Life after F-1 and J-1 Visas

David Wilks – November 5, 2021
About Hodgson Russ

- Two centuries of experience
- Offices throughout New York State, as well as in Toronto, New Jersey, and Florida
- Eight dedicated immigration attorneys with decades of experience
Navigating Immigration

Agenda

1. Immigration Overview
2. Nonimmigrant (Temporary Options)
3. Permanent Residence
4. Naturalization
Typical Immigration Path

- Student Visa (F/J)
- Professional Visa (H, O, E, L, etc.)
- Immigrant Petition
- Citizenship
- Permanent Residence

Nonimmigrant
Immigrant
Citizen
Everyone has a unique immigration path

Questions to determine your path:
- What is your risk tolerance?
- What are your career goals?
- What are your family needs?

Protect yourself and stay compliant!

Pay attention to changes:
- Travel Ban
- Public Charge
### Temporary Work Visas

<table>
<thead>
<tr>
<th>Letter</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Diplomats</td>
</tr>
<tr>
<td>B</td>
<td>Visitors</td>
</tr>
<tr>
<td>C</td>
<td>Transit</td>
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<tr>
<td>D</td>
<td>Crewman</td>
</tr>
<tr>
<td>E</td>
<td>Treaty Trader/Investor, Australian Specialty Occupation</td>
</tr>
<tr>
<td>F</td>
<td>Student</td>
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<tr>
<td>G</td>
<td>Foreign Government Representative</td>
</tr>
<tr>
<td>H</td>
<td>Temporary Workers (H-1B Specialty Occupation)</td>
</tr>
<tr>
<td>I</td>
<td>Press/Journalist</td>
</tr>
<tr>
<td>J</td>
<td>Exchange Visitor</td>
</tr>
<tr>
<td>K</td>
<td>Fiancé(e)/Spouse/Minor Child</td>
</tr>
<tr>
<td>L</td>
<td>Intracompany Transfer (Executives/Managers/Specialized)</td>
</tr>
<tr>
<td>M</td>
<td>Vocational Student</td>
</tr>
<tr>
<td>N</td>
<td>Special Immigrant’s Parents or Children</td>
</tr>
<tr>
<td>O</td>
<td>Extraordinary Ability</td>
</tr>
<tr>
<td>P</td>
<td>Athletes, Artists, and Entertainers</td>
</tr>
<tr>
<td>Q</td>
<td>Cultural Exchange</td>
</tr>
<tr>
<td>R</td>
<td>Religious Worker</td>
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<tr>
<td>S</td>
<td>Witnesses</td>
</tr>
<tr>
<td>T</td>
<td>Trafficking Victims</td>
</tr>
<tr>
<td>TN</td>
<td>NAFTA Professional</td>
</tr>
<tr>
<td>U</td>
<td>Crime Victims</td>
</tr>
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</table>

### Nonimmigrant Visas

- Temporary Work Visas
### H-1B Requirements

<table>
<thead>
<tr>
<th>Job Requires Specific Bachelor’s Degree (or higher)</th>
<th>Foreign National has the Required Degree (or equivalent)</th>
<th>Employer Pays “Required Wage”</th>
<th>For Licensed Occupations – holds the Required License</th>
</tr>
</thead>
</table>

- 3 year increments
- Extensions up to 6 years (unless permanent residence started by year 5)
- Spouse cannot work until permanent residence started
### Annual H-1B Cap

<table>
<thead>
<tr>
<th>Count</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6,800</td>
<td>(H-1B1) for Singapore and Chile Nationals</td>
</tr>
<tr>
<td>20,000</td>
<td>for Individuals with U.S. Master’s Degree or Ph.D.</td>
</tr>
<tr>
<td>65,000</td>
<td>For Individuals with Bachelor’s Degree</td>
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</tbody>
</table>

**FISCAL YEAR RUNS**

OCTOBER 1 TO SEPTEMBER 30

**PRE-REGISTER IN SPRING (LOTTERY IF TOO MANY SUBMISSIONS)**

**FILE DURING WINDOW PROVIDED ON SELECTION NOTICE**
H-1B Cap Process

1. Employers pre-register their employees in the Spring (March)
   - USCIS charges a $10 fee

2. If oversubscribed, USCIS conducts a lottery based on electronic registrations
   - USCIS (using previous system) received over 200,000 in 2020
   - Registering but not following through is flagged for fraud

3. If selected, employer has 90 days to submit H-1B petition
   - Must have certified LCA
   - Pay required fees: $460 (I-129), $500 (Fraud Detection and Prevention), $750/$1,500 (ACWIA)
   - Can pay Premium Processing Fee ($2,500)
- H-1B Cap petitions are valid October 1.
- OPT may expire prior to October 1.
- Cap Gap bridges this gap in work authorization.

