Navigating Immigration
David Wilks – February 26, 2020
ABOUT HODGSON RUSS

- Two Centuries of Experience
- Offices throughout New York State, as well as in Toronto and Florida
- Seven 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

Nonimmigrant
Immigrant
Citizen

Citizenship → Permanent Residence

Immigration Overview

4
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

| A | Diplomats |
| B | Visitors |
| C | Transit |
| D | Crewman |
| E | Treaty Trader/Investor, Australian Specialty Occupation |
| F | Student |
| G | Foreign Government Representative |
| H | Temporary Workers (H-1B Specialty Occupation) |
| I | Press/Journalist |
| J | Exchange Visitor |
| K | Fiancé(e)/Spouse/Minor Child |
| L | Intracompany Transfer (Executives/Managers/Specialized) |
| M | Vocational Student |
| N | Special Immigrant’s Parents or Children |
| O | Extraordinary Ability |
| P | Athletes, Artists, and Entertainers |
| Q | Cultural Exchange |
| R | Religious Worker |
| S | Witnesses |
| T | Trafficking Victims |
| TN | NAFTA Professional |
| U | Crime Victims |
| U | Crime Victims |
### 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
<table>
<thead>
<tr>
<th>ANNUAL H-1B CAP</th>
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<tbody>
<tr>
<td><strong>6,800</strong> (H-1B1) for Singapore and Chile Nationals</td>
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<tr>
<td><strong>20,000</strong> for Individuals with U.S. Master’s Degree or Ph.D.</td>
</tr>
<tr>
<td><strong>65,000</strong> For Individuals with Bachelor’s Degree</td>
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Nonimmigrant Visas

FISCAL YEAR RUNS OCTOBER 1 TO SEPTEMBER 30
FILE SIX MONTH IN ADVANCE (APRIL)
IF MORE PETITIONS THAN VISAS → LOTTERY
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 2019
   - 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/$1500 (ACWIA)
   - Can pay Premium Processing Fee ($1,440)
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**
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
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
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
# FAMILY-BASED VISA BULLETIN

<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>
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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

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<th>Employment-based</th>
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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
- 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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