

OVERVIEW OF POST-GRADUATION EMPLOYMENT OPTIONS FOR INTERNATIONAL STUDENTS

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Optional Practical Training- OPT

- ◎ Why important to you:
 - Allows smooth transition from studies to work
 - Reassures employers worried about work status
 - Gets your “foot in the door”
 - Allows you to sample more than one employer
 - Usually not advisable to go directly from degree to H1B

OPT—Bridge to Somewhere

- ◎ Brand new OPT rule of April 8:
 - Newly defined application period
 - Cap gap protection
 - STEM extension
 - Student, ISA, and employer reporting requirements
 - Limitations on unemployment
- ◎ *This is not your father's OPT!*

OPT, continued

- ⦿ Don't miss this bridge to your future:
 - ***WORK CLOSELY WITH YOUR ISA***
 - Use it strategically (usually post-completion)
 - ***APPLY EARLY!***
 - It can take USCIS months to approve OPT
 - Think about transition to next status, like H-1B

OPT, ctd.

- Eligible for one year of OPT for each higher degree
 - Don't need job offer to apply
 - Employment must be directly related to major field of study
 - Apply by filing Form I-765 with USCIS with OPT I 20
 - Apply no more than 90 days before completing program of study
 - Apply no later than 60 days after completing program of study
 - Apply no more than 30 days after ISA authorizes in SEVIS
 - Must complete OPT within 14 months after studies
 - While engaged in OPT, you must report change of your name, address, or e-mail address, change of employer's name or address, and changes of employer to ISA. Failure to do so could result in denial of H1B, PR.

OPT ctd.

- ◎ Reporting: New rule establishes triple reporting requirements:
 - Student to DSO:
 - initial 12 months: should report any change of address, name, interruption of employment, to DSO [within 10 days--SEVP];
 - STEM extension: must provide within 10 days change of legal name, address, employer name or address, and loss of employment; also “validation report” each six months if on STEM extension [not in SEVIS 5.8]
 - Employer to DSO: (STEM ext. only) must report if student separated from employment within 48 hours
 - DSO to SEVIS:
 - Initial 12 months: must report in SEVIS within 21 days: any change of name, residential or mailing address,
 - Also during STEM extension: change of employer name or address, end date of employment, as reported by student/employer [8 CFR 214.3(g)(3)(i)].

OPT, ctd.

- STEM extension of OPT
 - Students who earn bachelor's or higher in a science, technology, engineering or mathematics (STEM) field may receive **one** 17-month extension, 29 months total OPT
 - Apply by filing Form I-765 **before** initial period of OPT expires
 - authorized to continue working 180 days while waiting for approval
 - Employer must enroll in E-verify
 - See www.uscis.gov/E-Verify
 - Many already enrolled, required by law in some states, but some may refuse, so discuss with employer

OPT, ctd.

- Unemployment may lead to violation of status
 - Allowed 90 days unemployment during initial period of OPT
 - Those with STEM extension allowed cumulative total of 120 days of unemployment during initial and extension period
 - SEVP says paid or unpaid employment of at least 20 hours per week suffices, it may be with more than one employer, but unpaid does not suffice during STEM extension
 - SEVP says self-employment, independent contractor work, or through agency or consulting firm are acceptable
 - Allowed up to 10 days off between jobs (not unemployment)
 - Time outside U.S. does not count as unemployment if you are employed before leaving U.S.
 - ***This is current guidance from SEVP and could change, so get advice from your ISA!***

Training, ctd.

- ⦿ Academic Training (J-1 students)
 - Allowed varying amounts of academic training, depending on the kind and length of their academic program
 - Authorized by ISA
 - No application to USCIS
 - ISA will issue new DS-2019
 - Must have a job offer to be eligible

Highlights of H-1B

- ⦿ H-1B “Temporary Employees in Specialty Occupation”
 - Valid for up to 6 years (increments of up to 3 years)
 - Specialty occupation (at least B.S. for entry into profession)
 - USCIS and DOL approval required
 - Recruitment, like for employment-based “green card,” not required
 - Employer (not employee) “applies” or petitions
 - Employer must pay “prevailing wage” (see <http://www.flcdatcenter.com/>)
 - Cap on number available each year
 - 58, 200 generally available
 - Additional 20,000 for U. S. graduate degree holders
 - Higher education institutions and affiliated non-profits exempt
 - Government and non-profit research organizations exempt

Highlights of H-1B, ctd.

