Immigration Overview for Rice University
February 3, 2016

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Fostering Global Immigration Solutions
Session Highlights

- Important New Updates
- Documents & Travel
- Temporary Work Visas – H-1B, E-1 & E-2, O-1
- Permanent Residency Options
- Question & Answer
17 month STEM OPT remains valid until May 10, 2016.

Proposed rule to expand STEM OPT from 17 to 24 months still not final.

Some Visa Waiver/ESTA visitors may be required to apply for B-1/B-2 visas if they:
- Are nationals of Iran, Iraq, Sudan or Syria.
- Have traveled to Iran, Iraq, Sudan or Syria since 3/1/11 (some exceptions).

Proposed new AC 21 regulations may be final in 2016:
- New 60 day grace period for H-1B, H-1B1, L-1, E & TN that lose job.
- Automatic 180 days EAD validity for timely filed extensions.

Increased scrutiny of cases and immigration documents by DHS and DOS (consular officers).
H-1B “change of status” in the U.S.

- Form I-797 approval notice is issued with a new I-94 card attached and 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
What is a Visa?

• The visa reflects:
  ➢ The nonimmigrant category
  ➢ The validity dates for travel on the visa
  ➢ Any additional notes or restrictions on the visa

• The visa indicates to the inspecting officer at the port of entry that the applicant, and his or her purpose for entry, have been prescreened.

• HOWEVER, a valid visa stamp does not guarantee admission to the United States upon inspection by U.S. Customs & Border Protection.

• A visa is merely the “key” that allows a non-US citizen to apply for admission to the United States.
The I-94 card is the document that controls the status and how long the individual can remain legally in the United States.

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.

Paper I-94 is available to print from CBP website [www.CBP.gov/I94](http://www.CBP.gov/I94) (which is now fully operational).

Individuals should receive a new I-94 card upon each entry into the United States.
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).
- I-129H petition and supporting documents are filed at an appropriate USCIS Service Center.
- Maximum time period in U.S. is 6 years (AC-21 extensions possible if in green card processing).
- Dual intent – may pursue green card.
- Spouses on H-4 may not work.
H-1B “Cap Subject” and “Cap Exempt”  
INA §214(g)

- “H-1B Cap subject” - around 65,000 H-1B visas are available each year.  
  - An additional 20,000 H-1B numbers are available for individuals with U.S. advanced degrees.  
  - Earliest date to apply is April 1\textsuperscript{st}.  
  - If H-1B’s are exhausted the 1\textsuperscript{st} day or week, a lottery occurs.  
  - H-1B status becomes effective October 1\textsuperscript{st}.  

- 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 non-profit entity affiliated with a university (e.g. hospital, school district).  
  - Employed by or at a non-profit research or government research organization.
H-1B Timeline:
1. Collect documents & information and prepare petition, 1-3 weeks.
2. Obtain certified LCA (Labor Condition Application) from DOL – 7 days.
3. USCIS – regular processing 3 to 7 months, premium processing 15 days.

USCIS filing fees:
1. $325 filing fee (+ $290 for family H-4).
2. $500 Anti Fraud fee (initial H-1B only).
3. $1500 ACWIA fee for Training and Scholarships for U.S. workers (cap exempt don’t have to pay).
4. $1225 optional Premium Processing fee.
5. Most H-1B costs must be paid by the employer.
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.
• The 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 United States.
• 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).
• The foreign national employee must share the same citizenship as the company’s owners.
• The position must be executive or supervisory/managerial in nature or one requiring “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.
Sustained national or international acclaim by receipt of a major internationally recognized award, such as the Nobel Prize, \textit{or} documentation of at least \underline{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).
Employment-Based Preference Categories
*No Labor Certification Required

**First Preference**
1. Extraordinary Ability *
2. Outstanding Researcher *
3. Multi-national 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)
PERM Labor Certification

• U.S. Dept. of Labor oversees the PERM program to protect U.S. workers.
• Job position must be “permanent” - of indefinite duration.
• Employer must pay all PERM costs.
• Employer must pay the required wage (higher of actual or prevailing wage) when the green card is approved.
• Employer must demonstrate that there are no U.S. workers who are:
  — Minimally able, willing, qualified and available.
  — to perform the duties of a particular job being offered.
• PERM application is specific to the company, location/worksite, position – if these change, a new PERM might be required.
Advertising and Recruitment Required

- Employer must determine the minimum education and experience for the position.
- Obtain a Prevailing Wage Determination from DOL.
- Begin Recruitment & Advertising of the job:
- Employer must review/interview U.S. applicants and find no one is qualified, willing, able or available.
PERM regulations establish a strict and unforgiving timeline for recruitment steps.

