Specializing in Visas for Professionals

OPT – H-1B – Green Cards

Executive Orders – Travel Ban and Possible New Visa Rules

Martin J. Lawler

1 Post Street, Suite 475
San Francisco, CA 94104
Tel: 415-391-2010
www.aboutvisas.com

Listed in Best Lawyers In America

Martin’s book:

Professionals: A Matter of Degree
(Now in its 5th Edition)
New Strategies for New Times

- Lack of H-1B Visa Numbers
- USCIS Restrictive Attitude
- Limited Immigrant Visa Numbers For China & India

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Solutions

• Advanced Planning
• Get a MS Degree
Practical Training (OPT)

• One Year Work Permit
• Apply Before Or Shortly After Graduation
• Bridge to H-1B or Other Visas

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Type of Employment?

• Paid Employment
  – Part and full time
  – Employer + 1099
  – Self-employment
• Unpaid Employment is Okay
• For Work Related to Degree
• Attend SFSU’s OPT Seminars

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Document Work is Degree Related

- Letter(s) From Manager or HR
  - Job duties
  - Dates
  - How degree is related to work
STEM

• Post Completion 36mo OPT For BS, MS or Ph.D. in:

Science, Technology, Engineering, Math, Computer Science Applications, Actuarial Science, Engineering Technologies, Biological and Biomedical Sciences, Math & Statistics, Military Technologies, Physical Sciences, Science Technologies, Medical Scientists, & Chemical Engineering And many more…

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Possible New Rules

Martin’s Crystal Ball
Possible New OPT Rules

• Reduce 36 months of OPT provided by Obama Rules
• SFSU will hold seminars on OPT
H-1B Visas
Professional/Specialist

• 6 Year Work Visa (3yrs + 3yr ext)
  – Employer must sponsor
  – Job requires a degree
  – Individual degree or = work experience
  – Prevailing wage must be paid
  – No worker shortage need be proven
  – Not enough visas for applicants (In 2015, there were 233,000 applications for the 85,000 visas)
H-1B Process Overview

• Gather Data & Documents
• Post & File LCA
• File I-129 Form, LCA, & Documents With USCIS
• Petition Decided & Change of Status or Obtain Visa Stamp at Consul

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Foreign National Documents For H-1B

• College Degree (Transcript Optional) or Proof of Work Experience
• I-20, I-94 & OPT Card
• Copy of Passport
• License(s), if any
• Prior H-1B Approval Notice, if any

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• H-1B Occupations
  – Accountants, Engineers, Financial Analysts, Social Workers, System Analysts
  – **Questionable**: Hotel Managers, marketing jobs, mid-level managers
  – **Not**: Bookkeepers, Import/Export, Real Estate Agents
  – See [www.aboutvisas.com](http://www.aboutvisas.com) for list
  – Watch out for contractors – consultants
  – Traveling computer jobs
H-1B Visa Numbers

• Available in April, valid October 1 – 65,000 + 20,000 for U.S. advanced degree holders (MS, PhD, etc.)

• # Exempt
  – University jobs
  – Changing jobs
  – Chile/Singapore numbers
  – E-3 for Australians

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Practical Training to H-1B
The Timing Problem
When All Visas Are Used

H-1B #s available for FY18 Practical Training Issued H-1B #s active FY19 H-1B #s Available Practical training expires Grace period expires FY19 H-1B #s active

Gap in Status and Work Authorization
Grace Period

FY = Government Fiscal Year

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• Other H-1B Rules
  – Immigrant intent permitted
  – H-4 visa for dependents but no work permit
  – Government filing fees – employer must pay
    • Training fee — $750 for company with < 25 employees; otherwise $1,500 — must be paid by employer
    • Petition fee — $460
    • Anti-fraud fee — $500
    • Not mandatory $1,225 premium processing fee
NOTICE OF ACTION

U.S. Department of Justice
Immigration and Naturalization Service

CASE NO. N-1139
PETITION FOR A NONIMMIGRANT WORKER

RECEIVED DATE: July 17, 2006

RECEIVED DATE: September 13, 2006

NOTICE TYPE: Approval Notice
Class: HIB
Valid from 08/29/2005 to 08/28/2008

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LAWLER & LAWLER
201 FISHER ST STE 400
SAN FRANCISCO CA 94133

The above petition and change of status have been approved. The status of the named foreign national in this classification is valid as indicated above. The foreign national may work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization street from the filing of this petition, additional employment authorization documentation is not required. Please contact the INS with any questions about the approval of this petition.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right part with his or her Form I-94, Arrival-Departure Record. This should be turned in with the I-94 when departing the U.S. The left part is for his or her records. A person granted a change of status who leaves the U.S. must normally obtain a visa in the new classification before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file Form I-797, Approval Notice for Alien Petition or Approval of Application or Petition, with this office to request that we notify a consular post of entry or pre-flight inspection office of this approval.