- Employer-, job-, and location-specific, so changing jobs or employers requires new petition
- Possible to have part time employment with more than one employer
- “Dual intent” permissible, so possible to pursue LPR while H-1B
- “Portability” to new employer once petition is filed by new employer
- H-4 status for dependents (no employment allowed)

Who and What Qualifies

- ◎ Both the job and the employee must qualify for H-1B
 - The Job:
 - Must require at least a bachelor's degree for entry into the profession
 - Engineer: YES
 - Housekeeper: NO
 - Nurses?? Sales/Marketing jobs?? Retail jobs??
 - Not employer's requirements, but industry practice decides
 - The employee:
 - Must, of course, qualify for the job
 - Must have at least a bachelor's in closely-related field or equivalent education and experience (3 years experience = 1 yr. education)
 - If diploma has not been issued, but ALL requirements for degree completed, letter from registrar required

Filing Fees and Legal Fees

- ◎ USCIS filing fees for H-1B petitions are:
 - \$320.00 basic filing fee (for Form I-129)
 - \$300 for dependants
 - \$500.00 “anti-fraud fee” (not for extensions)
 - Training fee
 - **\$750.00** (employers of fewer than 26 full-time employees) or
 - **\$1500.00** (employers of 26 or more full-time employees)
 - Higher ed. institutions, primary/secondary schools, non-profit and govt. research entities are exempt from training fee
 - \$1000.00 if “premium processing” is required
- ◎ Legal fees, paid to an attorney who handles the process for you and your employer, vary widely

H-1B Process

- ⦿ Analyze whether H-1B status is proper for the position and the employee
- ⦿ Determine “prevailing wage” for job
- ⦿ File Labor Condition Application with DOL
- ⦿ File H-1B petition with USCIS (with evidence of quals, job, company)
- ⦿ If employee is in the U.S., USCIS will change status to H-1B (no need to leave U.S. usually)
- ⦿ If out of US, will need to pick up H visa at consulate.
- ⦿ Obtain proper status (H-4) for dependents

Planning for H-1B Status

- Apply for OPT in a timely (and strategic) manner
- Talk to your employer early
 - “H-1B cap” problems make this essential
 - How you handle the discussion depends on the situation
 - Issues to settle
 - Who will handle the petition process
 - Remember, it is the employer who files the petition
 - Some employers use a specific attorney, some use in-house staff, some will allow you to hire the attorney, others have no idea about any of this
 - **Do not** let your petition be your company’s first self-filed H-1B petition
 - Who will pay the legal fees and filing fees?
 - No prohibition on employee paying legal and filing fees (except “training fee”), but some issues arise if employee pays, so employer needs legal advice
 - If your employer’s petition is not selected, what will you do?
- Consult an immigration attorney

Availability and Timing Issues

- H-1B Quota or “Cap”
 - USCIS makes H-1Bs available October 1, the start of its fiscal year
 - “Bachelor’s cap”: 65,000 (less 6800 Chile/Singapore H-1B1s) equals 58,200.
 - “Master’s cap”: additional 20,000 (must have master’s or higher from U.S. university)
 - Petitions must be filed 6 months in advance, on April 1, because of very high demand
 - USCIS allows five-day filing period, and both bachelor’s and master’s caps are usually exhausted, so many petitions are rejected/returned
 - Higher ed. institutions and affiliated non-profits, and government research and non-profit research organizations are exempt from the cap (so they can keep filing H-1B petitions after cap is reached)
 - Careful legal analysis of possible exemption is crucial
 - Premium processing may give slight statistical advantage, also helps with planning and travel
- Processing time several months (unless premium processing used)

How Can the Recession Help Me?

- Ironically, our current economic situation may be a boon to those applying for H's this April.
- Demand for visas appears to be sharply DOWN.
- That means that for those who DO apply, there will be fewer people vying for limited numbers of visas, thereby increasing the applicant's statistical chance of being "chosen" in the lottery.

The H-1B Cap-Gap – A Closer Look

- Many students on OPT fall into the “cap gap” each year
 - The “cap gap” is the period after finishing OPT but before a quota subject H1B will begin on October 1.
 - For example, a student’s OPT ends May 15. His H will not begin until October 1. May 16 to October 1 is his “cap gap.”
 - New “cap-gap rule”
 - OPT work authorization and “D/S” (F-1 status) are extended until 10/1 for beneficiaries of H-1B petition with 10/1 start date requesting change of status to H-1B
 - *So if employer’s April 1 petition for you is “selected,” you can continue working, and you become an H-1B on 10/1 !*

H-1B Cap-Gap, ctd.

- If your employer files a petition for you on April 1, you should have a receipt notice in about a month if your petition is selected
- If you used premium processing, you'll probably have an approval notice a couple of weeks later (without premium, four months or so)
- The approval notice will indicate that you have been granted a change of status effective October 1
 - Until October 1, you remain an F-1 student on OPT (F-2s extended too)
 - When your OPT expires the "cap gap rule" provides an extension of your OPT work authorization and "duration" of F-1 status
 - Contact your ISA to get a "cap-gap I-20"
- Travel
 - **While petition pending with USCIS** abandons the change of status request
 - **After petition is approved** but before 10/1 may be risky, so get legal advice
 - Pretty easy once you become H-1B, but you need visa to re-enter U.S., so you'll have to apply at a consulate while abroad (plan ahead)

H-1B Cap-Gap, ctd.

