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TREATY VISAS: TN, E-3, H1B1

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H-1B VISAS

- Employer sponsored work visas for specialized workers
- Employer is legally obligated to pay for the cost of an H-1B visa
- An individual can be in H-1B visa status for 6 years (usually issued in 3 yr increments)
- An individual can be in H-1B visa status for 6 years (usually issued in 3 yr increments)
- Subsequent years can be issued if a labor certification or immigrant visa petition (I-140) has been pending for at least 1 yr
- Dependent spouses/children can obtain H-4 visas to live in the U.S. with the H-1B visa holder, however, they can not work in dependent status
- H-1B visa dependents must obtain their own H-1B visas in order to work
NEW H-1B VISAS

- INDIVIDUALS NEEDING NEW H-1B VISAS ARE SUBJECT TO A CAP
- THE VISA CAP OPENS UP EVERY YEAR ON OCTOBER 1ST
- SOME YEARS VISAS RUN OUT QUICKLY. FOR EXAMPLE, IN 2014 WE BEGAN FILING NEW VISA APPLICATIONS ON 4/1/14 AND THE CAP WAS MET WITHIN THE FIRST 5 DAYS FOR BOTH REGULAR AND ADVANCED DEGREE HOLDERS
- 65,000 NEW H-1B VISAS ARE ISSUED EACH YEAR
- NEW APPLICATIONS CAN BE FILED AS EARLY AS APRIL 1ST FOR THE CAP OPENING OCTOBER 1ST OF THAT YEAR
- 20,000 NEW H-1B VISAS ARE ISSUED EACH YEAR FOR INDIV WITH ADVANCED DEGREES (MASTER DEGREES OR HIGHER) FROM A U.S. UNIVERSITY
- ANY VISAS FILED WILL BE GIVEN A VALID DATE OF OCTOBER 1ST OR LATER
- NEW H-1B APPLICANTS CAN NOT BEGIN WORKING UNTIL THEIR VISAS ARE APPROVED
H-1B VISA ISSUES

- CURRENT H-1B VISA HOLDERS (SPONSORED BY A FOR-PROFIT COMPANY) CAN TRANSFER THEIR VISA TO ANOTHER FOR-PROFIT COMPANY AND ARE NOT SUBJECT TO THE CAP

- H-1B VISA TRANSFER APPLICANTS CAN BEGIN WORKING WHEN THEIR APPLICATIONS ARE FILED WITH THE USCIS

- LCA TAKES 7 DAYS UNDER DOL I-CERT PROGRAM

- IF EMPLOYEE IS TERMED BEFORE EXPIRATION OF H-1B, EMPLOYER MUST PAY EMPLOYEE’S RETURN TRANSPORTATION COSTS AND REVOKE H-1B

- BENCHING OF EMPLOYEES HOLDING H-1B IS NOT PERMITTED AND EMPLOYER COULD BE LIABLE FOR BACK WAGES AND FINES
PREMIUM PROCESSING

- NEW H-1B VISAS TAKE APPROX 3-6 MONTHS TO BE APPROVED
- H-1B TRANSFER VISAS TAKE APPROX 3-6 MONTHS TO BE APPROVED
- PREMIUM PROCESSING IS A SERVICE THAT EXPEDITES THE APPROVAL PROCESS FOR AN ADDITIONAL COST OF $1225
- APPLICATIONS FILED WITH PREMIUM PROCESSING WILL BE ADJUDICATED WITHIN 15 CALENDAR DAYS FROM FILING
- BOTH NEW H-1B AND H-1B TRANSFER APPLICATIONS CAN BE FILED WITH PREMIUM PROCESSING
What is H-1B?

❖ “Specialty occupation”: Job must require a degree

❖ I.E., Engineer is normally expected to have degree

❖ Labor Condition Application (LCA)
  - Employer must pay prevailing wage or more
  - Notify existing employees of H1B filing

❖ Must show degree field is related to job
TN VISAS

❖ WORK AUTHORIZATION REQUIRED BY A CANADIAN OR MEXICAN CITIZEN WISHING TO WORK IN THE US

❖ INDIVIDUALS MUST HAVE BACHELOR’S DEGREE OR HIGHER TO OBTAIN TN VISA (EXCEPTION: MANAGEMENT ANALYSTS, COMPUTER SYSTEMS ANALYST (POST-SECONDARY DIPLOMA OR POST-SECONDARY CERTIFICATE + 3 YRS EXP. IS ACCEPTABLE)

