Immigration Overview for Rice University
February 2, 2017

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Session Highlights

- Important Updates – Executive Orders and New Regulations
- Common Immigration Documents
- Temporary Work Visas
- Permanent Residency Options
- Question & Answer

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Executive Order Imposing Travel Ban to U.S

• Effective 1/27/17 – “Protecting the Nation from Foreign Terrorist Entry into the United States”
• 7 Countries – Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen (Additional countries can be added)
• Duration of ban – 90 days until April 27, 2017, but can be extended
• Bans entry to the U.S.
Executive Order Imposing Travel Ban to U.S

- Backdrop and Developments since 1/27/17
  - Draft EO leaked 1/25 – poorly written, vague language
  - Draft became final 1/27 with little change = Chaos
  - No instructions or guidance for implementation to
    - Consular officers – Department of State
    - CBP officers at airports/borders – Department of Homeland Security
    - Airline employees
- Important changes opaquely communicated to the public
- Virtually no notice provided
Who is covered? – Persons “from” the 7 countries

- Citizens using passport of the 7 countries – **banned**
  - Exception: waiver on a “case by case basis, if in the national interest” (But no instructions or guidance)
  - Exception: Diplomats, NATO visas, UN related visas, IGO visas

- Dual citizens of the 7 and another country – might **not be banned**, if passport of the other country used (DHS press release 1/29)
Who is covered? – Persons “from” the 7 countries

- U.S. Permanent Residents (Green Card) who are citizens of the 7 – not banned, but... (DHS Sec. 1/29 & WH 2/1)
- U.S. Citizens from one of the 7 – not banned, but...
- U.S. Citizens and Citizens of not one of the 7, but who have traveled to one of the 7 countries – not banned, but...
Other Considerations and Developments of the Executive Order

- “Benefits” such as USCIS applications for those from the 7 may be covered – Final decisions appear to be on hold
- Travel horror stories – not limited to those holding passports from the 7 countries
- In-person visa interview waivers were suspended under EO – but 2/1/17 White House press conference announced interview waivers (mail-in & drop box) restored
Other Considerations and Developments of the Executive Order

- Refugees
  - All refugee admissions suspended for 120 days; once resumed, priority to go to religious minorities being persecuted
  - Syrian refugees admissions suspended indefinitely
  - Exceptions for above on case by case basis when in the national interest
  - Reduces annual number of refugees from 110,000 to 50,000
Executive Order Imposing Travel Ban to U.S

• Court cases filed nationwide on various grounds
  – Habeas Corpus
  – 5th Amendment due process clause; equal protection
  – Discrimination based on country of origin
  – Religious Freedom Restoration Act
  – California court issued national wide Temporary Restraining Order for group with Immigrant Visas

• Numerous letters to White House and Congress and demonstrations of protest.
Important Updates: New Regulations

• Admission for 10 Days Before and After Petition Validity
  – H-1B, L-1, TN, E
  – Does not provide work authorization, but does provide lawful status

• Sixty-Day Grace Period
  – H-1B, H-1B1, E-1, L1, O-1, TN
  – Grace period for up to 60 consecutive days of unemployment or until petition expires
  – Cannot engage in unauthorized employment

• Automatic Extension of EAD Card up to 180 days
  – Extension must be timely filed
  – Only for those applying under same category as previously authorized and which do not require an adjudication of nonimmigrant status
  – Does NOT apply for L-2, H-4 or E spouse EAD renewals
“Change of status” within the U.S.:

• Form I-797 approval notice is issued with a new I-94 card attached

• New status starts automatically on validity date

• Whenever the employee leaves the U.S., a visa stamp in passport must be obtained at a U.S. consulate abroad to return, except:
  – Canadian citizens (visa exempt)
  – Special rules for travel to Mexico or Canada for less than 30 days
• The visa reflects:
  ➢ The nonimmigrant category
  ➢ The validity dates for travel on the visa
  ➢ Any additional notes or restrictions
• Indicates to the inspecting officer at the port of entry that the applicant, and his or her purpose for entry, have been prescreened
• Does not guarantee admission upon inspection by U.S. Customs & Border Protection
• A “ticket” to apply for admission to the U.S.
The I-94 controls status and permissible period of stay in the U.S.

