Program Overview

1) Overview of U.S. Immigration
2) Temporary Visas after Graduation
3) Long-term Residence
4) Planning Ahead
WHO WE ARE

Since 1986, Miller Mayer, LLP has served corporate and individual clients from Ithaca, New York.

In 2016, we established a legal office in Asia, a testament to our expanding client base and reputation.

Recognized for our knowledgeable and responsive counsel, Miller Mayer is highly regarded for immigration services to high-skilled workers and investors, and the American companies who employ them.
Miller Mayer attorneys have over 25 years of experience in guiding U.S. businesses, individual clients, and families through the immigration process. We help employees and employers in startup companies, hospitals, universities, and financial and tech industries in our region and across the United States. Simply put, we help our clients succeed.
Overview of U.S. Immigration
U.S. Immigration Overview

**Nonimmigrants (NIV)**
- Employment limited
- Duration of stay limited
- Starting place for most students and graduates
- Examples: H-1B, TN, O-1
- Can hold NIV for years

**Permanent Residents (IV)**
- “Green Card Holder”
- Can live or work anywhere in the U.S.
- Cannot vote in U.S. elections or serve on a jury
- Can be deported

**Citizens**
- Can work or live anywhere
- Can vote in U.S. elections and serve on juries
- No fear of deportation

**Visa Backlogs**
- Employment Based (I-140, I-526, I-360)
- Family Based (I-130)
- Diversity Lottery

**J-1 Two Year Foreign Residence Requirement**

**Diversity Lottery**

**DACA, TPS, Undocumented not on Continuum**
Typical Immigration Timeline

**Student Employee Pathway**
- U.S. Graduated F-1/J-1 Students' work permit (OPT)
- Employer-sponsored Work Visa (H-1B or other)
- Green Card, LPR
- U.S. Citizenship (Naturalization)

**International Employee Pathway**
- Employer-sponsored Work Visa (H-1B or other)
- Green Card, LPR
- U.S. Citizenship (Naturalization)

**Family or Asylee Pathway**
- Green Card, LPR
- U.S. Citizenship (Naturalization)
Questions to Keep in Mind

• Can I work?
  Not every status lets you work.
  Doing something for free or as a volunteer could still be work.

• Who can I work for and what am I allowed to do?
  Many visas are employer specific.
  Some are job or even location specific.
  Some visas or green card options don’t allow you to work for a company that you own and control.

• How can I be compensated?
  Some visas require minimum pay.
  Some visas or green card options won’t be available if you are compensated via stock or an ownership draw.

• Does my status limit my family members?
  Not every visa allows your spouse to work.
  Some family members can join you in the U.S., others cannot.
Temporary Visas after Graduation
## Typical Work Visas for Graduates

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Diplomats</td>
</tr>
<tr>
<td>B</td>
<td>Visitors (business/pleasure)</td>
</tr>
<tr>
<td>C</td>
<td>Transit</td>
</tr>
<tr>
<td>D</td>
<td>Crewman</td>
</tr>
<tr>
<td>E</td>
<td><strong>Treaty trader/investors/Australian professionals</strong></td>
</tr>
<tr>
<td>F</td>
<td>Academic students</td>
</tr>
<tr>
<td>G</td>
<td>International organizations</td>
</tr>
<tr>
<td>H</td>
<td><strong>Temporary workers</strong></td>
</tr>
<tr>
<td>I</td>
<td>Journalists/Media</td>
</tr>
<tr>
<td>J</td>
<td>Exchange visitors</td>
</tr>
<tr>
<td>K</td>
<td>Fiancés/fiancées of U.S. citizens</td>
</tr>
<tr>
<td>L</td>
<td><strong>Intra-company transferees</strong></td>
</tr>
<tr>
<td>M</td>
<td>Vocational students</td>
</tr>
<tr>
<td>N</td>
<td>Parents or children of special immigrants</td>
</tr>
<tr>
<td>O</td>
<td><strong>Persons of extraordinary ability</strong></td>
</tr>
<tr>
<td>P</td>
<td>Athletes or entertainers</td>
</tr>
<tr>
<td>Q</td>
<td>International cultural exchange visitors</td>
</tr>
<tr>
<td>R</td>
<td>Religious workers</td>
</tr>
<tr>
<td>S</td>
<td>Federal witnesses</td>
</tr>
<tr>
<td>T</td>
<td>Trafficking of persons victims</td>
</tr>
<tr>
<td>TN</td>
<td><strong>NAFTA professionals (Mexico and Canada)</strong></td>
</tr>
<tr>
<td>U</td>
<td>Certain crime victims</td>
</tr>
<tr>
<td>V</td>
<td>Certain spouses/children waiting for green cards</td>
</tr>
</tbody>
</table>
H-1B Professionals

- Employer sponsored for up to 6 years in a “specialty occupation.”