The approval of this visa petition does not in itself create any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

This Form is Not a Visa nor May It Be Used in Place of a Visa.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SVC
CALIFORNIA SERVICE CENTER
P. O. BOX 30111
LAGUNA HILL, CA 92677-0111
Customer Service Telephone: (800) 375-5283
Form I-797A (Rev. 09/07/93)

71377088810
Receipt Number
Immigration and Naturalization Service
I-94
Departure Record

[Additional information printed on back]
Possible New Rules
Possible New H-1B Rules

• High salaries?
• Reduce number?
• Proof of worker shortage?
• Bar labor contractors?
TN Visa – Canadian/Mexican

- Jobs on Schedule 1
- Temporary up to 3 Years + Extensions
- Degree Required for Most Jobs
- Don’t be Fooled by Light Paperwork
- Must Maintain Nonimmigrant Intent
- No Numbers
TN (NAFTA) Professionals (Schedule 1)

- Accountant
- Architect
- Computer Systems Analyst
- Disaster Relief Insurance and Claims Adjuster
- Economist
- Engineer
- Forester
- Graphic Designer
- Hotel Manager
- Industrial Designer
- Interior Designer
- Land Surveyor
- Landscape Architect
- Lawyer (including Notary in the province of Quebec)
- Librarian
- Management Consultant
- Mathematician (including Statistician)
- Range Manager/Range Conservationist
- Research Assistant (post-secondary educational institution)
- Scientific Technician/Technologist
- Social Worker
- Sylviculturist (including forestry specialist)
- Technical Publications Writer
- Urban Planner (including Geographer)
- Vocational Counselor
- Medical/Allied Professionals Dentist
- Dietitian
- Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and U.S.)

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<td>Nutritionist</td>
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<td>Occupational Therapist</td>
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<td>Pharmacist</td>
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<td>Physiotherapist/Physical Therapist</td>
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<td>Scientists</td>
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<td>Agriculturalist/Agronomist</td>
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<td>Animal Breeder</td>
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<td>Animal Scientist</td>
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<td>Geologist</td>
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<td>Geophysicist (incl. Oceanographer in Mexico &amp; U.S.)</td>
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<td>Meteorologist</td>
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<td>Pharmacologist</td>
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<td>Physicist (incl. Oceanographer in Canada)</td>
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<td>Plant Breeder</td>
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<td>Poultry Scientist</td>
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<td>Soil Scientist</td>
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<td>Teacher (University)</td>
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<td>Veterinarian</td>
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Entrepreneur Visas

- **E-1 Treaty Trader**
  - Substantial investment or trade
  - 50% + owned by treaty country citizens - future
  - Business, not passive investment
  - Executive, manager, essential knowledge worker
  - 2 to 5 year visa stamp
  - Admission for 2 years
  - Dependents may get work permits

- **E-2 Treaty Investor**
Treaty Countries for E-1 and E-2 Visas

- Albania
- Argentina
- Armenia
- Australia
- Austria
- Azerbaijan
- Bahrain
- Bangladesh
- Belgium
- Bolivia
- Bosnia & Herzegovina
- Brunei
- Bulgaria
- Cameroon
- Canada
- Chile
- China (Taiwan)
- Colombia
- Congo (Brazzaville)
- Congo (Kinshasa)
- Costa Rica
- Croatia
- Czech Republic
- Denmark
- Ecuador
- Egypt
- Estonia
- Ethiopia
- Finland
- France
- Georgia
- Germany
- Greece
- Grenada
- Honduras
- Iran
- Ireland
- Israel
- Italy

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– Jamaica
– Japan
– Jordan
– Kazakhstan
– Korea (South)
– Kosovo
– Latvia
– Liberia
– Lithuania
– Luxembourg
– Macedonia
– Mexico
– Moldova
– Mongolia
– Montenegro
– Morocco
– Netherlands
– Norway
– Oman
– Pakistan
– Panama
– Paraguay
– Philippines
– Poland
– Romania
– Serbia
– Senegal
– Singapore
– Slovak Republic
– Slovenia
– Spain
– Sri Lanka
– Suriname
– Sweden
– Switzerland
– Thailand
– Togo
– Trinidad & Tobago
– Tunisia
– Turkey
– Ukraine
– United Kingdom
– Yugoslavia

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L-1 Multi-National Organization

- Executive/Manager (7 yrs)
- Specialized Knowledge (5 yrs)
- 1 Year Overseas Work With Multinational Organization
- 1 Year Visa For Start-up Company
- Problem For Small Companies

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WELCOME TO AMERICA!
THIS WAY FOR GREEN CARDS
Family Based Permanent Resident/Green Card

- Marriage to a U.S. Citizen, 3-8 months
- Marriage to Green Card Holder, years
- Petition by Parents, 5+ years
- Petition by Sibling, 15 years
- 2-Step Process
  - Visa petition to prove relationship
  - Green card application via CIS/INS office or American Consul in home country

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Employment Based Procedure
Green Card

Preference 1
- Extraordinary Ability
- Outstanding Researcher
- Multinational Co. Manager

