



Work Visa Options After Graduation

Jonathan L. Moore, Esq.
Phone: (804) 775-7227
jmoore@lawmh.com

David E. Gluckman, Esq.
Phone: (804) 775-3826
dgluckman@lawmh.com

McCandlish Holton, PC
Richmond, VA

February 11, 2022



Introduction to U.S. Immigration Law

- Permanent Resident Green Cards:
 - Live forever in the United States
 - Ease of employment
 - Ease of travel
 - Only limited ways to obtain / lengthy processing
- Temporary Nonimmigrant Visas:
 - Many categories (A – V)
 - Few allow employment
 - Categories most relevant for post-graduation work:
 - F-1 – OPT
 - H-1B



Typical Post-Completion Employment Path

- F-1 - Optional Practical Training (12 or 36 months)
 - or
- J-1 – Academic Training (18 or 36 months)
 - then
- H-1B – Most common work visa (6 years of work eligibility)



F-1 Optional Practical Training

- **Generally, 12 months of OPT post-graduation**
 - Allows work in any job related to degree
 - Cannot work until receive work card (Employment Authorization Document); application fee is \$410
 - Can apply for card up to 90 days before completion of program, or up to 60 days after completion
 - Must apply within 30 days of OPT authorization from Foreign Student Advisor
 - 3-4 month processing time
 - No more than 90 days of unemployment permitted
- **Consult with international student office before traveling while on OPT**



F-1 OPT STEM Extension

- Students with qualifying “STEM” degree eligible for an additional 24 months of work authorization
 - Must apply before initial OPT expires and within 60 days of Foreign Student Advisor’s authorization for STEM extension
 - Employer **MUST** be enrolled in E-Verify
- Qualifying STEM degrees
 - Compare CIP Code on Form I-20 with the “STEM Designated Degree Program List”
 - U.S. degrees obtained within the last 10 years generally can be used as a basis for the STEM OPT extension, as long as program is on current STEM list



H-1B Visa

- **Most Common Work Visa**

- Employer must “sponsor” (offer a job that requires a degree)
- Beneficiary must have degree
- Degree must relate to the job
- No need to advertise for U.S. workers



H-1B Issues

- **Duration**

- 3 years initially
- 3 year extension
- 6 year maximum

- **Scope of H-1B Authorization**

- Can only work for this employer, doing what was described on the petition, in the location described on the petition

- **Change Employer**

- New employer must file new petition
- But can begin working as soon as new petition is filed without waiting for approval



H-1B Issues

- **Cost - Who Pays?**
 - Legal Fee
 - Current USCIS Filing Fees
 - H-1B registration fee - \$10
 - Base fee - \$460
 - Fraud Prevention Fee - \$500
 - “Training Fee” - \$1,500 (\$750 for employers with 25 employees or less)
 - Optional Premium Processing Fee (15 days) - \$2,500
 - Additional fee for companies with 50 or more employees, and 50% or more of workforce is H-1B or L (rare)

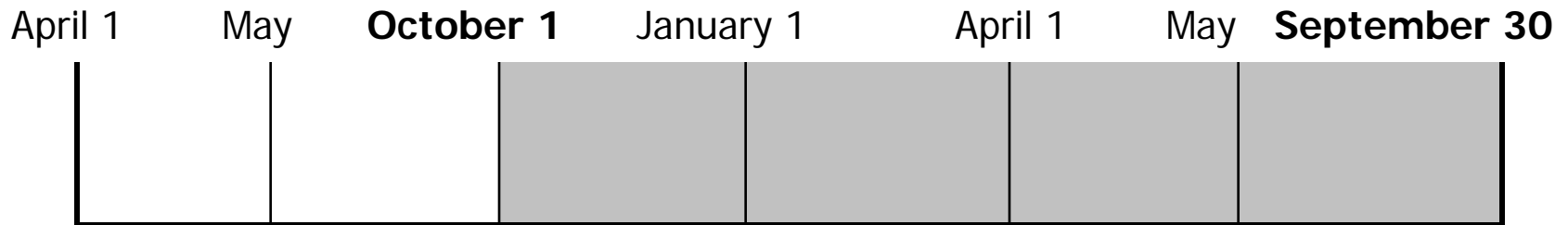


H-1B Quotas

- **USCIS FISCAL YEAR**: October 1 – September 30
- **Quotas**:
 - 85,000 new H-1Bs available each fiscal year
 - Applicants with U.S. advanced degrees – 20,000
 - All other degrees – 65,000
 - New law improves lottery chances for U.S. advanced-degree grads
- **Current availability**: ?



Beat the H-1B Cap



- October 1 – new quota released
- March 1-18 – electronic pre-registration/lottery
- April 1 – 90-day filing window begins for cap lottery “winners”
- May/Dec – graduation & OPT



Example #1

- Student graduates in May 2022.
- Employer had submitted registration in March 2022 and student was selected in lottery. Employer files for H-1B, effective October 1, 2022.
- Student works on OPT until September 30, 2022, then H-1B effective October 1, 2022.



Example #2

- Student graduates in May 2022 without H-1B registration or lottery selection.
- Student works on OPT. Employer submits registration in March 2023 and student is selected in lottery. In April 2023, employer files for H-1B, effective October 1, 2023.
- But student's OPT expires in June 2023.
- What now?



H-1B “Cap Gap” Relief

- If your employer files an H-1B petition on your behalf on or after April 1st,
AND
- OPT is still valid at the time of filing,
THEN
- OPT is extended until September 30th



H-1B Cap-Exempt Organizations

- Universities
- Non-profit organizations affiliated with universities (such as research facilities or hospitals)
- Non-profit research organizations, engaged primarily in basic or applied research
- Governmental research organizations (federal, state, or local)



H-1B Alternatives

- Canada, Mexico, Chile, Singapore, Australia
- L-1 Manager / Executive / Specialized Knowledge. Work overseas for one year; now working for affiliate in United States
- E treaty investor/trader (not China, India) working for companies owned by citizens of your country in the United States
- Re-enroll in full-time study (F-1 or J-1)
- Other possible options are very limited (e.g., J-1, O-1). Consult qualified immigration specialist.



Green Card

- Limited Ways to Obtain
 - Family Relationships
 - Diversity Visa Lottery
 - Employment/Special Skills
 - EB-1 - Extraordinary / Outstanding / Multi-national
 - EB-2 - Advanced Degree / Exceptional
 - EB-3 - Bachelor's Degree / Skilled worker
 - Must maintain non-immigrant status



Extending H-1B Beyond Six Years

- Normal length of H-1B – 6 years
- Can extend for the following:
 - Recapture time outside the U.S.
 - Employment-based green card process pending at least 1 year – can extend H-1B in 1 year increments
 - Approved I-140, but no quota number to adjust – 3 year extension



“Schedule A” Green Card Option

- Special green card option for Professional Nurses and Physical Therapists
- Employer-sponsored
- Must be a “permanent” position
- Employer does not conduct a labor market test for these occupations
 - Requires additional documentation regarding licensure (or eligibility for licensure)



Choosing an Attorney

- Location - Irrelevant
 - Immigration law is federal, not state specific
 - All filings are made at the same lockboxes and service centers
- Knowledge and Experience – Very Relevant



RESOURCES

Jonathan L. Moore, Esq.

jmoore@lawmh.com

(804) 775-7227

David E. Gluckman, Esq.

dgluckman@lawmh.com

(804) 775-3826