real Estate Agents, Computer Programmers



# H-1B Visa Category

- ▶ **H-1B status generally capped at six (6) years,** issued in 3-year approval periods.
  - ▶ Extensions beyond cap are possible if certain points in a green card process (sponsored by employer) have occurred.
- ▶ Dual intent permitted.
- ▶ Spouses and children under 21 → H-4 status.
  - Spouse cannot apply for work authorization (until primary H-1B holder has I-140 approval).
  - Kids may attend school.





# H-1B Visa Category



- ▶ Unlike the rigid regulations surrounding other employment-based visas, the H1B gives holders the **ability to “port” their status from one employer to another during their stay.**
- ▶ Part-time work permitted; multiple employers permitted.
- ▶ **“Golden Ticket”** - key to work in the U.S. after a student completes the Optional Practical Training. Rarely any other immigration options available.

Sounds great... what's the catch??



# H-1B Annual Numerical Cap

- ▶ Statutory numerical **limitation of 65,000 visas** issued per fiscal year for Bachelor's degrees (or equivalent)
- ▶ **Additional 20,000** visas for foreign nationals who have a **U.S. Master's degree** or higher

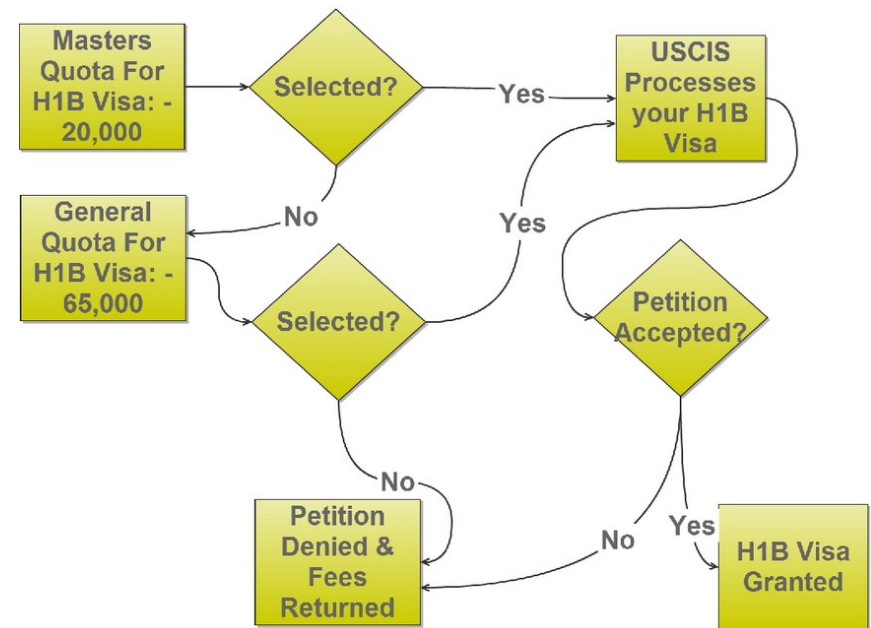


## EXEMPT FROM ANNUAL CAP:

- ▶ Renewals/Extensions of previously approved H-1Bs
- ▶ Petitions filed on behalf of current H-1B workers who have been counted previously against the cap
- ▶ Institutions of higher education or related/affiliated nonprofit entities
- ▶ Nonprofit research organizations or governmental research organizations – Petitions filed prior December 31, 2014

# H-1B Visa Lottery

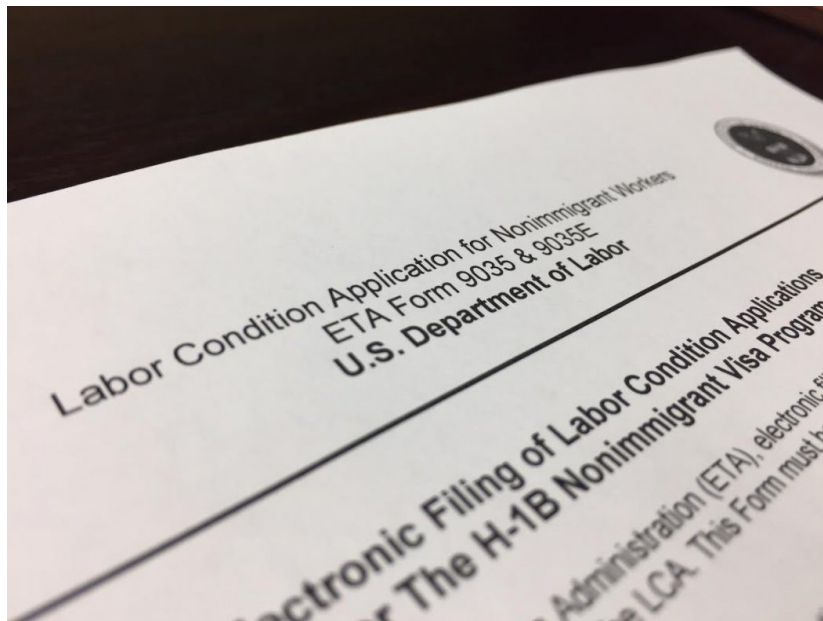
- ▶ Immigration Attorney's "Tax" Season
  - H-1B CAP registrations filed electronically in **March**.
  - LOTTERY Process in **April**. Random selections.
  - If petition is selected, file full petition with USCIS.
  - If approved, H-1B not valid for use until **October 1**.
- ▶ Tough sell to employers
  - Expensive (must pay all legal + government)
  - Unknown
  - Timing issues



