IMMIGRATION SEMINAR FOR FOREIGN STUDENTS
RICE UNIVERSITY

September 30, 2015
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MAINTAINING YOUR F1 STUDENT STATUS

• Since January 30, 2003, mandatory use of the Student and Exchange Visit Information System (SEVIS)
• School officials are required to maintain records and report on the following information:
  – Confirmation of Registration
  – School Transfer
  – Annual Vacation
  – Reduced Course Load (academic difficulties, medical conditions)
• Connection to ICE
• Duration of Status
• Employment Authorization
• Reinstatement of Student Status:
  – Not out of status for more than 5 months;
  – No record of repeated or willful violations;
  – Currently pursuing or intending to pursue a full course of studies;
  – Has not engaged in unauthorized employment;
  – Is not deportable; and
  – Establishes to satisfaction of USCIS that violation resulted from circumstances beyond the student’s control or that the violation relates to a reduction in the student’s course load that would have been within a DSO’s power to authorize and that failure to approve reinstatement would result in extreme hardship to the student.
Optional Practical Training

- 90 days before completion of the program or 60 days after graduation
- The student may apply for OPT up to 120 days before the employment start date
- Cannot request start date of employment that is more than 60 days past the student’s program end date
- Duration
- Authorized Employment – Starts on date of approval
- Student continues to be in F1 status even after graduation
**TRAVEL OUTSIDE THE UNITED STATES**

- If you changed status from Visitor (B2) or other nonimmigrant status to F1 student status, you are authorized to travel to Mexico or Canada, for less than 30 days and to return to the United States without an F1 Visa.

- If you travel outside of the country more than 30 days or beyond Canada and Mexico, you need to apply for a student visa at a U.S. Embassy or U.S. Consulate.

- Consuls may refuse visas in their discretion even if the students are in the middle of a school program. Student must continue to meet all the requirements of the student visa.

- Be aware of administrative processing and other security checks.

- Make sure to contact your International Student Advisor before traveling to verify that your student status is in order in SEVIS.
ENTERING THE UNITED STATES

• A valid F1 visa - Admission into the United States
• A student may have a visa issued by the U.S. Embassy and at the port of entry have the admission denied, the visa canceled and the student sent back to his/her home country
• Claim for asylum
• Rule in 2009 allows automatic extension of F1 status and post completion OPT from 12 to 29 months
• Student with a Bachelor’s, Master’s, or Doctoral degree in Science, Technology, Engineering or Mathematics as stated on the STEM Designated Program List
• Student must be in an approved post-completion OPT period, based on a designated STEM degree
• Employer must be enrolled in E-verify
• The rule, extends post-study period of work authorization from 12 to 29 months under OPT - ALERT – Feb 2016
• Must apply for extension before the expiration of the current OPT
• If Post-Completion expires during the pendency of EAD Application under STEM extension, will receive an extension of employment authorization for up to 180 days.
H1B CAP AND CAP GAP EXTENSIONS

• The Cap Gap extension is a period in which an eligible F1 student’s status is automatically extended to bridge the gap between the expiration of the OPT and October 1, the start date of the H1B

• Student must be in valid post completion OPT status to apply
• Position must be a “specialty occupation” requiring a Bachelor’s or higher degree in a specific specialty or its equivalent, as a minimum for entry in the U.S.
  • A Baccalaureate, higher degree or its equivalent is normally the minimum requirement for the position
  • The degree requirement is common to the industry in parallel positions among similar organizations, or the employer’s particular position is so complex or unique that it can be performed only by an individual with a degree
• H1B may be for full or part-time employment
• Beneficiary may work for more than one employer provided each employer has obtained an approved H1B petition
REQUIREMENTS AND QUALIFICATIONS FOR H1B SPECIALTY OCCUPATION

PETITIONER:
• Labor Condition Application with the Secretary
• A statement that the petitioner will comply with all the terms of the labor condition application for the duration of the beneficiary’s authorized period of stay
• Evidence that the position is a specialty occupation

BENEFICIARY:
• United States Baccalaureate or higher degree from an accredited college or university
• Or Foreign Degree determined to be the equivalent to a United States baccalaureate or higher degree from an accredited college or university, or
• Have education, specialized training and or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree and have recognition of expertise in the specialty through progressively responsible positions related to the specialty. 8 CFR Sec. 214.2(h)(4)(iii)(C)(4).
• Hold an unrestricted state license, registration or certification which authorizes him/her to fully practice the specialty occupation
65,000 H1B petitions per fiscal year from October 1, to September 30 of the following year

- 6,800 are allocated for nationals of Singapore and Chile as a result of the free trade agreement between the U.S. and those countries
- Additional 20,000 H1B petitions approved for beneficiaries who have completed a master’s degree in the United States

**Filing of H1B petitions start April 1 but earliest start period is not earlier than October 1**

H1B cap affects all H1B petitions approved for new employment of beneficiaries who were never accorded H1B status.