CBP will only issue electronic I-94s for air and sea travel, although paper I-94s are still being issued at land border Port of Entry.

Passport or travel documents will be stamped with admission date, visa class and expiration date.

I-94 records are available on CBP’s website: [https://i94.cbp.dhs.gov/I94/#/recent-search](https://i94.cbp.dhs.gov/I94/#/recent-search)

Check I-94 record upon each entry into U.S.
H-1B Non-Immigrant Visa Requirements

- Must have a job offer in the U.S. with a U.S. employer.
- The job offer must be in a Specialty Occupation, a position that normally requires at least a Bachelor’s degree or equivalent in a specific field of study.
- U.S. employer must file a Labor Condition Application (LCA) complying with DOL regulations.
- Employer must pay the required wage (higher of actual or prevailing wage).
- Maximum time period in U.S. is 6 years (AC-21 extensions possible if certain steps in green card process are timely accomplished.)
- Dual intent – may pursue green card.
- Spouses in H-4 status may apply for a work permit in limited cases.
H-1B “Cap Subject” and “Cap Exempt”
INA §214(g)

• “H-1B Cap subject”: Annual quota limits H-1B numbers per fiscal year
  ➢ 65,000 H-1Bs are available each year
  ➢ Additional 20,000 H-1Bs are reserved for individuals with U.S. advanced degrees
  ➢ Earliest date to apply is April 1st
  ➢ If H-1Bs are exhausted the first week, a lottery occurs.
  ➢ H-1B status becomes effective October 1st

• Cap Exempt – Can obtain H-1B at any time
  ➢ H-1B extensions/amendments.
  ➢ Change of Employer H1B - currently in H-1B status with another employer (unless employed with a cap exempt employer).
  ➢ Held H-1B status in the past 6 years (unless with a cap exempt employer).
  ➢ Employed by or at an institution of higher education (e.g. University) or certain non-profit entity
F-1 Cap-Gap OPT automatic extension

- H-1B change of status petition
- Timely filed while F-1 OPT EAD is valid
- OPT will be automatically extended until September 30th
- No travel abroad during cap-gap extension
- 90 limit on unemployment

STEM OPT extension (additional 17 months)

- Latest degree must be in Science, Technology, Engineering or Mathematics
- Sponsored by Employer enrolled in E-verify program
- Position directly related to degree
E-1 Treaty Traders & E-2 Treaty Investors

- Sponsoring employer must be at least 50% foreign-owned by a company or individual(s) with the citizenship of a country that has a treaty of commerce or trade with the U.S.
- Employer has made a substantial investment and is operating a viable commercial enterprise (E-2 Treaty Investor) OR
- Employer is engaged in substantial trade between the U.S. and the treaty country (E-1 Treaty Trader)
- Foreign national employee must share the same citizenship as the company’s owners
- Position must be executive or supervisory/managerial or require “essential skills” or specialized qualifications
- No dual intent
- Spouse can apply for a work permit
Generally - Individual who has extraordinary ability in the sciences, arts, education, business or athletics which has been demonstrated by sustained national or international acclaim.

Acclaim demonstrated by:
1) Receipt of major award such as Nobel Prize, or
2) At least 3 of the enumerated criteria.

Consultation - Must include consultation letter unless no appropriate union exists.

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

O-3 spouses and dependents not allowed to work.
Criteria for O-1 Visa

Sustained national or international acclaim by receipt of a major internationally recognized award, such as the Nobel Prize, or documentation of at least 3 of the following:

- Recipient of nationally or internationally recognized awards;
- Membership in associations which requires outstanding achievements by their members;
- Published materials in professional or major trade publications about the beneficiary’s work;
- Evidence that the beneficiary has judged the work of others in the field;
- Original scientific, scholarly or business related contributions of major significance in field;
- Authorship of scholarly articles;
- Employment in a critical or essential capacity at organizations with a distinguished reputation;
- Evidence that the beneficiary has commanded or will command a high salary.
Overview of Permanent Residency - Employment-Based