- Requirements:
  1. Job must require a bachelor’s degree or higher in specific field – USCIS now imposing a more exacting standard.
  2. Beneficiary must have at least the relevant Bachelor’s degree or equivalent.
  3. Employer must pay the required wage.
  4. License (if required for occupation).
Advantages of H-1B

1. Duration:
   • 6 year maximum.
   • 1 year stay outside U.S.refreshes 6 years.
   • Additional H extensions if green card started by end of 5th year.

2. Time to work toward green card.

3. No advertising or test of the U.S. labor market.

4. No delay when you change employers.

5. Some spouse work authorization by regulations (may be withdrawn in the future).
Disadvantages of H-1B

1. Each employer must file a separate petition.
2. Self-employment limited (be careful of stock compensation).
3. Not flexible like F-1 OPT.
4. Paperwork, cost and delay.
   - Fees: approx. $5,000 per filing, based on:
     - $960 – cap-exempt fee
     - $1,710 to $2,460 – cap-subject fee
     - $1,410 – expedite fee
     - $3,500 – approx. legal fee
5. RFE Trends (45% increase in 2017).
6. Primary disadvantage is inadequate supply – H-1B lottery.
What is the H-1B Cap?

Non-university employers are subject to H-1B cap (annual quota)

- 20,000 for U.S. master’s degree or higher.
  - Must have degree by April 1 (time of H-1B filing).
  - Accredited U.S. institutions, excluding for-profit schools.
  - All advanced degrees included.
  - Master’s cases considered under both caps (approx. 60% success rate), with the master’s cap lottery selected second.
- 6,800 for individuals from Chile and Singapore.
- 65,000 for all others.

Exempt Employers*

- Colleges/universities.
- University-affiliated nonprofits (i.e., university teaching hospitals).
- Non-profit research institutions (rare).

*Limits on changing to cap-subject jobs.

Exempt Individuals

- Prior cap H-1B holders.
- Employed “at” cap-exempt worksite.
- Concurrently employed at cap-exempt worksite.
- J-1 shortage area waived doctors.
H-1B Quota, April Lottery & Cap Gap

- Cap-subject H-1B filings exceed supply.
- All cap-H-1B employers file as early as possible (first week in April).
- Annual cap-H-1B quota filled in short time.

- Cap Gap:
  - Extends work authorization and ability to stay until October 1 if EAD expires between April 1 and October 1.
  - Extends ability to stay until October 1 if grace period ends between April 1 and October 1.
  - Current Issue: Many cases not decided by October 1, leaving beneficiaries without work authorization

- Recent lottery success rate approx. **35% for bachelor’s degree holders**
  - FY 07 - May 26, 2006 (8 weeks)
  - FY 08 - Apr 3, 2007 (1 day)
  - FY 09 - Apr 7, 2008 (1 week, lottery)
  - FY 10 - Dec 21, 2009 (9 months)
  - FY 11 - Jan 26, 2011 (10 months)
  - FY 12 - Nov 22, 2011 (7.6 months)
  - FY 13 - Jun 11, 2012 (2.4 months)
  - FY 14 – FY 19 (1 week, lottery)
H-1B Procedure

**DOL**
File LCA
Employer files with Department of Labor

**USCIS**
File H-1B
Employer files petition with Citizen and Immigration Services

**DOS**
Visa application
Employee files for a visa stamp in passport during non-US travel

This process may change in 2020 with the introduction of preregistration
# H-1B Questions

<table>
<thead>
<tr>
<th>H-1B</th>
<th></th>
</tr>
</thead>
</table>
| **Can I work?** | • Yes.  
• 3 year intervals, up to 6 years (longer if progress made toward permanent residence). |
| **Who can I work for and what am I allowed to do?** | • Can work for the employer listed on your I-797.  
• Can perform the duties in the H-1B petition. (Some ability to promote within same occupation).  
• Must work at the location listed in the H-1B petition.  
• Must have employer-employee relationship – making self-employment challenging. (Independent board?)  
• Can change jobs fairly easily through portability (remember cap-subject/cap-exempt distinction). |
| **How can I be compensated?** | Must be paid prevailing wage. |
| **Can my spouse work?** | Not until progress made toward permanent residence. |
# Other Visa Options: L-1 and E-3

