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**Immigration Update for
Rice University
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Topics

- Temporary Work Visas –
 - H1-B, TN, E, E3, O
- Travel & Visa Issuance
- Permanent Residency – Employment Based
- Visa Retrogression



H-1B VISA

- U.S. Employer must petition
- Specialty occupation – position requires at least a Bachelor's degree
- Labor Condition Application (LCA) – from Department of Labor (DOL)
- Prevailing wage or actual wage must be paid
- Maximum stay of 6 years – up to 3 years at a time (can stay more than 6 years under certain circumstances)
- Dual Intent – may apply for green card
- H4 spouses not allowed to work



H-1B Processing Times & Filing Fees

Processing Times

- Regular – 2 – 6 months
- Premium – 15 days or less (\$1000 filing fee)

Filing Fees

- \$320(H1B)/\$300 (H-4) filing fee
- \$500 Fraud Prevention and Detection fee - exception – H-1B extension for same employer
- \$1500 ACWIA Training and Scholarship Fee (\$750 reduced ACWIA fee for 25 or less employees)

Exception – H-1B exempt employers; second extension with same employer; amended petition



H-1B Cap

- 58,200 H-1Bs available per Fiscal Year (65,000 less 6,800 Chile & Singapore H-1Bs)
 - Earliest file date is April 1, 2008
 - Earliest start date is October 1, 2008
 - H1B cap was reached the first day. Lottery was held to select from over 120,000 filed
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- U.S. Master's H-1B – 20,000 per fiscal year
 - Earliest file date is April 1, 2008
 - Earliest start date is October 1, 2008
 - H1B Advanced Degree cap was reached April 30, 2007



H-1B Cases Not Subject to the Cap

1. Exempt Organization – University; Non-profit Affiliated To University; Non-profit Research; Government Research
2. Amendments
3. Extensions
4. Concurrent Employment Scenarios
5. Foreign Workers Who Have Already Been Counted Against the Cap – Held H1B in the past
6. J-1 Medical Doctors w/Waivers Who Are Changing Status to H-1B



O-1 Extraordinary Ability Alien

Generally - Individual who has extraordinary ability in the sciences, arts, education, business or athletics which has been demonstrated by sustained national or international acclaim. And is one of the small percentage who have risen to the very top of the field of endeavor.

Acclaim demonstrated by:

- 1) Receipt of major award such as Nobel Prize, or
- 2) At least 3 of the enumerated criteria: other awards and prizes; membership in elite organizations; judge of work of others; original major contributions; authorship of articles; critical capacity; high salary; other

Consultation - Must include consultation letter unless no appropriate union exists; expert letters

Admission - CIS authorizes initial period up to 3 years; extensions possible in one-year increments

O-1 spouses not allowed to work



E-1/E-2 Treaty Trader/Treaty Investor

E-1 • Substantial Trade between U.S. & treaty country

E-2 • Substantial investment in a commercial enterprise

- Nationality of U.S. Corporation - at least 50% owned by nationals of treaty country
- Employees must have same nationality as treaty employer & must be:
 - (i) Executive/Supervisors; or
 - (ii) Essential employees/special qualifications
- Spouses can apply for work permit



TN Visas – Professionals Under NAFTA

- Citizen of Canada or Mexico
- Canadian – Apply at Border POE
Mexican – Apply at U.S. Consulate
- Occupations & requirements listed in NAFTA treaty
- No intent to immigrate
- 1 yr. increments of stay; unlimited extensions
- To spouses not allowed to work



E-3 Visa for citizens of Australia

1. U.S. employer job offer in specialty occupation
2. Bachelor's degree or equivalent
3. Labor Condition Application (LCA)
– prevailing wage required
4. 10,500 per fiscal year
5. Spouse can apply for work permit
6. Apply directly at U.S. consulate or file in U.S. with CIS



Visa Application Process at US Consulates Abroad

Visa Stamp Processing differs
from consulate to consulate

- Check with consulate before finalizing travel plans
- Links available to consulate websites on Dept of State site at www.travel.state.gov
- DS application forms also available at www.travel.state.gov
- Make appointment well before travel abroad



Visa Application Process at US Consulate Abroad

Visa issuance is not guaranteed

- Be prepared to present for H1B:
 - Original approval notice form I797
 - Copy of I-129 petition packet
 - DS-156/157 application forms
 - Original supporting documents (diploma/transcripts)
 - Recent employment verification letter from HR and pay stubs
- Eligibility includes criminal check and security clearances which may delay visa issuance



Visa Applications in Canada and Mexico

- Set an appointment at www.nvars.com or phone the consulate
- Make travel arrangements—allow for time to pay visa fees at bank in Mexico or Canada
- Gather documents to take to consulate
- Obtain Canadian or Mexican visa, if needed



You should not consider processing your visa application in Canada or Mexico if:

- You were born in a country designated by DOS as a sponsor (or potential sponsor) of terrorism
- You have a criminal record
- Your visa has been cancelled
- You have overstayed your I94 card expiration date
- You have violated your status (e.g. unauthorized employment, dropped below 12 hours for F1)
- You may be subject to the Technology Alert List special clearance
- (Mexico only) You entered the U.S. as a visitor and changed the status to F1; H1B etc.