- Applications are filed electronically with DOL office in Atlanta, Georgia.
- All supporting documents must be kept for 5 years in case of audit by DOL.
- Date the PERM is filed is the “priority date” for the queue for immigrant visa wait.
- Current PERM processing time with no audit is 7-8 months.
- Current Audit processing time is 18 months.
“More qualified”, rather than “Minimally qualified” standard

Requirements For Special Recruitment PERM:

- **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.

- **The PERM must be filed within 18 months of the formal selection decision***

  *Start the process no later than 15 months after selection date.*
Step 2 after PERM: Immigrant Visa Petition (Form I-140)

• Document employee has education & experience required on PERM – degree, transcript; experience letters.
• Document employer can pay offered salary.
• Must be filed within 180 days of PERM approval or PERM expires.
• Current USCIS processing is 4 months - Premium processing available for decision in 2 weeks.
• Priority date (date PERM is filed) “attaches” to the foreign national upon I-140 approval.
## February 2016 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
“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:** EB-11 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
“Recognized internationally as outstanding in the academic field”

- At least 3 years experience
- and at least 2 of 6 criteria
- Fields of Endeavor: Academic fields

**Petitioner:** Employer required; no self-petition option

1. Need a permanent offer of employment – tenure, tenure track or term of indefinite or unlimited duration.
2. Employer is a university or institution of higher learning or private employer with 3 full time researchers.

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

**Visa Availability:** EB-12 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.
• Requires “Advanced degree” OR “Exceptional ability in science, arts or business”.
• It is in the national interest to waive labor certification.
• National interest is adversely affected to require labor certification.
• **Petitioner:** Employer or Self
• **Priority Date:** Date I-140 filed
• **EB-2 Preference Category**

**EB 21/22—National Interest Waiver**
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.
**“National Interest” Test**

**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.
1. “Exceptional Ability” – defined as widespread acclaim and international recognition from experts in the field.

2. Must be in a Sciences or Arts field – is any field of study at a college or university.

3. Practice of the Science or Art during the year before filing the application.

4. Requires a long term offer of employment and employer sponsorship, including a Prevailing Wage Determination from Department of Labor and other PERM requirements but no Recruitment of U.S. workers.

5. Documentation of “Exceptional Ability” – at least 2 of the following 7:
   a) Receipt of internationally recognized prizes or awards for excellence.
   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 field.
   e) Original scientific or scholarly research contributions of major significance the field.
   f) Authorship of published scientific or scholarly articles in journals with international circulation.
   g) Evidence of display of work at artistic exhibitions in more than one country.
USCIS Guidance Memo on EB-1

http://www.uscis.gov/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf

- Provides latest guidance to USCIS officers regarding analysis they should use when reviewing Extraordinary Ability and Outstanding Researcher immigrant visa petitions (Form I-140).
- Establishes a 2 part adjudicative approach to evaluating evidence (in agreement with the Kazarian v. USCIS case).
  1. Evaluate each type of evidence submitted to determine if it meets the parameters specified in the regulations (“regulatory criteria”).
  2. Consider all the evidence in totality in making a “final merits determination” regarding the high level of expertise for the immigrant classification.
- Memo contains helpful charts that detail each criteria and provide examples of what type of evidence might be acceptable.
• I-485 Adjustment of Status cannot be filed until Priority Date is current under Filing Cut-off date.

• If Priority Date retrogresses after I-485 is filed, the I-485 cannot be approved until the Final Action date is current.

• I-140 & I-485 can be concurrently filed – * if the I-140 is premium processed, sometimes the I-485 is processed faster.

• Principal can “cross charge” to spouse’s country of birth.

• An earlier EB priority date can be “re-captured” if the earlier I-140 was approved.

• Dependent family members get the same Priority Date.
Step 3 - Adjustment of Status
Form I-485 - Current processing time 4-9 months

Purpose: Show employee and dependent family 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.
Travel Document and Work Permit while I-485 is pending

• 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-yr. 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
Spouse of USC is an “immediate relative” so no visa limit or wait for visa availability.

If in the U.S., can concurrently file Form I-130 Relative petition and Form I-485 Adjustment of Status (with applications for Work Permit and Travel document which are issued in 2-3 months) – must be a “bona fide” marriage.

Interview is held before a USCIS officer in around 6 months; if approved, “green card” issued in a few weeks (if married less than 2 years, will receive “conditional resident card” and after 2 years must file a petition to “remove conditions” showing a bona fide marriage).

BEWARE – travel risk if in F-1, J-1 or B-1/2 and married to a USC due to “non-immigrant intent” required for these visas.

BEWARE – getting married and/or filing I-130/I-485 shortly after entry to U.S. as F-1, J-1 or B-1/2; USCIS may find 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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