<table>
<thead>
<tr>
<th>L-1: Multinational Transferee</th>
<th>E-3: Australian Professionals</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Can I work?</strong></td>
<td><strong>Can I work?</strong></td>
</tr>
<tr>
<td>• As authorized by I-94 and I-797.</td>
<td>• Yes – as authorized by I-94 and visa.</td>
</tr>
<tr>
<td>• Up to 5 years for Specialized Knowledge employees (3, 2).</td>
<td>• No limit on extensions (2 year intervals).</td>
</tr>
<tr>
<td>• Up to 7 years for Managers and Executives (3, 2, 2).</td>
<td>• AUSTRALIANS ONLY.</td>
</tr>
<tr>
<td><strong>Who can I work for and what am I allowed to do?</strong></td>
<td><strong>Who can I work for and what am I allowed to do?</strong></td>
</tr>
<tr>
<td>• L-1B can work as a specialized knowledge employee for company on I-797.</td>
<td>• Similar to H-1B.</td>
</tr>
<tr>
<td>• L-1A can work as a manager or executive for company on I-797.</td>
<td>• Must work for employer on LCA performing duties listed in initial submission to consulate.</td>
</tr>
<tr>
<td>• Must have previously worked (1 year within the last 3) for an affiliate abroad as manager, executive or specialized knowledge employee.</td>
<td></td>
</tr>
<tr>
<td>• Can be self-employed.</td>
<td></td>
</tr>
<tr>
<td><strong>How can I be compensated?</strong></td>
<td><strong>How can I be compensated?</strong></td>
</tr>
<tr>
<td>Fairly flexible.</td>
<td>Must be paid prevailing wage.</td>
</tr>
<tr>
<td><strong>Can my spouse work?</strong></td>
<td><strong>Can my spouse work?</strong></td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Other Visa Options: TN and O-1

<table>
<thead>
<tr>
<th>TN: NAFTA Professional</th>
<th>O-1: Extraordinary Ability</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Can I work?</strong></td>
<td><strong>Yes – as authorized by I-94 and I-797.</strong></td>
</tr>
<tr>
<td>• As authorized by I-94.</td>
<td>• Initial term of 3 years with no specific limit on extensions.</td>
</tr>
<tr>
<td>• 3 year intervals (no limit for most occupations).</td>
<td></td>
</tr>
<tr>
<td>• MEXICANS AND CANADIANS ONLY.</td>
<td></td>
</tr>
<tr>
<td><strong>Who can I work for and what am I allowed to do?</strong></td>
<td><strong>Must work in a field in which you have extraordinary ability for either an employer or via an agent (great option for academics).</strong></td>
</tr>
<tr>
<td>• Can work for the employer specified on your application.</td>
<td>• To be authorized for this visa, you must be able to show receipt of a nationally or internationally recognized prize, or three lesser achievements (e.g. prestigious memberships, major media coverage, judging the work of others, original contributions to the field, scholarly publications, high salary, critical role in a prestigious organization).</td>
</tr>
<tr>
<td>• Employer must be in a designated occupation (and you must have the qualifications for that occupation).</td>
<td>• Ownership of employer possible – must be handled carefully.</td>
</tr>
<tr>
<td>• Self-employment prohibited.</td>
<td></td>
</tr>
<tr>
<td><strong>How can I be compensated?</strong></td>
<td><strong>Flexible</strong></td>
</tr>
<tr>
<td>Flexible</td>
<td>Flexible</td>
</tr>
<tr>
<td><strong>Can my spouse work?</strong></td>
<td><strong>No</strong></td>
</tr>
<tr>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
### Other Visa Options: E-1 and E-2

<table>
<thead>
<tr>
<th>E-1: Treaty Trader</th>
<th>E-2 Treaty Investor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Can I work?</strong></td>
<td>• As authorized by I-94 and visa stamp (for reentry).</td>
</tr>
<tr>
<td>• Must be from a treaty country.</td>
<td>• As authorized by I-94 and visa stamp (for reentry).</td>
</tr>
<tr>
<td>• 2 year increments.</td>
<td>• Must be from a treaty country.</td>
</tr>
</tbody>
</table>

