Today’s Presentation

1. Temporary Work Visas – H-1B, TN, H-1B1, E-1, E-2 & E-3, L-1 & O-1
2. Travel Issues
3. Permanent Residency Options
4. Question & Answer
H-1B Visa

- U.S. Employer must file petition with USCIS; employer specific
- Specialty occupation – position requires at least a Bachelor’s degree
- Labor Condition Application (LCA) – from Department of Labor (DOL); obligations for the employer
- Prevailing wage or actual wage must be paid
- Can be for full time or part time employment
- 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 to 4 months
- Premium – 15 days or less (requires $1225 filing fee)

Filing Fees
- $325(H1B)/$290 (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 and no extension
H-1B Cap

- 65,000 (appr.) H-1Bs available per Fiscal Year - Oct 1-Sept 30
- 20,000 additional for U.S. Master’s (and higher degrees)
- Earliest filing date each year is April 1st
- Earliest date to start work as H-1B is October 1st
- If H1B cap is reached the first day of filing, a lottery is held
- Past 2 years H-1Bs remained available to Dec/Jan
- Cap Exempt Employers - Universities; Non-profits Affiliated to a University; Non-profit Research and Government Research organizations
- Currently, H1Bs are no longer available
H-1B Approval Notice with I-94

The above petition and change of status have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the dates authorized. Any change in employment requires a new petition. Once the employment authorization stems from the filing of this petition, separate employment authorization documentation is not required.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right part with his or her Form I-94, Arrival/Departure Record. This should be turned in with the I-94 when departing the U.S. The left part is for the petitioner. A person granted a change of status who leaves the U.S. must normally obtain a visa in the new classification before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file Form I-94, Application for Action on an Approved Petition, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDON STREET
SAINT ALBANS VT 05478-0001
Customer Service Telephone: (800) 375-5283
Form I-797(A) (Rev. 09/07/93)

Receipt Number EAC-07-264
Immigration and Naturalization Service
I-94
Departure Record
Petitioner: UNIVERSITY OF

Detach This Half for Personal Records

Receipt # EAC-07-264-1-94
NAME
CLASS H-1B
VALID FROM 10/05/2007 UNTIL 09/16/2010
PETITIONER: UNIVERSITY OF HOUSTON
ONE MAIN STREET SUITE 960 S
HOUSTON TX 77002

FosterQuan, LLP
THE COMPREHENSIVE IMMIGRATION LAW FIRM
F-1 Students c/s to H-1B

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 E-verified Employer
- Position directly related to degree
TN Visas

Canadian and Mexican citizens

- For occupations listed in NAFTA treaty – most require a bachelor’s degree
- Work only for U.S. sponsoring employer
- Canadian citizens – can apply at border (POE) or preflight inspection (PFI) OR change status in the U.S
- Mexican citizens – apply at U.S. consulate for visa (valid only 1 year) OR change status in the U.S.
- Time Period in U.S. – Three years (initial admission); 3 year extensions
- Nonimmigrant intent required
- TD Spouses – no work permit available
TN Designated Occupations

Sample list of designated occupations for TN includes:

- Engineer
- Registered Nurse*
- Scientific Technician*
- Management Consultant*
- Economist
- Accountant
- Architect
- Computer System Analyst
- Graphic Designer

*Does not require Bachelor’s degree or Licenciatura
H-1B1 for Citizens of Singapore & Chile

- Must have a job offer with a US employer
- Must be a degreed professional
- LCA and prevailing wage required
- Can apply directly at US consulate without obtaining an approved USCIS petition
- Admission is for one year, renewable in 1 year increments
- No dual intent
- Chile has a numerical cap of 1,400 visas per year
- Singapore has a numerical cap of 5,400 visas per year
- Spouse cannot work
E-3 Visas for Citizens of Australia

- Must have job offer with US employer
- Must be a degreed professional
- LCA and prevailing wage required
- Can apply directly at US consulate without obtaining an approved USCIS petition
- no dual intent
- 2 year validity with additional 2 year extensions
- 10,500 visas per year
- Spouse eligible to apply for employment authorization
E-1 Treaty Traders & E-2 Treaty Investors

- The sponsoring employer must be at least 51% foreign-owned by a company or individual with the citizenship of the treaty country
- A treaty of trade or commerce between the U.S. and the foreign country of origin exists
- The foreign national employee must share the same citizenship as the company
- The position must be managerial in nature or one requiring “essential skills” or specialized experience
- No Dual Intent
- Spouse can apply for a work permit
L-1 Intracompany Transferee

• Must have worked abroad for parent, subsidiary, affiliate, or branch of the U.S. employer for 1 continuous year in an executive, managerial or specialized knowledge capacity prior to entry into the U.S.