Special Security Clearances

Not possible to expedite security checks

- However: e-mail/call Department of State or check with consular post on regular basis
- Clearances may take 2 weeks up to 6 months+
- Often delay is not with Department of State but with government agency e.g. FBI



Employment Based Immigration Preference System

1st Preference: Priority Worker

		Labor Cert	Job Offer
EB-1(1)	Aliens of extraordinary ability	No	No
EB-1(2)	Outstanding professors and researchers	No	Yes
EB-1(3)	International executives and managers	No	Yes

2nd Preference: Professional

EB-2(1)	Professionals holding advanced degrees	Yes unless NIW	Yes unless NIW
EB-2(2)	Aliens of exceptional ability	Yes unless NIW	Yes unless NIW

3rd Preference: Skilled Worker

EB-3(1)	Job requiring a minimum of 2 years of training, education, or experience	Yes	Yes
EB-3(2)	Job requiring a minimum of a bachelor's degree	Yes	Yes



Employment Based Immigration Preference System (*cont'd*)

3rd Preference: Schedule A

Professional Nurses, Physical Therapists

Exceptional Ability in the Sciences or Arts (except performing)

Labor Cert

No

No

Job Offer

Yes

Yes

4th Preference: Special Immigrant

EB-4 Religious occupations professional

No

Yes

5th Preference: Investor

EB-5 Employment creation investors Million dollar investor

Yes

Yes

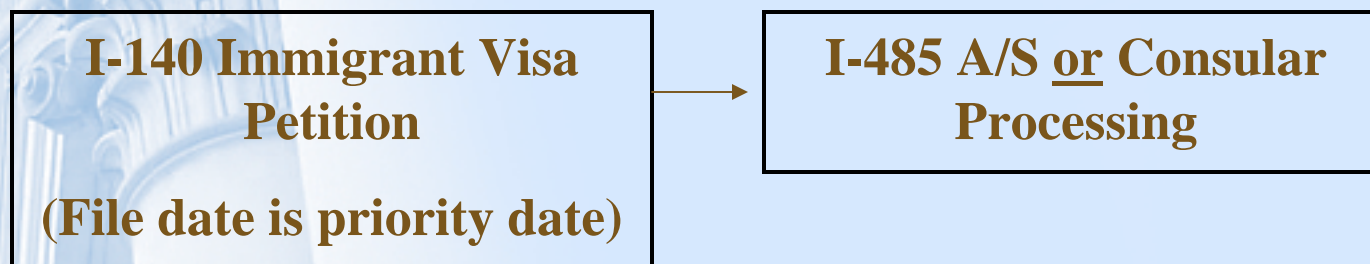


Employment Based Permanent Residency

3 Step Process



2 Step Process



PERM Labor Certification

Employer requirements:

- “Permanent Job Offer”
- Determine minimum education and experience required Determine (EB2 or EB3)
- Must Pay Prevailing Wage
- Conduct Good Faith Recruitment for U.S. Workers
- Document that no able, willing, qualified and available U.S. workers were found
- PERM filed with Department of Labor
- Employer must pay all costs of PERM (effective 7/17/07)



PERM Processing Times

- Time required to file (recruitment activities, prepare PERM form and recruitment report)-60-180 days
- Approval or Denial - 1 week-6 months
- Audit - approximately 60-90 days delay



PERM Special Handling

- Only for college or University teachers
- Document a competitive recruitment and selection process
- Standard is best qualified, not minimally qualified
- At least one printed journal ad required
- PERM must be filed within 18 months of selection
- Usually EB2 classification



EB 11 – Individual of Extraordinary Ability

- Self petition option; employer not required to sponsor
- Priority date established on date the I-140 petition is filed
- CIS is generally not consistent in approvals – more risk



EB 11 – Individual of Extraordinary Ability *(cont'd)*

- **Documentation of 1 major international honor or at least 3 of the following:**

1. Receipt of lesser national or internationally recognized awards
2. Membership in associations requiring outstanding achievement
3. Published material about the person in professional publications or other major media;
4. Participation as a judge of the work of others;
5. Original scientific, scholastic, artistic, athletic or business related contributions of major significance;
6. Authorship of scholarly articles in the field;
7. Artistic exhibitions;
8. Performance in leading roles for organizations with distinguished reputations;
9. High salary or remuneration in relation to others in the field; and
10. Commercial success in the performing arts.



EB 12 Outstanding Professors and Researchers

1. Employer required to petition – university or private employer with at least 3 researchers
2. Three years research or teaching experience required
3. Tenured, tenure track or term of employment of indefinite duration
4. Internationally recognized as outstanding in the academic field – at least 2 of the following:
 - a. receipt of major prizes or awards for outstanding achievement
 - b. membership in associations which require outstanding achievements
 - c. published material in professional publications written by others about your work
 - d. participation as the judge of the work of others in the same academic field
 - e. original scientific or scholarly research contributions to the academic field
 - f. authorship of scholarly books or articles in journals with international circulation



EB 21 & 22 National Interest Waiver

- Master's degree or higher OR exceptional ability
- Work is in the National Interest of the United States
- Self petition option; employer not required to sponsor
- Priority date established on date the I-140 petition is filed
- CIS is generally not consistent in approvals – more risk



“National Interest” Issues

Mississippi Phosphate test:

1. Improving the U.S. economy;
2. Improving wages/working conditions of U.S. workers;
3. Improving education and training programs for U.S. children and under qualified workers;
4. Improving health care;
5. Providing more affordable housing for young and/or older, poorer U.S. residents;
6. Improving the U.S. environment and making more productive use of natural resources;
7. A request from an interested U.S. governmental agency.

NYSDOT test:

1. Employment sought is in an area of substantial intrinsic merit
2. Proposed benefit must be national in scope;
3. U.S. national interest adversely affected if labor certification were required



Visa Bulletin for October 2007

Employment-Based	All Chargeability Areas Except Those Listed	China	India	Mexico	Philippines
1 st	C	C	C	C	C
2 nd	C	01JAN06	01APR04	C	C
3 rd	01AUG02	01SEP01	22APR01	22APR01	01AUG02
Other Workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01

Form I- 485 Adjustment of Status with Work Permit and Travel document cannot be filed until "Priority Date" is current.

