#### Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

# Life after F-1 Status: Options for Visas and Permanent Residence

Glenn Schieck & Susanne Heubel

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# Harter Secrest & Emery LLP Immigration Practice Group





# F-1 Optional Practical Training (OPT)

- 1 to 3 years of post-graduate work authorization, "related to" field of study (major)
- Apply 90 days before program end date
- Minimum 20 hours/week
- One grant of OPT per higher degree level
- Limit of 90-150 days of unemployment
- Self-employment only during initial OPT period, not permitted during STEM Extension
- STEM OPT must be paid work



# Job Interview Sponsorship Questions

- Authorized interview questions:
  - Are you legally authorized to work in the United States?
  - Will you now or in the future require sponsorship for employment visa status?
- How to answer these questions?
  - Legally speaking you don't 'need' sponsorship
  - Point out how OPT requires no employer involvement and STEM OPT just E-Verify + training plan (no cost)
  - Think about relationship maximize H-1B lottery chances



#### What Comes Next?

- Many visa options available after F-1 status expires
- Available options depend on Job / Nationality / Qualifications / Employer etc.
- Possible to jump directly to permanent residence?
- Watch for limitations on travel and immigrant intent during permanent residence process
- Plan Ahead: Can take months to years, so do not wait until end of OPT period to begin planning



# Nonimmigrant Menu

	Α	Ambassador, public minister or diplomatic or	•	L-1A	Intracompany transferee – manager or
		consular office			executive
	B-1	Visitor for business		L-1B	Intracompany transferee – specialized
	B-2	Visitor for pleasure			knowledge
	C D	Alien in transit		L-2	Spouse or child of L-1
	D	Crewman	_	M	Vocational or nonacademic students
	E-1	Treaty trader	-		
	E-2	Treaty investor	•	0-1	Aliens of extraordinary ability
	E-3	Specialty Occupation (Professional) -	•	0-2	Aliens providing essential support to O-1
		Australia			artist or athlete
	F-1	Student	•	O-3	Spouse or child of O
	F-2	Spouse or child of student	•	P-1	Athletes and entertainers
	G	Representative to international	•	P-2	Artist or entertainer, individual or part of
		organization			group
	H-1B	Specialty Occupation (Professional)		P-3	Performer, teacher or coach of culturally
	H-1B1	Specialty Occupation (Professional) -			unique program
		Singapore or Chile		P-4	Spouse or child of P
	H-2A	Temporary/seasonal worker	-		International Cultural Evolunga Brogram
	H-3	Trainee	•	Q	International Cultural Exchange Program
	H-4	Spouse or child of H	•	R	Religious Workers
	i''	Foreign media	•	S	Critical Witness
	Ì-1	Exchange visitor	•	TN	Treaty NAFTA
	J-2	Spouse or child of J-1	•	U	Victim of abuse who will be a witness
	K-1	Fiancé(e) of U.S. Citizen	•	V-1	Spouse of legal permanent resident
	K-2	Derivative unmarried child of K-1		V-2	Unmarried child of V-1 (petitioned for)
	K-3	Spouse of U.S. Citizen		V-3	Derivative unmarried child of V-1 or V-2
	K-4	Unmarried child of K-3			Estimate annialities sind of 1 1 of 1 E
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#### H-1B Visa Overview

#### H-1B Visa

- Covers 'Specialty Occupations' close fit between job and degree program – bachelor's level
- Job, employer, location specific
- Normally six-year limit. Possible to break through based on PR sponsorship – negotiate with employer
- Limited options for spouse employment if principal far enough along in PR sponsorship
- Not made for small businesses/start-ups via (quasi) selfemployment



# Major Planning Issue: H-1B Visa Lottery

- Limited Number of H-1B Visas Available
  - 65,000 base plus 20,000 for U.S. master's degree or higher
- Annual Lottery
  - Employer files \$10 ticket, only files petition if selected
  - Over 780,000 entries in the 2023 lottery via multiple petitioners
  - ~11% selection rate
  - 2024 program change allows each applicant to be counted only once, regardless of how many petitioners file lottery registration for that person ("beneficiary-centric")
- April Selection for October Start Date
  - Cap Gap: If OPT expires after filing but before October 1, cap gap extends work authorization automatically until H-1B start date (idea to extend to April 1 of following year not implemented by USCIS)



#### H-1B Alternatives

- Lottery Exempt Employers
  - Colleges, universities and non-profit affiliates (e.g., hospitals)
  - Non-profit and government research organizations
  - Employment "at" a qualifying institution (institution of higher education or related or affiliated non-profit, OR non-profit research or governmental research organization)
  - Concurrent cap-subject/cap-exempt employment
- H-1B Lookalike Categories (TN, H-1B1, E-3)
  - Canada, Mexico, Singapore, Chile, Australia



#### E-1/E-2: Start a Successful U.S. Business

- Covers Traders (E-1), and Investors (E-2)
- Only available for certain countries, not India/China
  - (Google "E-2 treaty countries")
- E-2 Criteria:
  - Nationality (at least 50% ownership)
  - Substantial Investment (relative to business)
  - Real and Operating Business (or will be = ready to open the doors and start service)
  - More than Marginal (U.S. jobs creation; more income than just to support the applicant and family)
- Spouse can work for any U.S. employer; no EAD needed



#### L-1: Work One Year Outside U.S.

- Multinational Company: Work for one year outside U.S., can transfer back
- Can be existing multinational, or new company (no citizenship restriction like the E-2)
- Both roles must be executive, managerial or involve specialized knowledge
- For executives/managers, easier path to permanent residence