• Maximum stay:
  – L-1A executive or manager is 7 years
  – L-1B specialized knowledge worker is 5 years.

• Time spent in L-1 status counts toward the 6-year H-1B maximum.

• L-2 spouse can apply for work permit.

• Allows for “dual Intent”
O-1 Extraordinary Ability or Achievement

- Extraordinary ability in the arts, sciences, business, athletics and education; or

- Extraordinary achievement in the motion picture or television industry.

- Must be able to prove the person is one of the very few that have risen to the top of his/her field of endeavor.

- There is no limitation on number of extensions permitted for O-1 classification. Extensions may be granted so long as the beneficiary continues to meet the regulatory requirements.
Upcoming International Travel?
Plan Ahead for a Smoother Entry and Exit
Do I need a visa?

“My non-immigrant change of status has been approved.”

“My visa stamp is expired.”

Do I need a new visa in my passport?

Except for Canadian citizens and Visa Waiver Visitors, a valid, unexpired visa issued by a U.S. consulate is needed to enter or re-enter the United States.

- Exception: 30 day automatic revalidation rule for travel to Canada or Mexico.
Visa Application at the U.S. Consulate

- Make visa appointments well in advance of international travel – check consulate website for processing times
  
  [www.travel.state.gov](http://www.travel.state.gov) “Visas”

Passport must be valid for at least 6 months

- Immigration documents for the visa status – eg. I-20s, DS-2019, I-797 approval notice
  - Attorney Certified Copy of I-129 Petition, if applicable
  - Original supporting documents
  - Visa fees; may be payable at a local bank designated by the particular U.S. Consulate
  - Passport photo
  - DS-160 application forms completed online
Visa Application and Possible Delays: Driving Under the Influence

• In 2007 the Department of State ("DOS") issued instructions to Consular Posts *requiring* consular officers to refer non-immigrant visa applicants to panel physicians for medical examinations if the applicant has:
  
  – (1) A single drunk driving arrest or conviction within the last three years, or
  
  – (2) Two or more drunk driving arrests or drunk driving convictions in any period of time.

• Directive is not discretionary. Officers must also refer applicants to physicians if there is any other evidence to suggest an alcohol problem.

• Visa applicants should have available a certified copy of arrest report and court disposition.
Visa Application and Possible Delays: Security Clearances

• Types of Security Clearances:

– **Criminal Background Check**: Name check of the visa applicant or similar biographical information results in a “hit” – name similar to someone with a criminal record.

– **Visas Condor**: Applies to male citizens ages 16-45 from any of the listed “Countries of Concern” or “Countries that Sponsor Terrorism”.

– **Visas Mantis / Technology Alert List**: Applies to a list of “critical” fields that the DOS has determined a cause for concern such as advanced computer, chemical, sensory technology, information security, and robotics.
Canada/Mexico Option for Third Country Nationals (TCNs)

- U.S. consulates in Mexico will no longer accept TCN applicants unless the same visa they are seeking was issued in home country – eg. F-1 with H-1B approval can not apply

- U.S. consulates in Mexico and Canada will generally not accept TCN applicants who have been out of status in the U.S. by having violated terms of their visas or having overstayed the validity indicated on their I-94s.

- Citizens of Iran, Sudan, North Korea, Cuba, and Syria cannot apply for visas in Mexico or Canada.
Form I-94 Arrival / Departure Record 
Issued at Entry to the U.S.

• It is very important to confirm that each I-94 Card is completed correctly – check visa class and expiration date

• Be aware that the I-94 validity could be “cut short” due to passport validity.
NSEERS Registration

• Registration of certain nonimmigrants upon their entry into the United States and when leaving the U.S.

