

Pursuing Work Authorization After Leaving the University and Legal Updates

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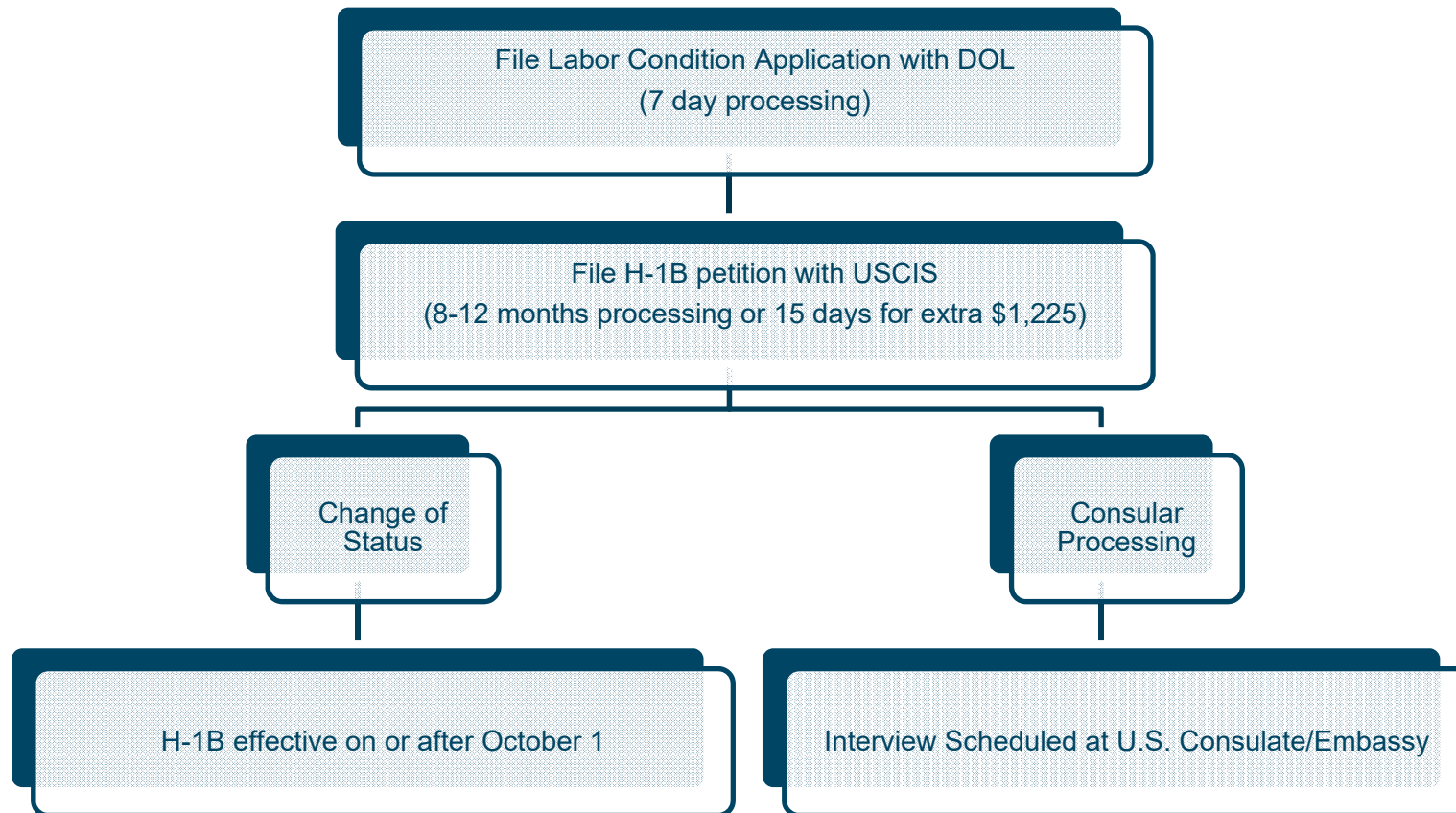