# J-1 Exchange Visitor

- Lots of categories: Consider Research Scholar, Professor, Trainee, etc.
- Can be direct with a school, or facilitated through a third party
- Limited Time (Trainee 18 months, Professor/Research Scholar 5 years)
- Careful of Two-Year Home Residence Rule and Consider Waiver Options



## O-1: Extraordinary Ability

- Challenging standard, slightly easier for artists
- Categories of Evidence:
  - Publications (Good Journals/Citation Rate)
  - Honors and Awards; Grants
  - Press/Trade Publication Attention
  - Judging the Work of Others
  - High Salary
  - Critical Role with Distinguished Organization
  - Original Contributions to the Field
  - Invited Membership in Prestigious Associations



#### International Entrepreneur Rule

- Requires at least 10% equity, and at least \$250,000 from qualified investor (e.g., venture capital), or \$100,000 government grant
- Central/active role in start up w/ significant public benefit
- 30-month grant with possible 30-month renewal
- Renewal requires demonstration of additional investment, job growth, or revenue growth
- Parole status after approval + boarding foil/travel doc



# Jumping Directly to Permanent Residence

- It is possible start as early as possible. Might have some lapse in work authorization and travel restrictions
- Country of Birth Restrictions (India/China)
  - Can rely on spouse's country of birth
- Two main pathways:
  - National Interest Waiver (NIW)
  - Labor Certification
- Limited options for India/China (EB-1 Extraordinary Ability / Multinational Manager)



#### National Interest Waiver (NIW)

- Show your work is in National Interest and that you are well-positioned to carry out the work
- No job offer or employer sponsorship required
- Easier with Master's Degree
- New: Expedite Option (45-day decision)
- Policy favoring STEM Master's degrees supporting "Critical and Emerging Technologies", U.S. Security, U.S. Competitive Interests



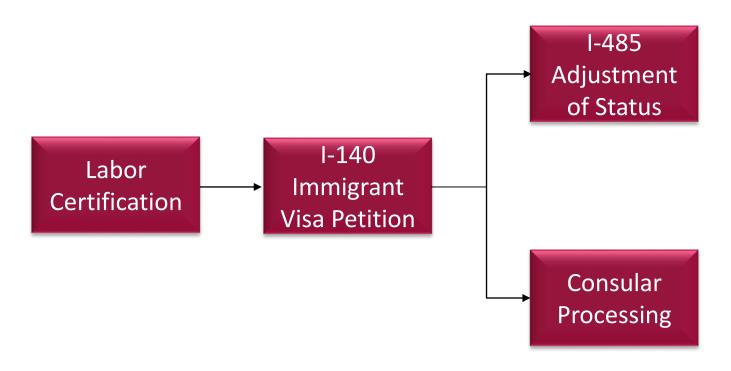
#### Labor Certification Process

- Very likely to succeed, but requires employer sponsorship and enough time
- Adds 18 to 20 months to the process at the outset
- Job, employer, location specific
- Labor market test: Newspaper ads, radio ads, etc. to confirm there is not a minimally qualified U.S. worker to fill the role



#### Timeline for Permanent Residence Process

- Normally a 3-Step Process
- EB-1 and EB-2 NIW Skip Step 1
- Step 3 (I-485) includes application for work authorization





#### Priority Dates

- Limited number of employment green cards each year (in total and 7% limit based on country of birth)
- Priority date is place in line for green card set by I-140 or labor certification filing date
- Bakery/deli number system wait for your number to be called
- How to read the monthly Visa Bulletin
  - "C" means current file immediately
  - Otherwise, wait until priority date is earlier than Visa Bulletin date
- Two Charts: Sometimes you can "pre-file"



# Priority Dates (March 2024) Visa Bulletin Filing Dates Chart

Employment- based	All Chargeability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIPPINES
1st	С	01JAN23	01JAN21	С	С
2nd	15FEB23	01JUN20	15MAY12	15FEB23	15FEB23
3rd	01FEB23	01JUL21	01AUG12	01FEB23	01JAN23
Other Workers	15DEC20	01JUN17	01AUG12	15DEC20	15MAY20
4th	01JAN20	01JAN20	01JAN20	01JAN20	01JAN20
Certain Religious Workers	01JAN20	01JAN20	01JAN20	01JAN20	01JAN20
5th Unreserved (including C5, T5, I5, R5)	С	01JAN17	01APR22	С	С
5th Set Aside: (Rural - 20%)	С	С	С	С	С
5th Set Aside: (High Unemployment - 10%)	С	С	С	С	С
5th Set Aside: (Infrastructure - 2%)	С	С	С	С	С



## Permanent Residence Strategy on OPT

- File NIW or Labor Cert ASAP set place in line
- File I-485 as soon as you are able work authorization after 2-6 months in recent cases
- Try to get work authorization before OPT expires, possible that you have some lapse in work authorization, or need to leave U.S.
- Reentry in F-1 status right before I-485 filing can lead to immigrant intent issue
- If COB is India or China, NIW still worth it sets place in line, adds flexibility



# Diversity Lottery

- Free green cards!
- Fall applications, Spring selection
- Only for countries with historically low rates of immigration to U.S.
- If F-1, file carefully
- Must complete PR process within fiscal year



#### Conclusion

- Don't wait to begin planning for next steps
- Don't rely on H-1B lottery (but try every year)
- If you might qualify for NIW, consider filing currently good policy, sets place in line
- Be open with employers about sponsorship needs and what support they will or will not provide
- You can pay for certain green card steps on your own
- We are here to help!



# Questions?

gschieck@hselaw.com sheubel@hselaw.com