• Individuals are selected by the CBP Inspecting Officer or the Consular Officer abroad for registration upon entry, based on the Officer’s virtually unlimited discretion. Usually, this is based on the individual’s country of origin (primarily includes all Islamic countries).

• Registration upon entry requires fingerprinting and photographing as well as the provision of additional information which may be requested by the CBP Inspecting Officers.
Address Change Notification

- Within 10 days of moving to a new address within the U.S., all foreign nationals must file a form AR-11 with USCIS.
- Each family member must submit their own AR-11.
- Possible to submit online at www.uscis.gov
Most Common – A 3-Step Process to Lawful Permanent Resident Status

1. Labor Certification PERM - filed with Dept. of Labor
2. Immigrant Visa Petition – Form I-140 filed with USCIS
3. Adjustment of Status Application – Form I-485 filed with USCIS
Labor Certification PERM Application

Employer must demonstrate to the Department of Labor (DOL) that no U.S. workers are:
– minimally qualified;
– willing;
– available; and
– able to perform the duties

Prevailing Wage is required
Employer, location, and position specific
Employer MUST pay all PERM costs
Advertising and Recruitment Required

- Employer must determine the minimum education and experience for the position
- Obtain a Prevailing Wage Determination
- Begin Recruitment:
  1) Job Order with State Workforce Agency
  2) Internal Posting
  3) Two Sunday Advertisements (or 1 Sunday newspaper ad and one journal ad)
  4) Three Additional Recruitment Steps for Professional positions such as Job Fairs, Employer’s Web Site, Journal ad etc.

Review/interview U.S. applicants
PERM Labor Certification

- 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 ranges from 2 weeks to several months
- Current Audit processing time is 2 years
Optional Special Recruitment for College and University Teachers

Basic 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.**

- **A print advertisement in a national professional journal is required.**

- **File within 18 months of the formal selection decision.** The labor certification application must be filed within 18 months from the date that the foreign national was selected for the position.

- **Posting Notice** - Prior to filing, a Posting Notice must be posted and all required documentation and information must be collected and prepared for filing.
Immigrant Visa Petition Form I-140 based on PERM approval

Requirements for I-140:
- Documents that employee has the required education & experience
- Financial Documents to show company can pay offered salary

Must be filed within 180 days of PERM approval
Premium processing available in most cases
Upon approval, priority date is set and can move with the foreign worker
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
3. National Interest Waiver *

**Third Preference**
1. Skilled Worker (job requires 2 Years of Experience)
2. Professional (job requires a Bachelors Degree)
March 2011 Visa Bulletin
Employment-Based

The Visa Bulletin can be found at [www.fosterquan.com](http://www.fosterquan.com) or at the Department of State website at [www.travel.state.gov](http://www.travel.state.gov).

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PERM Exempt
Immigrant Visa Categories

• EB11 - Extra Ordinary Ability
• EB12 - Outstanding Professor or Researcher
• NIW (EB-2) - National Interest Waiver
EB 11-Extraordinary Ability

“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
EB 12-Outstanding Professor or Researcher

“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
  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
EB 12-Outstanding Professor or Researcher Criteria

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
EB 21/22–National Interest Waiver

- 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
- **Visa Availability as of March 2011:**
  China – July 8, 2006
  India – May 8, 2006
  Current for other countries
“National Interest” Test

**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
Priority Dates & Permanent Residency Processing

• I-485 Adjustment of Status can not be filed until Priority Date is current
• If Priority Date retrogresses after I-485 is filed, the I-485 cannot be approved until it is current again
• I-140 & I-485 can be concurrently filed
• 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

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

- No medical issues, such as tuberculosis (Medical exam required)
- 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
Success! – Green Card

PERMANENT RESIDENT CARD

NAME  First name Last name

A# 07878XXX
Birthday  Category  Sex
xx/xx/yy  2SS

Country of Birth

Sample Purpose Only

www.path2usa.com

Resident Since: 09/xx/xx

C1US xxxxxxxxxx WAC xxxxxxxx

Last Name  <<  First Name  <<

<< << << << << << << <<6

Finger Print
Contact Us

600 Travis, Suite 2000
Houston, Texas 77002
713-335-3971
FosterQuan.com