| **Who can I work for and what am I allowed to do?** | • Can start or buy a company engaged in substantial trade between U.S. and your home country. |
| • Can work for a company engaged in substantial trade between U.S. and your home country if majority owned by nationals of your home country (not U.S. citizens or LPRs), and you are coming to work as an executive, supervisor, or special skill employee. | • Can start or buy a company making a substantial investment in the United States. |
| • Can work for a company owned by nationals of your home country (not U.S. citizens or LPRs), where those nationals have made a substantial investment in the U.S. company, and you are coming to work as an executive, supervisor, or special skill employee. |

| **How can I be compensated?** | Flexible (but some consulates want to see high salaries). |
| **Can my spouse work?** | Yes |

| **Can my spouse work?** | Yes |
Travel and Visa Issuance Issues

• Travel ban and restrictions for individuals from Syria, North Korea, Iran, Libya, Yemen, Somalia and Venezuela.

• Visa issuance delays for individuals from any country – “administrative processing.”

• Consult with international students’ office prior to any travel in OPT or STEM OPT – must have job or job offer, current I-20, EAD.

• Once H-1B petition has been filed, do not travel until after H-1B petition is approved and effective (i.e., at least October 1). Consider options if H-1B not approved by October 1.
Long-term Residence
Transitioning to Permanent Residence

- **Permanent Residence Paths:**

  - **Family-Based:** Must be related to a U.S. citizen or permanent resident. Your employer or stock ownership will not impact your petition.

  - **Diversity Lottery:** Must come from a country that sends fewer immigrants (not China, India, Mexico, Canada). Your employer or stock ownership will not impact your petition.

  - **Employment-Based:** Your employer sponsors you. Your position, credentials, and stock ownership may determine your eligibility or wait time.
## Family-based Green Card Categories (FB)

<table>
<thead>
<tr>
<th></th>
<th>Spouse, parents, children under 21</th>
<th>Sons and daughters aged 21+</th>
<th>Married sons and daughters</th>
<th>Siblings</th>
<th>Nationality = China, Mexico, Philippines, India</th>
</tr>
</thead>
<tbody>
<tr>
<td>US citizen sponsor aged 21+</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No difference</td>
</tr>
<tr>
<td>Approx. wait time</td>
<td>None</td>
<td>6 years</td>
<td>12 years</td>
<td>13 years</td>
<td>Longer</td>
</tr>
<tr>
<td>LPR/CPR sponsor aged 21+</td>
<td>Yes – spouse, child</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No – parents</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approx. wait time</td>
<td>1.5 years</td>
<td>7 years</td>
<td>N/A</td>
<td>N/A</td>
<td>Longer</td>
</tr>
</tbody>
</table>
## Visa Bulletin (FB: 10/2019)

<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>
</tr>
</thead>
<tbody>
<tr>
<td>F1</td>
<td>15JAN13</td>
<td>15JAN13</td>
<td>15JAN13</td>
<td>08AUG97</td>
<td>01JUL08</td>
</tr>
<tr>
<td>F2A</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>F2B</td>
<td>01JUN14</td>
<td>01JUN14</td>
<td>01JUN14</td>
<td>01AUG98</td>
<td>01SEP08</td>
</tr>
<tr>
<td>F3</td>
<td>15SEP07</td>
<td>15SEP07</td>
<td>15SEP07</td>
<td>22FEB96</td>
<td>01APR98</td>
</tr>
<tr>
<td>F4</td>
<td>22NOV06</td>
<td>22NOV06</td>
<td>01OCT04</td>
<td>15DEC97</td>
<td>08JUL98</td>
</tr>
</tbody>
</table>
Diversity Lottery

Program allows 50,000 randomly selected diversity visas (DVs) annually, must meet strict eligibility requirements, from countries with low immigration rates.

Eligibility requirements:
• Receive a visa based on education or work;
• Must have a high school education; or
• Two years of work experience within the past five years.

Current program:
https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry.html
Employment-based Green Card Categories (EB)

**Priority Workers (EB-1)**
40,000 visas per year

- Extraordinary ability (can self-sponsor).
- Outstanding professors and researchers (tenure-track position).
- Business executives and managers (no labor certification required).

**Advanced Degree Holders (EB-2)**
40,000 visas per year

- Professionals with advanced degrees or exceptional ability in sciences, arts and business (labor certification required).
- National Interest Waiver of labor certification requirement (can self-sponsor).

**Skilled & Unskilled Workers (EB-3)**
40,000 visas per year

- Skilled workers in short supply.
- Professionals with bachelor’s degree.
- Unskilled workers in short supply (all require labor certification).