❖ CANADIANS: ISSUED AT THE PORT OF ENTRY INTO THE US BY CBP

❖ MEXICANS: ISSUED AT US CONSULATE ABROAD

❖ ISSUED IN THREE YEAR INCREMENTS AND CAN BE RENEWED

❖ TEMPORARY VISAS, NOT INTENDED FOR LIFE-TIME STAY IN U.S.
H-1B1 Chile & Singapore

- 5,400 visas available for Singapore
- 1,400 for Chile
- Specialty Occupation standard
- LCA required
- Valid for 1 year, no limit on extensions
E-3 Australians

- For professional-level workers who are coming to work for a U.S. employer in a “specialty occupation”
- Applies only to nationals of Australia
- Spouses and children may be of any nationality; spouses may apply for employment authorization
- Must have a job offer from a U.S. employer
- Not required to file a petition with USCIS, application submitted directly at a consular post (can apply outside Australia)
- Employer must obtain certified LCA from the Department of Labor
- Granted in two year increments; no limit on stay
- Numerically limited to 10,500 annually (cap has never been met)
EADs

MEANS EMPLOYMENT AUTHORIZATION DOCUMENT
(ALSO REFERRED TO AS WORK AUTHORIZATION)

MOST COMMON SITUATIONS FOR INDIVIDUALS TO APPLY FOR EADs
PENDING I-485 APPLICATION
&
OPT WORK AUTHORIZATION + STEM
**EADs**

OTHER SITUATIONS (NOT COMMON BUT GOOD TO KNOW) FOR INDIVIDUALS WHO MAY BE ABLE TO APPLY FOR EADs

**E-1/E-2 VISAS (SPOUSE OF PRIMARY E-1/E-2 VISA HOLDER)**

• E-1 VISAS ARE ISSUED TO FOREIGN NATIONALS OF A TREATY NATION TO ENTER THE U.S. AND CARRY OUT SUBSTANTIAL TRADE

• E-2 VISAS ARE FOR ENTREPRENEURS FROM TREATY COUNTRIES INVESTING SUBSTANTIALLY IN A U.S. ENTERPRISE

**L-2 VISAS (SPOUSE OF L-1 VISA HOLDER)**

• L-1 VISAS ARE INTRA-COMPANY TRANSFER VISA ISSUED TO INDIVIDUALS BEING TRANSFERRED TO THE U.S. TO WORK LEGALLY FOR A U.S. COMPANY THAT IS A BRANCH, SUBSIDIARY, AFFILIATE OR JOINT VENTURE OF A COMPANY THAT ALREADY EMPLOYS THE INDIVIDUAL OUTSIDE THE U.S.

J-1 VISAS ARE ISSUED TO PARTICIPANTS OF A CULTURAL EXCHANGE PROGRAM

**TPS VISAS (TEMPORARY PROTECTED STATUS)**

• TPS VISAS ARE GRANTED TO NATIONALS OF CERTAIN COUNTRIES THAT ARE EXPERIENCING EXTREME DIFFICULTIES (I.E. ARMED CONFLICT, ENVIRONMENTAL DISASTERS) WHERE IT WOULD POSE A SERIOUS THREAT TO THEIR SAFETY IF THEY RETURNED
Permanent Residence
GREEN CARDS

AN EMPLOYEE WISHING TO BEGIN GREEN CARD PROCESSING CAN DO SO AT ANY TIME IF THE EMPLOYER AGREES TO SPONSOR THE PROCESS

REGULATIONS ISSUED BY THE U.S. DEPT. OF LABOR AS OF 7/16/07 REQUIRE EMPLOYERS TO PAY FOR THE COST OF LABOR CERTIFICATION, INCLUDING ADVERTISEMENTS

THERE ARE THREE STAGES TO GREEN CARD PROCESSING...
3 STEPS TO GC PROCESSING

1. LABOR CERTIFICATION

*LABOR CERTIFICATION IS A STATEMENT FROM THE U.S. DEPARTMENT OF LABOR THAT A PARTICULAR POSITION AT A PARTICULAR COMPANY IS "OPEN" BECAUSE NO U.S. WORKERS WHO SATISFY THE MINIMUM REQUIREMENTS FOR THE JOB ARE AVAILABLE

2. IMMIGRANT VISA FILING (I-140)

*EMPLOYMENT BASED PETITION FILING (I-140) WHICH IS THE PETITION FOR THE U.S.C.I.S. TO APPROVE AN IMMIGRANT’S REQUEST TO WORK IN THE U.S. ON A PERMANENT BASIS