• Typically a 3-step process:
  ➢ Step 1: Labor Certification (PERM) (*individual may be exempt from this step in certain cases*)
  ➢ Step 2: Immigrant Petition (I-140)
  ➢ Step 3: Adjustment of Status “Green Card” Application (I-485)
Employment-Based Preference Categories

*No Labor Certification Required

First Preference
1. Extraordinary Ability *
2. Outstanding Researcher *
3. Multinational Executive/Manager *

Second Preference
1. Advanced Degree Professional
2. Exceptional Ability – Schedule A
3. National Interest Waiver *

Third Preference
1. Skilled Worker (job requires 2 Years of Experience)
2. Professional (job requires a Bachelors Degree)
• **Objective:** Protect U.S. workers

• Employer must conduct a detailed recruitment campaign to prove that no qualified, willing, able or available U.S. worker applied

• Employer must obtain a formal Prevailing Wage Determination and pay the required wage rate
  – Required wage rate: Higher of actual or prevailing wage
  – Due when green card is approved

• Other considerations:
  – Job position must be “permanent”
  – Employer must pay all PERM costs
  – Specific to the company, location and position – if these change, a new PERM may be required
**Key Difference:** Demonstrate that there were not U.S. workers who were “more qualified” than foreign national based on competitive recruitment process that was already conducted.

**Requirements:**

- **Qualified institutions.** The teaching position must be at an accredited educational institution that offers a 2 year associate degree or higher degree.
- **Limited to teaching positions.** Requires some amount of actual classroom instruction
- **Evidence that a competitive recruitment and selection process was conducted**
- **An advertisement** in a national professional journal is required – print or web ad
- **Posting Notice** - Prior to filing, a Notice must be posted at the worksite.
- **Prevailing Wage Determination** must be obtained
- **PERM must be filed within 18 months of the formal selection decision***
- **Start the process no later than 12 - 15 months after selection date/ date of offer letter.**
Step 2: Immigrant Visa Petition (Form I-140)

- Establish that employee meets minimum requirements for position that served as basis for PERM
  - Degree and transcripts
  - Experience verification letters
  - Certification, license, etc.
- Prove employer can pay offered salary
- Must be filed within 180 days of PERM approval or PERM expires
- Current USCIS processing time is 5 – 6 months, but premium processing available for initial decision in 2 weeks
- Priority date “attaches” to the foreign national upon I-140 approval
## February 2017 Visa Bulletin
### Employment-Based Preference

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PERM Exempt
Immigrant Visa Categories

• EB11 – Extraordinary Ability
• EB12 – Outstanding Professor or Researcher
• EB13 – International Executive or Manager
• EB2 NIW – National Interest Waiver
• EB2 – Exceptional Ability, Schedule A
Extraordinary Ability Petitions:
• Demonstrate “sustained national or international acclaim”
• Small percentage at the top of the endeavor;
• Will substantially benefit prospectively the U.S., and
• 1 major international award or at least 3 of 10 criteria

Fields of Endeavor: Sciences, Arts, Education, Business or Athletics
Petitioner: Employer or Self
Priority Date: Established on the date the I-140 is filed
Visa Availability: Current for all countries
EB 11-Extraordinary Ability Criteria

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 contributions of major significance; Authorship of scholarly articles in the field;
6. Artistic exhibitions;
7. Performance in leading role for organizations with distinguished reputations;
8. High salary or remuneration
9. Commercial success in the performing arts
Outstanding Professor or Researcher:
- Recognized internationally as outstanding in the academic field
- At least 3 years experience
- Satisfaction of at least 2 of 6 criteria

Fields of Endeavor: Academic fields

Petitioner: Employer required; no self-petition option
- Need permanent offer of employment – tenure, tenure track or term of indefinite or unlimited duration
- Employer is a university or private employer with 3 full time researchers

Priority Date: Established on the date the I-140 is filed

Visa Availability: Current for all countries
Internationally recognized as outstanding in the academic field as shown by at least 2 of the following:

1. Receipt of major prizes or awards for outstanding achievement.
2. Membership in associations which require outstanding achievements.
3. Published material in professional publications written by others about your work.
4. Participation as the judge of the work of others in the same academic field.
5. Original scientific or scholarly research contributions to the academic field.
6. Authorship of scholarly books or articles in journals with international circulation.
National Interest Waiver:

• Requires “Advanced degree” OR “Exceptional ability in science, arts or business”
• Demonstrate that it is in the national interest to waive labor certification
• New case, *Matter of Dhanasar*, provides a more flexible framework and better accommodates self-employment and entrepreneurial situations

**Petitioner:** Employer or Self

**Priority Date:** Date I-140 filed

**Visa Availability:** Depends on COB
New “National Interest” Test

Matter of Dhanasar 3-prong test:

1. Proposed endeavor has “substantial merit” and “national importance;”
   - No requirement to demonstrate economic benefits to U.S.
   - “Pure science, and the furtherance of human knowledge” may qualify
   - No requirement to demonstrate interest that is national in scope

2. Foreign national must be “well positioned to advance the proposed endeavor;”
   - Consider factors such as education, skills, past progress and achievements, and interest of customers, investors, or other relevant parties
   - Forecast of future success is not required

3. On balance, it would be beneficial to the U.S. to waive requirements of a job offer and labor certification.
“Exceptional Ability” – Schedule A, Group II

- Defined as “widespread acclaim and international recognition from experts in the field”
- Cannot self petition – Requires a long-term offer of employment; Employer must pay
- Includes some elements of PERM case, including a Prevailing Wage Determination, but no requirement campaign
- Documentation of “Exceptional Ability” – at least 2 of the following:
  - Receipt of internationally recognized prizes or awards for excellence
  - Membership in associations which require outstanding achievements
  - Published material in professional publications written by others about your work
  - Participation as the judge of the work of others in the same field
  - Original scientific or scholarly research contributions of major significance the field
  - Authorship of published scientific or scholarly articles in journals with international circulation
Step 3 - Adjustment of Status
Form I-485- Current processing time 4-9 months

Purpose: Show employee and dependent family members are admissible to U.S.

- No communicable disease, such as tuberculosis or drug addiction (Medical exam required).
- No harmful, dangerous mental impairment.
- No criminal convictions (Biometrics required).
- No past US immigration violations fraud/misrepresentation/deportation.
- No claim to being a US citizen.
- No membership in terrorist or communist organization.
• I-765 Application for Employment Authorization Document (EAD)
  – For all who want to work
  – For child to obtain SSN
  – Issued for 1-yr. period or for 2-yrs. if priority date not current

• I-131 Application for Advanced Parole Travel Document
  – For travel permission
  – Each family member needs it to travel unless using valid H or L visa
  – Issued for 1-yr. period
Success! – Green Card
Marriage to a U.S. Citizen

• Spouse of USC is an “immediate relative” – no wait for visa availability
• If in the U.S., can file Form I-130 petition and Form I-485 green card application at the same time
• Must prove “bona fide” marriage and subject to an interview with USCIS
• If approved, “green card” is issued in a few weeks following interview
• If married less than 2 years at the time of approval, will receive a “conditional resident card” and must ultimately file a petition to “remove conditions”
• BEWARE for those in visa categories prohibiting “immigrant intent”
  – Includes F-1, J-1 and Visitor
  – Travel restrictions
  – Initiating green card process shortly after entry may cause USCIS to determine there was a “misrepresentation” of intent at entry
EB-5 “Million $” Investors

- Permanent Resident petition Form I-526 filed by the investor wishing to immigrate
- If approved, can file for Adjustment of Status. “Green Card” will be for conditional residency valid 2 years. Must file a “removal of condition” petition to prove the investment is still valid (10,000 visas available per year).

- Individual Investor requirements:
  - Investment of $1 million or $500k, if in an area of high unemployment or rural area (source of funds must be lawful).
  - in a new commercial enterprise (or expansion of existing business).
  - creates at least 10 full-time positions in the U.S. filled by U.S. citizens or U.S. Permanent Residents.
  - Engage in management of the investment enterprise.

- Regional Center Investor requirements:
  - minimum $500k investment in.
  - a Regional Center accredited by USCIS (over 200 in the U.S. in industries such as hotels, ski resorts, call centers, construction, retail shopping, etc.).
  - Indirect job creation may be considered.
Questions

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