# H-1B Numbers Over the Years

H1B Fiscal Year	Cap Reached Date	Cap Reached (YES or NO)	H1B Cap Open Days	H1B Applications Received by USCIS
2010	12/21/2009	YES	264 Days	No H1B Lottery
2011	1/6/2010	YES	300 Days	No H1B Lottery
2012	11/22/2011	YES	235 Days	No H1B Lottery
2013	6/11/2012	YES	71 Days	No H1B Lottery
2014	4/5/2013	YES	5 Days	<a href="#">124,000 (H1B Lottery)</a>
2015	4/7/2014	YES	5 Days	<a href="#">172,500 (H1B Lottery)</a>
2016	4/7/2015	YES	5 Days	<a href="#">233,000 (H1B Lottery)</a>
2017	4/7/2016	YES	5 Days	<a href="#">236,000 (H1B Lottery)</a>
2018	4/7/2017	YES	5 Days	<a href="#">199,000 (H1B Lottery)</a>
2019	4/6/2018	YES	5 Days	<a href="#">190,098 (H1B Lottery)</a>
2020	4/5/2019	YES	5 Days	<a href="#">201,011 (H1B Lottery)</a>
2021	3/20/2020	YES	20 Days	<a href="#">275,000 (H1B Lottery)</a>
2022	3/25/2021	YES	15 Days	<a href="#">308,613 (H1B Lottery)</a>
2023	3/18/2022	YES	18 Days	<a href="#">483,927 (H1B Lottery)</a>

# Labor Condition Application (LCA)



- ▶ Each petition for an H-1B worker must be accompanied by an LCA in which the DOL certifies:
  1. Paid at least the actual or prevailing wage for the occupation in the area(s) the employee will be working: <http://www.flcdatcenter.com>
  2. Working conditions will have no adverse effect on U.S. workers
  3. No strike or lockout is in progress
  4. The employer has notified the bargaining representative if the job is unionized, or has posted a public notice at worksite that an LCA was filed

# H-1B Visa Process Overview

## CAP SUBJECT PETITION:

- ▶ Gather documents & review
  - ▶ \*Key: detailed job description with minimum requirements, proffered wage, worksite location, applicant's education/credentials
- ▶ Wage assessment + Public Access File preparation
- ▶ Post Notices & file LCA with DOL
- ▶ Draft Employer's Letter of Support + government forms
- ▶ Register for electronic selection notice with USCIS
  - ▶ March registration; April selections; File by end of June.
- ▶ Start date no earlier than October 1



# What is a “Green Card?”

- ▶ **Green Card holder = Lawful Permanent Resident (LPR)**
- ▶ Gives a foreign national the right to permanently live and work in the U.S.
- ▶ Card itself is a government issued ID that serves as proof of LPR status in U.S.
- ▶ May be revoked if the holder breaks certain laws, does not maintain required residence in the U.S., or if LPR travels outside the U.S. for an extended period of time.
- ▶ LPR can later apply for U.S. citizenship





# Five Ways to Obtain a Green Card



- ▶ Family-based petitions
- ▶ **Employment-based petitions**
- ▶ Investing in the U.S. (EB-5)
- ▶ Asylum
- ▶ Diversity Lottery

# Employment-Based (EB) Green Cards



- ▶ **Employment-based (EB):** Capped at 140,000 visas per year and contingent on Approval of Form I-140.
- ▶ **Preference categories:**
  - EB-1: Extraordinary People, Outstanding Researchers and Professors, and Multinational Executives/Managers.
  - EB-2: Exceptional People
  - **EB-2: Advanced Degree Holders (requires PERM)**
  - **EB-3: Bachelor's Degree Holders, Skilled Workers, and Unskilled Workers (requires PERM)**
  - EB-4: Special Immigrants
  - EB-5: Investors