**Special Immigrants (EB-4)**
10,000 visas per year

- Religious workers; certain US govt. employees; Panama Canal employees; plus certain dependent juveniles.

**Investors (EB-5)**
10,000 visas per year

- Must invest between $500,000 and $1 million.
- Must create at least 10 full-time jobs in 2 years.
### Visa Bulletin (EB: 10/2019)

<table>
<thead>
<tr>
<th>Employment-based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>EL SALVADOR</th>
<th>GUATEMALA HONDURAS</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
<th>VIETNAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>22APR18</td>
<td>01NOV16</td>
<td>22APR18</td>
<td></td>
<td>01JAN15</td>
<td>22APR18</td>
<td>22APR18</td>
<td>22APR18</td>
</tr>
<tr>
<td>2nd</td>
<td>C</td>
<td>01JAN15</td>
<td>C</td>
<td>12MAY09</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>3rd</td>
<td>C</td>
<td>01NOV15</td>
<td>C</td>
<td>01JAN09</td>
<td>C</td>
<td>15OCT17</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Other Workers</td>
<td>C</td>
<td>01JAN08</td>
<td>C</td>
<td>01JAN09</td>
<td>C</td>
<td>15OCT17</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>4th</td>
<td>C</td>
<td>C</td>
<td>01JUL16</td>
<td>C</td>
<td>01MAY17</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Certain Religious Workers</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
</tr>
<tr>
<td>5th Non-Regional Center (C5 and T5)</td>
<td>C</td>
<td>22OCT14</td>
<td>C</td>
<td>22NOV17</td>
<td>C</td>
<td>C</td>
<td>15OCT16</td>
<td></td>
</tr>
<tr>
<td>5th Regional Center (I5 and R5)</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
</tr>
</tbody>
</table>
Employment-based with PERM

• **What**: A certification from the Department of Labor that a particular position at a particular company is “open” for a foreign national because no qualified U.S. workers are available to fill the position.

• **How**: Employer completes 5 kinds of advertising/recruitment to show no qualified U.S. workers applied for the position.

• **When**: Date of PERM filing = initial green card application date, triggering start of quota waiting period, if any.

• Limits on self-employment or even company ownership – also problematic if a family member owns the employer.

• Streamlined process for professors (“special handling”).
PERM-based Green Card Process

I-140 Immigrant Visa Petition (USCIS)

PERM (DOL)

Adjustment of Status (USCIS)

“Special Handling PERM” for professors (DOL)

Consular Process Overseas (DOS)
EB-1 priority workers:

1. EB-1-A Extraordinary ability aliens
   i. Self-sponsor
   ii. Similar to O-1A NIV

2. EB-1-B Outstanding professors and researchers

3. EB-1-C Multinational executives and managers
   i. Similar to L-1A NIV

⚠ NOW BACKLOGGED

EB-2 “national interest” workers:

i. Self-sponsored
ii. Advanced degree or exceptional ability
iii. Doing work in the national interest

⚠ BACKLOGGED IF BORN IN CHINA AND INDIA
EB-5 Investors

• Self-sponsored.

• Must invest in U.S. companies that benefit U.S. economy and create or save at least 10 full-time U.S. worker jobs.

• $1 million normally required to invest; $500,000 in rural or poor areas. Effective November 21, amounts go up to $1.8 million and $900,000 respectively.

• Receive conditional residence for two years; then file again to show job creation and receive permanent green card.

• Quota backlogs for Chinese, Vietnamese, and Indian nationals.
Planning Ahead
Government Resources

- Links to embassies and consulates worldwide.
- Application procedures and consulate closings.
- Warden messages and travel advisories.
- Public announcements.
- Derivative citizenship and renunciation.
- Visa Bulletin regarding priority dates.
- [www.state.gov](http://www.state.gov)

U.S. Citizenship and Immigration Services

- Statutes and regulations.
- Forms.
- Procedures and instructions.
- Contact information.
- Processing times.
- [www.uscis.gov](http://www.uscis.gov)
Additional Resources

Everyday Immigration Podcast

https://frostedlens.com/everyday-immigration

Miller Mayer FREE Webinars

https://millermayer.com/webinars/
Social Media Scrutiny

- Google
- LinkedIn
- Facebook
- Online articles

Make sure your web presence only has authorized work!
The Road Ahead

• Realistic assessment is important.
• Planning ahead is key.
• Get to know employers soon.
• Meet with immigration counsel before starting a company.
• Think of alternative and creative employment options.
Questions?