- Extensions of H1B status are not part of the cap
- Petitions for concurrent employment
- New petitions for beneficiaries who have held H1B status over the past six years with a non-exempt employer and have not been outside the U.S. for over one year since the last petition was approved

Exempted from the cap are institutions of higher learning, affiliated research or organizations, nonprofit research organizations and governmental research organizations
• If beneficiary is in the United States in legal status, he/she can apply for a change of status in the United States and begin working upon approval
• If beneficiary is outside of the United States, the beneficiary must apply for the H1B visa at a U.S. Embassy or Consulate abroad
• Out of Status
• H-1B visas are valid for 3 years and can be extended for an additional 3 year period for a total of 6 years in H-1 status
  – Previous stays in L-1 or H-1 status (but not L-2 or H-4 dependent status) count towards maximum period of stay
  – Time spent outside the US does not count towards 6 year limit
• H-1B visas can be extended beyond the 6 years in certain situations:
  – 1 year Extension: If PERM/Labor certification has been filed at least 365 days prior to the date the H-1B expires
  – 3 year Extension: If an Immigrant Visa has been approved, and the individual cannot adjust status because priority date is not current
• H1B1 petitions for Singaporean and Chilean Nationals are initially valid for one year and can be renewed in one year increments indefinitely
PORTING AND PERMANENT RESIDENCE

• An H1B worker may port to another employer and start working legally for employer number 2 when the second H1B petition is filed, if:
  – The filing fee receipt has been issued or there is a USCIS receipt that the petition has been received by the USCIS;
  – The H1B worker is in lawful status at the time of filing the second H1B petition (i.e. s/he has a valid Form I-94); and
  – Worker has not engaged in any unauthorized employment since his last lawful admission.

• How do you apply for Permanent Residence?
E-1/E-2: Investor Visas

- Existence of treaty country: [http://www.travel.state.gov/visa](http://www.travel.state.gov/visa)
- Nationality
- Substantial Trade or Substantial Investment
- Coming to work in a “Qualifying Capacity”
- Intent to Return
- Visa Validity and Extensions of Status
- Spouses Allowed to work – with EAD
Treaty traders (E-1)

• Trade: Exchange, purchase, or sale of goods, services or technology
• “Substantial” import or export
• No minimum dollar threshold
• Volume of Trade vs. Value
• Majority of trade between U.S. and treaty country
• Trade must be in existence
• Can be manager, supervisor or “essential skill” employee
E-2: Treaty Investors

• Treaty investors (E-2) - U.S. Investment must be in a Real Operating Enterprise - A paper corporation?
• Investment must be “Substantial” -
• At Risk - irrevocable commitment - bank loan? US Business used as collateral?
• What counts as part of the investment?
• Legitimate Sources - Requirement that Investment not be Marginal
• Applicant must have control of the U.S. enterprise. Could there be more than one investor?
• Must be in a position to “develop and direct” the enterprise
• Visa applicant can be
  – Investor, or
  – Manager, supervisor or essential employee
• Can you apply for permanent residence?
H-3 (Trainee) Visa

• Need a well structured training program
• Must have either classroom instruction or coursework
  – Any productive employment must be incidental to training
• Training must be unavailable in Applicant’s home country
• Non immigrant intent required and ties with home country
• Must demonstrate that training will qualify the trainee for position abroad
• Maximum 2 years
• If you stay in the US for the 2 years, then must remain outside the US for 6 months before changing status to L/H visa
• Can you apply for Permanent Residence?
L-1A/L-1B (Intra-Company Transferee) Visas

• Classification for Multinational Companies with U.S. affiliated companies that wish to transfer Managers or Executives or Employees with Specialized Knowledge skills to come to the U.S. or for Foreign Companies that do not have a company in the U.S. and wish to open a new parent, branch, affiliate or subsidiary office in the U.S., to open new markets and send executive personnel.