# Employment-Based Green Cards: PERMs

## Three Steps:

### 1. PERM Labor Certification filed with DOL

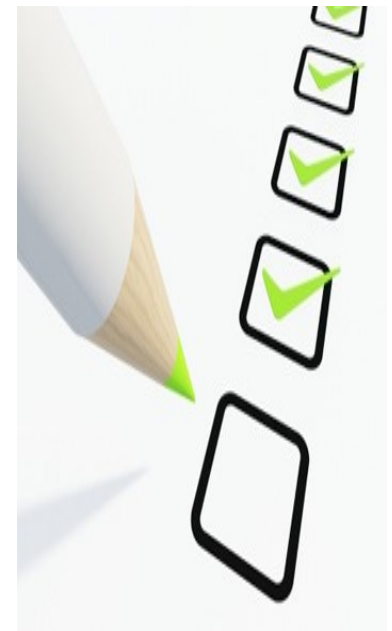
- ▶ Recruitment campaign by employer to prove there is no willing and qualified U.S. worker to do the job. Wage and position (job duties) assessment by DOL. Taking 18 months!
- ▶ Sometimes not required (EB-1)

### 2. Form I-140, Petition for Immigrant Worker filed with USCIS

- ▶ Employer attests the position is available, offered to beneficiary, wage paid, etc.

### 3. Government creates physical green card

- ▶ IF visa number for foreign national is immediately available (no backlog)
- ▶ If applicant is in the U.S. – File Form I-485, Application for Adjustment of Status (AOS) with USCIS.
- ▶ If applicant is outside the U.S. – attend Immigrant Visa Interview (Consular Processing)



# What is PERM?

## Program Electronic Review Management (PERM)

- ▶ Governed by the U.S. Department of Labor (DOL)
- ▶ Results in a “labor certification” where Employer has proven they cannot find a qualified American worker for the job.

## Employer certifies:

- Company needs the foreign worker’s skills and abilities;
- The wage offered by the employer meets the DOL’s prevailing wage requirements;
- The employer has tried to recruit U.S. workers for the position but he/she has found no qualified U.S. workers who are ready, willing and able to fill the position; and
- The employment of the foreign worker will not adversely affect the wage and working conditions of similarly employed U.S. workers.

# PERM TIMING

## Multiple Steps within PERM:

1. Description of Duties/Minimum Skills
2. Prevailing Wage Request to DOL
3. Recruitment
4. Submit PERM to USDOL

**= 15-18 mos for PERM process!! (fluid DOL adjudication trends)**

**If PERM is audited, add another 12 months!**



# PERM - Recruitment

- ▶ After receiving the prevailing wage determination, specific advertisements will be placed to “test the labor market.” **This labor market test for PERM purposes must be conducted in conformity with DOL rules. 30 days active, 30 day “cool off” period.**
- ▶ Employer must promptly respond to any qualified resumes or applications submitted for the advertised position. Failure to manage all inquiries, résumés, job applications and interviews for all qualified applications can negatively impact the PERM process.

## **What happens if someone applies to the job?**

- ▶ If an able, willing and qualified US worker (citizen or LPR) applies for the position, we will need to stop the process, wait at least 6 months, and then re-test the labor market, perhaps with modified criteria.

# PERM - Recruitment

## MANDATORY


1. Job order placed with a state workforce agency for 30 days.
2. Place two (2) Sunday advertisements in a newspaper of general circulation in the area of intended employment.
3. One internal posting notice for 10 biz days to alert current employees of the role.

## ADDITIONAL (MUST DO 3 of 10)

- ▶ Job fairs;
- ▶ Employer's website;
- ▶ Job search website other than the employer's;
- ▶ On-campus recruiting;
- ▶ Trade or professional organizations/publications;
- ▶ Private employment firms;
- ▶ Employee referral programs with incentives;
- ▶ Campus placement offices
- ▶ Local and ethnic newspapers
- ▶ Radio and television advertisements.

# Submit PERM to USDOL

- ▶ **Form 9089 is filed online through the DOL website.**
- ▶ It's a lengthy form! Includes:
  - ▶ Employer info
  - ▶ Attorney info
  - ▶ Prevailing Wage + Recruitment info
  - ▶ The position info – education and minimum skills/knowledge required
  - ▶ Applicant info – education and past employment

OMB Approval: 1205-0451		Application for Permanent Employment Certification	
Expiration Date:		ETA Form 9089	
U.S. Department of Labor			
			