**ONLY FOR CHANGE OF STATUS PETITIONS**

<table>
<thead>
<tr>
<th>OPT STARTS</th>
<th>OPT EXPIRES</th>
<th>CAP GAP EXPIRES</th>
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<tbody>
<tr>
<td>8/2021</td>
<td>FILE H-1B REGISTRATION 3/2022</td>
<td>9/30/2022</td>
</tr>
<tr>
<td></td>
<td>IF SELECTED/FILED 8/2022</td>
<td>H-1B BEGINS 10/1/2022</td>
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</table>
## Cap Exempt H-1B

### Exempt Employers
- Universities and Colleges
- Nonprofits affiliated with Universities and Colleges
- Nonprofit or Government Research Organizations

### Exempt Employees
- Employed at but not by a Cap-Exempt Employer
- Concurrent Employment by Cap-Exempt Employer
- J-1 Waiver Doctor
L-1 Intracompany Transfer

- Transfer manager, executive or specialized knowledge employee from affiliated foreign company.
- 1 year in last 3 years
- L-1A: 3+2+2
- L-1B: 3+2
- Similar Green Card Path
- Spouse Can Work
E-1 Treaty Trader / E-2 Investor / E-3 Specialty Occupation

- Nationals of Treaty Countries can do trade with or invest in the U.S. (E-1/E-2)
- Certain employees of E-1/E-2 beneficiaries can also get E status
- Australians working in specialty occupations can get E-3 status (similar to H-1B)
- 2 year entries
- No maximum extensions
- Spouse can work
Canadians and Mexicans ONLY

3 years of status in particular occupations: FULL LIST

Cannot be self employed

No spouse work authorization

No specific maximum
O-1 Extraordinary Ability

- Foreign nationals with extraordinary ability
  - Major Award OR
  - Meet at least 3 criteria (published articles, awards, major impact, important position, high salary, work as judge, etc.)

- 3 + 1 + 1...
- No maximum extensions
- Spouse cannot work
Path to a Green Card

- Considerations:
  - Live or work anywhere in the U.S.
  - Cannot vote
  - Worldwide taxation
  - Family considerations

- Primary Options:
  - Diversity Lottery
  - Family-based
  - Employment-based
Diversity Lottery

- Nationals of nations that send fewer immigrants to U.S.
- 50,000 each year
- High School diploma or 2 years of professional work experience
- Available in the Fall
Family-Based

- Immediate relatives (minor children, spouses, parents of adults) of U.S. citizens
- (F1) Unmarried sons and daughters of U.S. Citizens
- (F2A) Spouses and minor children of permanent residents
- (F2B) Unmarried sons and daughters (over 21) of permanent residents
- (F3) Married sons and daughters of U.S. citizens
- (F4) Brothers and sisters of adult U.S. citizens
<table>
<thead>
<tr>
<th>Family-Sponsored</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
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<tbody>
<tr>
<td>F1</td>
<td>01DEC14</td>
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<td>01DEC14</td>
<td>15JAN99</td>
<td>01MAR12</td>
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<td>F2A</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
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<tr>
<td>F2B</td>
<td>22SEP15</td>
<td>22SEP15</td>
<td>22SEP15</td>
<td>15MAR00</td>
<td>22OCT11</td>
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<td>F3</td>
<td>22NOV08</td>
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<td>15MAY97</td>
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<td>F4</td>
<td>22MAR07</td>
<td>22MAR07</td>
<td>15SEP05</td>
<td>08FEB99</td>
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Employment-Based

- (EB-1) Extraordinary Ability, Outstanding Researcher, Multinational Manager
- (EB-2) National Interest Waiver, Labor Certification (advanced degree or exceptional ability)
- (EB-3) Labor Certification (all others)
- (EB-4) Special Immigrants
- (EB-5) Investors
Labor Certification

- Department of Labor sets wage
- Employer recruits for position
- If no U.S. worker available → file with Department of Labor
- If certified → file with USCIS
- Adjustment/Consular processing when priority date “current”
# Employment-Based Visa Bulletin

<table>
<thead>
<tr>
<th>Employment-based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>EL SALVADOR GUATEMALA HONDURAS</th>
<th>INDIA</th>
<th>MEXICO</th>
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<td>2nd</td>
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<td>01JUL18</td>
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<td>01SEP11</td>
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<td>3rd</td>
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<td>01JAN14</td>
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<td>01JAN14</td>
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<td>4th</td>
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<td>C</td>
<td>15MAR19</td>
<td>C</td>
<td>01MAR20</td>
<td>C</td>
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<td>Certain Religious Workers</td>
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<td>5th Non-Regional Center (C5 and T5)</td>
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<td>22NOV15</td>
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<tr>
<td>5th Regional Center (I5 and R5)</td>
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EB-1 and NIW

- **EB-1A – Extraordinary Ability**
  - Similar to O-1
  - Does not require employer

- **EB-1B – Outstanding Researcher**
  - Similar to O-1 (only meet 2 criteria)
  - Tenure Track or permanent position

- **EB-1C – Multinational Manager**
  - Similar to L-1A
  - Managers and Executives Only

- **National Interest Waiver**
  - **Standard:**
    - Substantial merit / National importance
    - Well positioned to advance endeavor
    - Beneficial to U.S. to waive labor certification requirement
    - Does not require employer
  - Physician – work in underserved area
Becoming a Citizen

- 3 or 5 years of permanent residence
- Physical presence
- Continuous residence
- Good moral character
- English and Civics tests

Benefits:
- Can vote
- U.S. Passport
- No risk of deportation
- Can run for office/serve on jury
Take Aways

1. Plan ahead
2. Set your priorities
3. Protect yourself
Questions?

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