Preference 2
- MS or BS +5

Preference 3
- Professional, Specialist, Other workers

Preference 4
- Religious workers

Preference 5
- Investors

PERM
- Labor Certification
- Prove worker shortage

I-140 Visa Petition
- Prove ability to pay wage
- Edu, work experience

Must have a current priority date for a visa number

Adjustment of status in U.S.
Prove Admissibility

Immigrant visa at American Consul in home country

Green Card
“Been waiting long?”
Possible New Rules

Martin's Crystal Ball

Washington
Possible New Employment Based Green Card Immigration System

Possible new “merit based” green card system

President Trump discussed the Australian point based system in his address to Congress

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EB-5 Investors

- $500,000 (soon to be more) in a Rural or High Unemployment Area
- $1 Million (may be more) in Other Areas
- Create 10 Jobs
- “Regional Center” — Limited Partnerships pool money to build projects i.e. Hotels
  - Downstream employment creation is permitted
EB-5 Investors

- Gifted Funds
- Loans
- Tracing Funds From Legal Source

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EB-5 Case Study

• Ms. C From Indonesia Graduated From College in the U.S. and had an H-1B Visa
  – Received $500,000 gift from father
  – Invested in a regional center
  – EB-5 petition approved a few months later
  – Approval of conditional permanent resident status
Possible New EB-5 Rules

- Investment of $1,350,000
- $1.8 million in other areas
- New Targeted Employment Area (TEA) rules
- Apply now
Visa Lottery

- 55,000 green cards
- Only 1 application
- Do not pay
- Apply at www.state.gov
- Only people from certain countries
January Executive Order ("Muslim Ban")

- 7 Countries
  - Iran, Iraq, Syria, Libya, Somalia, Sudan, and Yemen
- Canceled visas and green cards
- Barred Muslim refugees from Syria (Christians accepted)
- People traveling were denied entry and visas voided

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Court Action

Washington v. Trump

- Court found harm to State of Washington and Minnesota and that Court had jurisdiction
- Court found government not likely to succeed on merits
- Enjoined the travel ban and suspension of refugee program
- Ninth Circuit panel denied Trump’s appeal and refused to reinstate the travel ban
- Court did not address religious discrimination

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Travel Ban 2.0 Countries

- Executive Order 2.0 (March 6, 2017) withdrew the first travel ban
- 6 countries – Iran, Syria, Libya, Somalia, Sudan, Yemen, but not Iraq
Travel Ban 2.0

• Bars new visa issuance for 90 days
• Will not apply to previously issued valid visas
• Will not apply to green card holders
• Effective date March 16, 2017
• Halts all refugees worldwide for 120 days to access security procedures
• Orders studies of other countries’ cooperation with U.S. to provide security information for visa issuance

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If I Travel Overseas – Will I Be Readmitted to the U.S.?

• If you’re a national of one of the 6 countries – Yes, only if you have a valid visa and valid passport, but…
  – If need new visa stamp to return to U.S. - NO
• If green card holder – YES
• Dual nationals – may travel on a non-banned passport
• If from other countries, there may be delays and increased security clearances
  – Especially people from Muslim countries
• Citizens of all countries cannot use ESTA if visited one of 7 countries since December 2012

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Can An Executive Order Cancel My Visa?

• INA § 212(f) gives President authority to ban people
• But court may invalidate the Executive Order as it did with Washington vs. Trump
• New court action, Hawaii v. Trump
  – Challenges executive order as establishing a Christian religion vs. Islam
  – Due process challenge
  – Challenges Administrative Procedure Act compliance
• We will see

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If My Visa is Canceled While in the U.S., Will I Be Deportable?

• Yes, if committed a crime – i.e., DUI
• Consul may be notified by DHS – they search records
• Yes, if drop out of school
• Executive order – we will see

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Long-Term Impact of Travel Ban 2.0

- After 90 days, people from 6 countries may wait for “enhanced vetting” (i.e. security clearances)
- Will Iran be found to be a cooperating country?
- Delay with immigrant visa and green cards
- There may be delays for preliminary green card petitions
  - I-130
  - I-140
  - I-526, etc.
  - Followed by delays for enhanced vetting and visa issuance
- Visa Interview Waiver Program is suspended for all countries – This impacts Indians obtaining renewed H-1Bs
What Are My Legal Rights?

- Those not U.S. citizens should carry proof of valid status (INA § 264(e))
  - Green card
  - EAD
  - I-94
  - Parole stamp in passport
- File address change within 10 days of move – Form AR-11
- Right not to consent to search without a warrant signed by judge
- Right to remain silent – 5th Amendment
- At airport
  - CBP can search cell phone and laptop
  - Citizens can have devices taken but be admitted
  - Noncitizens may be denied entry
- Expedited Removal
  - New executive order
  - If entered within 2 years (used to be 2 weeks), ICE can deport a person without a hearing
More on Legal Rights

- See: http://www.aila.org/advo_media/tools/psas/know-your-rights-handouts-if-ice-visits

Domestic Flights

- There are reports of ICE agents asking people leaving domestic flights for status documents

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Summary

• Plan Ahead for Limited Visa Numbers
• Develop a Green Card Plan
• Get an MS Degree
• Get Good Advice
• Ask Questions


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