Specializing in Visas for Professionals

OPT – H-1B – Green Cards

New Visa Rules

Martin J. Lawler

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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
Type of Employment?

- Paid Employment
  - Part and full time
  - Employer + 1099
  - Self-employment
- Unpaid Employment is Okay
- For Work Related to Degree
- Attend USF’s OPT Seminars
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
- USF 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
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
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
• 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 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.)
• Not enough visas for applicants (In 2017, there were 199,000 applications for the 85,000 visas) (233,000 the year before)
• # Exempt
  – University jobs
  – Changing jobs
  – Chile/Singapore numbers
  – E-3 for Australians
Practical Training to H-1B
The Timing Problem
When All Visas Are Used

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>4/1/2018</td>
<td>H-1B #s available for FY19</td>
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<tr>
<td>6/1/2018</td>
<td>Practical Training Issued</td>
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<tr>
<td>10/1/2018</td>
<td>H-1B #s active</td>
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<tr>
<td>4/1/2019</td>
<td>FY20 H-1B #s Available</td>
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<tr>
<td>6/1/2019</td>
<td>Practical training expires</td>
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<tr>
<td>8/1/2019</td>
<td>Grace period expires</td>
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<tr>
<td>10/1/2019</td>
<td>FY20 H-1B #s active</td>
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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
The above petition and change of status have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) will work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in the position requires a new petition. Since this employment authorization starts from the filing of this petition, advance employment authorization documentation is not required. Please contact the IRM with any questions about tax withholding.

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 reentering. The left part can be used in applying for a visa by presenting 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-485, Application for Adjustment of Status, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.

The approval of this visa petition does not in itself grant permanent 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 30211
LAGUNA NIGUEL, CA 92657-0211
Customer Service Telephone: (800) 375-5283
Form I-97A (Rev. 04/07/93)

Please tear off Form I-94 printed below, and staple to original I-94 if available.

Receipt #: WAC-####
I-94#: ####
Name: [Redacted]
Class: H-1B
Valid from 08/29/2005 until 08/28/2008
Petitioner: [Redacted]

Receipt Number
Immigration and
Naturalization Service
I-94
Departure Record
Petitioner: [Redacted]
Possible New Rules

Martin's Crystal Ball

Washington
Possible New H-1B Rules

• High salaries? – Level 1 salary problems
• 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

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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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– Nutritionist
– Occupational Therapist
– Pharmacist
– Physician (teaching or research only)
– Physiotherapist/Physical Therapist
– Psychologist
– Recreational Therapist
– Registered Nurse
– Scientists
– Agriculturalist/Agronomist
– Animal Breeder
– Animal Scientist
– Apiculturist
– Astronomer
– Biochemist
– Biologist
– Chemist
– Dairy Scientist
– Entomologist
– Epidemiologist
– Geneticist
– Geochemist
– Geologist
– Geophysicist (incl. Oceanographer in Mexico & U.S.)
– Horticulturist
– Meteorologist
– Pharmacologist
– Physicist (incl. Oceanographer in Canada)
– Plant Breeder
– Poultry Scientist
– Soil Scientist
– Zoologist
– Teacher (College)
– Teacher (Seminary)
– Teacher (University)
– Veterinarian

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Entrepreneur Visas

• E-1 Treaty Trader
• E-2 Treaty Investor
  – 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
## Treaty Countries for E-1 and E-2 Visas

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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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Family Based Permanent Resident/Green Card

• Marriage to a U.S. Citizen, 6-12 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
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
Possible New Employment Based Green Card Immigration System

Possible new “merit based” green card system

President Trump discussed the Canadian 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
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

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Possible New EB-5 Rules

• Investment of $925,000?
• $1.5 million in other areas
• New Targeted Employment Area (TEA) rules
• Apply now

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Visa Lottery

- 55,000 green cards
- Only 1 application
- Do not pay to file
- Apply at www.state.gov
- Only people from certain countries
- May be eliminated
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


Listed in Best Lawyers In America