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Basic Immigration Terms

- Non-immigrant: Foreign national approved for temporary entry into the U.S. for a specific purpose
- Immigrant: Foreign national approved for lawful permanent residence in the U.S.
- Visa: Travel document issued by a U.S. Consulate or Embassy abroad that allows a foreign national to apply for admission at a U.S. port of entry
- Status: Period of authorized stay, as indicated on the Form I-94

H-1B Flowchart



H-1B Status

- 6 years total of H-1B status (3 year extensions)
- Position must be in “specialty occupation” and require a baccalaureate degree
- Foreign national must possess the required degree or equivalent
- Allows for dual intent-immigrant intent
- Family members – H-4: Allowed to go to school but cannot work (exception for H-4 spouses if primary H-1B has an approved I-140 petition)
- H-1B audits are common

H-1B Status

- Position and employer specific
- Can be for part-time or concurrent employment
- Not for independent contractor
- Portability: Once in H-1B status can transfer employers once petition with new employer filed and received. Do not need to wait for decision on petition.
- Note: If going from cap-exempt to cap-subject employer, must apply for visa number

H-1B Numerical Cap

- 65,000 new H-1B “numbers” per year
- 20,000 additional H-1B numbers for holders of U.S. Master’s degree or higher degree
- Cap opens up on April 1
- Cap reached on April 1-7 2016; April 1-7 2015; April 1-5 2014; April 1-5, 2013; June 11, 2012; January 26, 2011
- Normally, visas gone immediately, and lottery held for available slots

H-1B Numerical Cap: Who is Not Subject?

- Institution of Higher Education
- Affiliated Non-Profit Entity: Associated with an institution of higher education, through shared ownership or control or attached as a branch, cooperative, or subsidiary
- Non-profit research organization or governmental research organization
- Individuals who previously held H-1B status
- Individuals currently in H-1B status

H-1B Labor Condition Application

- Employer attests that it will pay higher of the prevailing wage or the actual wage
- Prevailing wage = market wage as determined by DOL or wage source accepted by DOL
- Actual wage = the wage that is actually being paid to similarly situated workers
- Must pay actual wage if more than prevailing wage
- Employer attests that it will provide same working conditions to foreign worker as to U.S. worker
- Employer must provide notice of the LCA to other employees
- LCA takes 7 calendar days to process
- Check <http://www.flcdatacenter.com/OesWizardStart.aspx> for wages

H-1B Status: Filing Fees

- REQUIRED OF ALL PETITIONS
 - \$460 application fee
 - \$500 USCIS Fraud Fee
- IF FEWER THAN 26 EMPLOYEES
 - \$750 - ACWIA
- IF 26 OR MORE EMPLOYEES
 - \$1500 – ACWIA

- *OPTIONAL \$1,225 TO PREMIUM PROCESS IN 15 DAYS

Preparing the H-1B Petition

- After LCA is certified, file petition
- H-1B petition filed with the USCIS
- Regular processing 8-12 months
- Premium processing in 15 days by paying USCIS an additional \$1,225
- Once approved, USCIS issues Form I-797 approval notice and either change of status or consular processing

Change of Status or Consular Processing

Change of Status	Consular Processing
File petition with USCIS	File petition with USCIS
Stay in US (BEWARE: departing US while petition is pending can result in denial of change of status)	Receive approval
Receive approval	Depart US
Status change goes into effect on requested date	Take original approval notice to interview at US Consulate
If travel abroad, must obtain visa at US Consulate	Obtain visa
	Re-enter US

H-1B Status

- Employer must pay H-1B wage within 30 days of employee's entry into U.S. or 60 days if a change of status application
- Must apply for visa at U.S. Consulate abroad once travel abroad if change of status (unless Canadian). Make sure to check processing times as delays are common.
- Must notify USCIS of any address changes within 10 days
- If terminated, there is a discretionary 60 day grace period
- Employer is required to pay return transportation back to home country if terminated prior to H-1B expiration date

Gap Cap Regulation

- Allows F-1 students to remain in the U.S. and continue to work on their OPT if a timely-filed H-1B petition remains pending or has been granted by the USCIS.
- OPT must be valid on April 1 to qualify
- Applies to all F-1 students who are successful under the H-1B lottery and have a pending or approved H-1B petition.
- H-1B must be approved by September 30 or employment must stop.