3. ADJUSTMENT OF STATUS (I-485)

*REQUEST TO CHANGE TEMPORARY RESIDENT STATUS TO PERMANENT RESIDENT STATUS. THIS IS THE STAGE WHERE AN EAD CAN BE OBTAINED. ONCE THE EAD IS OBTAINED, AN H-1B VISA IS TECHNICALLY NO LONGER NEEDED, BUT RECOMMENDED AS A SAFETY NET
GC PROCESSING

WE RECOMMEND STARTING THE PROCESS AT LEAST 24 MONTHS PRIOR TO THE H1B MAX OUT DATE. IT CAN TAKE 6 MONTHS TO TEST THE LABOR MARKET PRIOR TO FILING THE LABOR CERTIFICATION.

PROCESSING TIMES VARY BUT GENERALLY, A LABOR CERTIFICATION APPLICATION CAN REMAIN PENDING FOR APPROXIMATELY 5-18 MONTHS; I-140 APPLICATIONS CAN REMAIN PENDING FROM 3 MONTHS TO 1 YEAR; AND I-485 APPLICATIONS CAN REMAIN PENDING FOR ABOUT 4 MONTHS TO 1 YEAR OR LONGER

AN EMPLOYEE CAN SWITCH EMPLOYERS 180 DAYS AFTER THE I-485 APPLICATION HAS BEEN FILED. IF THE EMPLOYEE TERMINATES EMPLOYMENT PRIOR TO THIS TIME, HE/SHE MAY LIKELY NEED TO BEGIN THE GREEN CARD PROCESS OVER WITH SPONSORSHIP FROM HIS/HER NEW EMPLOYER

TERM “RESIDENT ALIEN” OR “PERMANENT RESIDENT” REFERS TO AN INDIVIDUAL WITH AN APPROVED GREEN CARD.
Categories or “Preferences” of LPR

LPR = Lawful Permanent Residence aka the Green Card

“Self-sponsored” categories:

- Aliens with extraordinary ability
- National Interest Waiver
- Do not require Labor Certification
- Do not require Employer Approval
- The employee can pursue these on his/her own
Categories or “Preferences” of LPR, cont.

**EB = Employment-based categories:**

- **EB-1:** Extraordinary Ability, Outstanding Researcher/Professor
- **EB-2:** Members of the professions holding advanced degrees (PERM, requires Labor Certification) Aliens of exceptional ability in the sciences, arts or business (NIW)
- **EB-3:** A professional or skilled worker (PERM, requires Labor Certification)
Three Steps in LPR (PERM)

-Employment-based/Employer-sponsored LPR requires 3 steps-

1. Labor Certification
2. Immigrant Petition
3. Obtaining the Visa
The Labor Certification

- To obtain a Labor Certification, the employer must prove that there is no U.S. citizen who is able, willing, qualified and available to take the job.

- Detailed, legally prescribed process and posting in multiple media for extended periods of time are required.

- If any U.S. workers apply who meet the criteria above, we cannot obtain a Labor Certification and the individual cannot obtain LPR in this category.
EXTRAORDINARY ABILITY, OUTSTANDING RESEARCHER, and NATIONAL INTEREST WAIVERS
Extraordinary Ability (EB-1A)

Requires sustained national or international acclaim.
Also called the “Nobel Prize Category”
Extraordinary Ability Criteria

You must meet 3 out of the 10 listed criteria below to prove extraordinary ability in your field:

1. Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
2. Evidence of your membership in associations in the field which demand outstanding achievement of their members
3. Evidence of published material about you in professional or major trade publications or other major media
4. Evidence that you have been asked to judge the work of others, either individually or on a panel
5. Evidence of your original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
6. Evidence of your authorship of scholarly articles in professional or major trade publications or other major media
7. Evidence that your work has been displayed at artistic exhibitions or showcases
8. Evidence of your performance of a leading or critical role in distinguished organizations
9. Evidence that you command a high salary or other significantly high remuneration in relation to others in the field
10. Evidence of your commercial successes in the performing arts
Outstanding Researcher or Professor (EB-1B)

- Outstanding Researcher or Professor (EB-1B)

- 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
National Interest Waiver (EB-2)

- Exceptional Ability

- Work in an area of substantial intrinsic merit;

- Work must have a benefit which will be national in scope; and,

- Work serves the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications/ The national interest would be adversely affected if a labor certification were required for the beneficiary.
And finally...

Your questions

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