<p><b>Please read and review the filing instructions before completing this form. A copy of the instructions can be found at <a href="http://www.foreignlaborart.dolsta.gov/etl/9089inst.pdf">http://www.foreignlaborart.dolsta.gov/etl/9089inst.pdf</a></b></p> <p>Employing or continuing to employ an alien unauthorized to work in the United States is illegal and may subject the employer to criminal prosecution, civil money penalties, or both.</p>			
<b>A. Refiling Instructions</b>			
1. Are you seeking to utilize the filing date from a previously submitted Application for Alien Employment Certification (ETA 750)?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
1-A. If Yes, enter the previous filing date			
1-B. Indicate the previous SWA or local office case number OR if not available, specify state where case was originally filed			
<b>B. Schedule A or Shepherd Information</b>			
1. Is this application in support of a Schedule A or Shepherd Occupation?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
If Yes, do NOT send this application to the Department of Labor. All applications in support of Schedule A or Shepherd Occupations must be sent directly to the appropriate Department of Homeland Security office.			
<b>C. Employer Information (Headquarters or Main Office)</b>			
1. Employer's name			
2. Address 1			
Address 2			
3. City	State/Province	Country	Postal code
4. Phone number		Extension	
5. Number of employees		6. Year commenced business	
7. FEIN (Federal Employer Identification Number)		8. NAICS Code	
9. Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the alien?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>D. Employer Contact Information (This section must be filled out. This information must be different from the agent or attorney information listed in Section E).</b>			
1. Contact's last name	First name	Middle initial	
2. Address 1			
Address 2			
3. City	State/Province	Country	Postal code
4. Phone number		Extension	
5. E-mail address			

# Finalizing the Green Card Process

1. **PERM Certified!! Next up...**
2. **Form I-140, Petition for Immigrant Worker filed with USCIS**
  - ▶ Employer attests the position is available, offered to beneficiary, wage paid, etc.
3. **AOS or IVP: Creation of physical green card**
  - ▶ **IF** visa number for foreign national is immediately available (no backlog)
  - ▶ If applicant is in the U.S. – File Form I-485, Application for Adjustment of Status (**AOS**) with USCIS.
  - ▶ If applicant is outside the U.S. – attend Immigrant Visa Interview (**Consular Processing**)



# The “Visa Bulletin” – Simple Explanation

Congress sets annual limit to the amount of green cards that can be issued in FB and EB preference categories, AND limits those numbers based on country of birth (COB).

- ▶ **Annual “preference category limit”:** 366,000 available annually → family-based (226,000 limit) and employment-based (140,000 limit).
- ▶ **Annual “country of birth cap”:** no single country of origin can account for more than 7% of the green cards in either category. Applicants from countries with high numbers of applications (China, India, Mexico or The Philippines) face a substantial wait.
- ▶ Every year, the number of total FB and EB green card applicants exceeds limits as a total and by category, which creates a large backlog of applications. **This backlog leads to wait times for new applicants, which are published in the monthly Visa Bulletin.**
- ▶ **DOS Visa Bulletin:** <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>



# Priority Dates & the Visa Bulletin

- ▶ Final step of green card may be filed (Form I-485 Adjustment of Status or Consular Processing) when PD is “current” in the Visa Bulletin
- ▶ “Priority Date” (PD) establishes FN’s “place in line” for Visa Bulletin.
- ▶ **Family-based:** PD assigned when USCIS receives the I-130 petition
- ▶ **Employment-based:** PD assigned when either DOL receives PERM; or, if no PERM, when USCIS receives the I-140 petition

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA
1st	C	C	C
2nd	C	<b>01JAN13</b>	<b>01JUL09</b>
3rd	01SEP15	01OCT13	01JUL05
Other Workers	01SEP15	01JAN07	01JUL05
4th	C	C	C
Certain Religious Workers	C	C	C
5th Targeted Employment Areas/ Regional Centers and Pilot Programs	C	01MAY15	C

# Difference between LPRs & USCs

- ▶ Unlike LPRs, **U.S. Citizens (USCs)** are:
  - ▶ Not subject to grounds of deportation that affect green card holders
  - ▶ Can vote in U.S. elections
  - ▶ Always guaranteed reentry back into the U.S.
- ▶ The **only** way to revoke an immigrant's citizenship is if the immigrant committed fraud when they were applying.



# Naturalization

- ▶ Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the Immigration and Nationality Act (INA).
- ▶ Application filed with USCIS on Form N-400
- ▶ Applicant must attend interview at local USCIS office, then attend oath and naturalization ceremony upon approval.



# Naturalization - Eligibility Requirements

- ▶ If you are a green card holder of at least 3 years (Marriage-based) or 5 years (all other), you must meet the following requirements in order to apply for naturalization:
  - ▶ Age 18+; be a person of good moral character
  - ▶ Read/write/speak English; knowledge and understanding of U.S. history and civics
  - ▶ Have **continuous residence** in U.S. as LPR for at least 5 years immediately preceding the date of filing the application
  - ▶ Have **physical presence** in the U.S. as LPR for at least 30 months out of the 5 years immediately preceding the date of filing the application
  - ▶ Lived in state or USCIS district with jurisdiction over the applicant's place of residence for at least 3 months prior to the date of filing the application
  - ▶ Reside continuously within the U.S. from the date of application to oath ceremony



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