OPT Dates and H-1B Submission

OPT Expiration	When to apply for H-1B	Special Notes
April – September 2017	April 2017	Will need to work under H-1B gap cap from OPT expiration until 09/30/2017
October 2017 – March 2018	April 2017	Will lose some of OPT time

Advantages to H-1B and OPT

OPT	H-1B
May work for any employer as long as related to field of study	Allowed a total of six years (with further extensions possible)
Allowed 90 days of unemployment	Can start permanent residency process
No employer sponsorship required	Counted once in H-1B “numbers”
Can be unpaid (note STEM OPT must be paid employment)	Must be paid the prevailing wage
Can be independent contractor	Must be an employee and receive same benefits as other employees

Other Non-Immigrant Visas

Visa classification	General requirements
TN	Canadians or Mexicans are eligible for TN status for a position designated in NAFTA. Schedule 2 of NAFTA identifies the requirements for each position. Can be issued in 3 year increments.
L-1A L-1B	Intra-company transferee. (Manager or Executive) or (Specialized Knowledge). Must work abroad for one year within the last 3 years with overseas employer before transferring to U.S. Must be employed as a manager or executive (L-1A). May apply for permanent residency without going through labor certification process. Limited to 7 years in L-1A status and 5 years in L-1B status.
O-1	Persons of extraordinary ability in the arts and entertainment, athletics, sciences, business and education. No numerical quota. Initial visa for 3 years and renewable annually indefinitely.

Other Non-Immigrant Visas (cont'd)

Visa classification	General requirements
J-1	Cultural exchange visa. Used for trainees, research scholar, short-term scholars, or specialists. Limits vary according to type of program. Beware – some individuals will be subject to two-year return requirement.
E-1 and E-2	Treaty investor. Must be from a country with a treaty of commerce and navigation with the US. Must be coming to US to carry on substantial trade or to develop/direct operations of an enterprise in which the foreign national has invested. Valid for 2 years, but renewable indefinitely.
E-3	Visa for Australian nationals. Similar to H-1B visa as position must require a Bachelor's degree and foreign national must possess a Bachelor's degree. Renewable indefinitely. Cap of 10,500 per year.

International Entrepreneur Rule

- **Purpose:** Improve ability of certain promising start-up founders to begin growing their companies within the U.S. and help improve nation's economy through increased capital spending, innovation, and job creation
- **Effective Date:** July 17, 2017
- **Requirements:** Formation of new start-up entity within 5 years
- **Significant investments** from established U.S. investors of capital totaling \$250,000 or more from venture capital firms, angel investors, or start-up accelerators with history of substantial investment in successful start-up entities before filing



International Entrepreneur Rule

- **Benefits:** Discretionary grant of parole lasting up to 30 months (2.5 years) based on significant public benefit that would be provided by applicant's, or family's, parole into U.S.
- Possibility to **extend** at discretion of DHS
- Spouses also eligible for work authorization
- **Limitations:** Must work only for their start-up entity
- Stay of up to 30 months (2.5 years)
- **No more than 3 entrepreneurs** (and their spouses and children) per start-up entity

International Entrepreneur Rule: Extension

- **Requirements:** Continues to possess significant (at least 5%) ownership interest in start-up entity at time of adjudication of grant of re-parole (extension)
- Generated **substantial and rapidly increasing revenue** in U.S. during initial parole period of at least \$500,000 in annual revenue, with average annualized revenue growth of at least 20% during initial parole period
- **Substantial job creation** in U.S. during initial parole period of at least 5 full-time jobs for U.S. workers
- Parole will continue to provide significant public benefit
- **Benefits:** May be granted an additional 30-month period of re-parole
- Total maximum period of 5 years