• (L-1A) Managers/Executives: can lawfully remain in the US for 7 years.
• (L-1B) Specialized Knowledge Employees: can lawfully remain in the US for 5 years

• No company size limitation -

• Qualifying relationship:
  – Must be qualifying relationship (Parent, branch, affiliate or subsidiary).

• Employee must have been employed with foreign company for continuous period for 1 year in the past 3 years and come to work as Exec or Manager

• Work Authorization for Spouse

• Can apply for a Permanent Residence? Ownership. When?
- Canada or Mexico
- Coming to U.S. to work in profession listed on NAFTA schedule
- Applicant must meet required qualifications as noted on the NAFTA schedule
- Requires a Bachelors degree in field
- Nonimmigrant intent
- Canadians apply at border (non-national dependents must obtain visa at U.S. Consulate)
- Mexicans apply at Consulate
- Three year stay, renewable indefinitely
- Extensions and changes of status may be filed at USCIS Service Center
- Prevailing Wage
- May apply for Permanent Resident Status?
O-1 (Extraordinary Ability) Visa

O-1 Extraordinary Ability Visa (Science, Education, Business, Athletics) requirements:

- Must demonstrate “sustained national or international acclaim and recognition for achievements”
- Must show that has risen to the top of the field.

Sustained Acclaim demonstrated by:

- Evidence of a one-time achievement = major internationally recognized award; or
- Evidence of at least 3 regulatory criteria including:
  - National or international awards
  - Membership in associations in the field that require outstanding achievements
  - Published material about beneficiary
  - Participation as a judge of the work of others
  - Original scientific, scholarly, artistic, athletic or business-related contributions of major significance
  - Authorship of scholarly articles in professional journals or major media
  - Employment in a critical/essential capacity for organizations with distinguished reputation
  - High salary or remuneration for services
  - Other comparable evidence
O-1 (Extraordinary Ability) Visa

• Suggested evidence in support of petition
  – Confirmation of achievements (1st authored articles/presentations; citations; book chapters/review articles; peer review or editorial duties, awards, memberships, etc.)
  – Reference letters

• Sponsor can be an employer or agent

• Length of Visa
  – 3 years
  – 1 year extensions
  – Can extend indefinitely

• Can you apply for Permanent Residence?
212(e): Certain J-1 exchange visitors are subject to a 2 year home-residence requirement; such individuals cannot change status to H-1B or become permanent residents until they serve the 2 years at home or obtain a waiver.

Who is subject to 2-year rule?
- Skills list: [http://travel.state.gov/content/visas/en/study-exchange/exchange/exchange-visitor-skills-list.html](http://travel.state.gov/content/visas/en/study-exchange/exchange/exchange-visitor-skills-list.html)
- Graduate Medical Training (medical residency or fellowship)

May not change status in the US (Except A and G)

May be eligible for other visas (J-2, O-1, TN, F-1, E-1/E-2/E-3) by applying abroad

Waivers of 2-year requirement:
- No-objection letters (Not for IMG)
- Interested Government Agency Waiver (e.g., Department of Health & Human Services, National Science Foundation, Department of Energy, Department of Defense, etc.)
- Hardship Waiver
- Persecution Waiver
- ADVISORY OPINIONS
Graduate of The Catholic University of America in Washington, D.C. 1986, with both a Juris Doctor and a Masters Degree in Psychology. Has served as AILA Liaison with the Department of Homeland Security, US Immigration and Citizenship Services (1995-1998 and 2007 to present) and Texas Chapter Chair with the American Immigration Lawyers Association (AILA) 2001-2002. Member of the AILA National Committee with Customs and Border Protection (2008-present); AILA Mentor on Consular Issues (10+ years); Member AILA Working Committee with USCIS, Houston District (10+ years); Member of the AILA National Committee with the Department of State from 2006 to 2008. Member of the State Bar of Texas Committee on Immigration Laws (2002-2005); and Member of AILA National Committee Liaison with USCIS (2013).

She has practiced exclusively immigration law for twenty eight years in Houston. Travels regularly to Mexico and Canada to represent third country nationals applying for nonimmigrant visas. Frequent speaker at a number of AILA, NAFSA, University of Houston, MD Anderson, and Houston Bar Association conferences, on consular practice and other immigration issues.

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