International Entrepreneur Rule: Nonimmigrant Visa and Green Card Eligibility

- **Benefits:** At any time prior to reaching 5-year limit of parole, may apply for any immigrant or nonimmigrant classification for which they may be eligible, such as:
 - O-1 nonimmigrant status
 - I-140 National Interest Waiver EB-2 petition
- **Limitations:** Ineligible to adjust or change status in U.S.
- Must leave U.S. and apply for visa with Department of State (DOS) at U.S. consulate abroad if petition approved by USCIS



Trump's January 27th Executive Order

- On January 27, 2017, President Trump signed an Executive Order suspending entry to non-immigrants, green card holders (lawful permanent residents) who are from certain designated countries for 90 days.
- Furthermore, admission of individuals granted refugee status will be suspended for 120 days.
- Designated countries include Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.
- Passport holders, citizens, nationals, dual nationals of the designated countries should refrain from traveling outside the United States until further notice.

EO: Protecting Nation from Foreign Terrorist Entry

- Temporary Restraining Order (TRO) issued by Washington State District Court blocking enforcement of the ban, allowing individuals from specific countries and refugees to enter the U.S.
- 127 companies filed a friend-of-the-court brief against EO.
- February 9, 2017 -- 9th Circuit Court of Appeals upheld TRO
- February 16, 2017 -- 9th Circuit paused the DOJ's appeal of the 9th Circuit ruling. Per DOJ, President will issue a new EO.
- Litigation continues in District Court regarding the underlying constitutionality of the Executive Order.

EO: Immigration Enforcement and Border Security

- EO issued on January 25, 2017; DHS Memo issued on February 20, 2017
- Calls for hiring of more CBP Agents/Officers, Asylum Officers, Immigration Judges at the border; ICE agents for interior enforcement
- Expansion of 287(g) agreements to allow both ICE and CBP to engage willing and qualified state/local law enforcement agencies to enforce immigration law
- Redefines enforcement priorities to include individuals who have “committed acts that constitute a chargeable criminal offense”

Draft Immigration Executive Order

- Replaces current H-1B visa lottery system with new (unspecified) rules
- Condition receipt of immigration benefits on participation in E-Verify
- Increased site visits for employer sponsors
- Reform J-1 program, practical training programs, and possibly eliminate STEM extensions
- Reform the E-2 treaty investor category for foreign entrepreneurs
- Eliminate work authorization on business/tourist visas

Potential Immigration Changes

➤ Increased border security

- Wall construction – requires Congressional approval and appropriations
- Aerial surveillance

➤ Increased protections for U.S. workers

- Increase prevailing wage for H-1B petitions
- Hire unemployed U.S. workers before recruiting foreign workers
- Eliminate J-1 visa (work and study exchange visitor)
- Require ability to pay certification (housing, healthcare, etc.) to address welfare abuse

➤ Renegotiation of NAFTA – impact on Mexican and Canadian nationals

- Visa reciprocity and TN status
- Filing and border fees

Potential Immigration Changes

- **End to Deferred Action for Childhood Arrivals (DACA) program**
 - Bar Removal of Individuals Who Dream of Growing Our Economy (BRIDGE) Act bill introduced – temporary gap measure to provide “provisional protected presence” and work authorization for DACA eligible individuals
- **Creation of selective registry** – impact on foreign nationals from predominantly Muslim countries
 - Suspension of immigration, including refugees, from “regions export terrorism”

Potential Immigration Changes for Immigrants

- **Return of immigration numbers to “historical norms”**
 - 1921 Emergency Quota Act – restricted immigration to U.S.
 - 1965 Immigration and Nationality Act (INA) – removed quota system
 - May attempt to decrease immigrant visas but by how much unclear

- **Shift away from principle of family reunification**
 - Selection based on “merit, skill and proficiency” and “likelihood of success in the U.S.”

- **New vetting procedures**
 - Support of American “values, institutions and people” – would apply to immigrants and nonimmigrants
 - Financial self-sufficiency

Strategy Issues

- **Join the immigration reform movement!**
- **Stay informed—changes happening rapidly (but beware of source)**
- **Research employer's policies regarding sponsorship**
- **Permanent residency—start planning early**
- **Seek legal advice early in the process to assist your planning**
- **Plan graduation date/OPT with H-1B in mind**

Questions or Comments?



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