- ⦿ But, if your employer's petition is not "selected," then once your OPT ends you have only a 60-day "grace period" to remain in the U.S. (can't work during grace period)
- ⦿ Strategies if not selected – many possibilities – some examples:
 - Earn a STEM degree or apply for STEM extension— 29 months of OPT gives you three H-1B cycles in which your employer's H-1B petition for you might be "selected."
 - Go back to school for another degree and get CPT.
 - If you qualify for the job and H-1B before graduating, have employer file petition before you graduate
 - Have employer start the "green card" process for you, if possible
 - If you're in love with USC, consider marriage.
 - Seek work for a cap-exempt employer, or concurrent employment, or working "at" rather than "for" institution.
 - Have you been "counted" as an H-1B within the last six years?
 - Consider other statuses: H1B1, TN, L, E-1, E-2, and E-3, J, H-3, R, O, Q etc.
 - Could you work abroad for your employer—telecommute or in foreign operations?

What if Size H Doesn't Fit?

- TN (Treaty NAFTA) for citizens of Canada and Mexico only. Occupations listed at 8 Code of Federal Regulations Sec. 214.6(c) generally require a minimum of Bachelor's degree. But MBA's beware: "Management Consultant" is carefully scrutinized; generally must be independent contractor. TN given in three year increments; requires residence abroad (no dual intent).

Other Ways to Heaven?

- H1B1 visa for Chile, Singapore: very similar to normal H1B, except granted in one year increments, requires residence abroad (no dual intent).
- E 3 for Australian citizens; again very similar to H1B; minimum Bachelor's, dual intent ok; spouses may work.
- H-3 trainee. 2 yrs max; training must be for job abroad.
- J-1 trainee. 18 mo. max; looser than H 3, but many J sponsors will not sponsor if you are in US.

Money, God or Business?

- E 1/E 2: if your country of nationality has an trader/investor treaty with US, investment of as little as 50K in a job-creating business can mean a visa for life, work permit for spouse.
- L 1A/L 1B: if you were employed by a company abroad for at least a year before coming to the US, and they wish to employ you in US; work permit for spouse.
- R-1: possible if job offer has a significant religious component.
- B-1 business visitor: only possible if employed outside US, no remuneration in US except expenses, and product/service is made/rendered outside US. **VERY LIMITED UTILITY.**

Once You Have H-1B Status

- ◉ Since H-1B allows “dual intent,” you may pursue LPR (“green card”) and travel/visa apps. much easier for Hs than for Fs and Js
- ◉ If extension is filed before H-1B status expires, can keep working while waiting for approval of extension
- ◉ Changing employers is pretty easy
 - “Portability” allows you to begin working for the new employer once it files new H-1B petition (don’t have to wait for approval)
- ◉ It can be extended for up to 6 years (up to 3 years at a time)
 - Can be extended indefinitely for those who have LPR petition or labor certification filed **before end of fifth year of H**
 - Can be extended indefinitely for someone with approved LPR petition who can’t obtain LPR yet because of backlog
 - ***Be sure to start LPR process well before you start your 5th year of H-1B status***

The Future for H's?

- ⦿ Congress has tried twice in 2006 and 2007 to raise the H quota and failed.
- ⦿ 2009 would have been a good year to try again, with new President and Congress, but for the economic meltdown
- ⦿ Politically difficult to raise numbers of foreign workers when Americans out of work
- ⦿ Perhaps in 2010 or 2011 we'll see relief, depending on economy.

Permanent Residence

- ⦿ This will be an overview of the many routes to permanent residence. For a more detailed discussion of permanent residence via employment, please come to our session at 2 PM today.

Permanent Residence

- ⦿ Employment-based
- ⦿ Family-based
 - U.S. citizen or permanent resident spouse
 - USC or PR parent; USC child over 21; USC sibling
 - Long waits for all but USC spouse or parent
- ⦿ Asylum
- ⦿ Diversity Visa Lottery
- ⦿ Large Investment
- ⦿ Special Programs
- ⦿ Removal Proceedings

Employment-Based LPR

- ⦿ Must have a permanent, full-time job
 - Or pursue “extraordinary” route
 - Or pursue “national interest waiver” route
- ⦿ Generally, process requires employer to show that there are no qualified U.S. workers willing to take the job: labor certification.
- ⦿ Labor certification process very burdensome, but quicker with the relatively new PERM system
- ⦿ H-1B gives you 6 years to work this out, but **START EARLY** because it can take several years to get the “green card”
 - University/college teachers get special benefit by having labor certification application filed within 18 months of job offer
- ⦿ Again, how you approach this depends on the situation
 - Some employers handle or pay, others don't (must pay LC costs)
 - Consider negotiating
 - You can try several routes, even at the same time

○ PR Steps

1. Labor certification

- Employer advertises position to “test the labor market”
 - Several forms of advertisement required (unless higher ed teacher)
- Employer files application through PERM system (online)
- DOL approves, denies, or audits

2. Employer files immigrant petition (I-140) with USCIS

3. Employee files Adjustment of Status Application (I-485) with USCIS

- Must have current “priority date” on Visa Bulletin to file
 - Some categories/countries backlogged, queues of several years
- If “current,” may file petition and application together (“concurrent filing”)
- Can apply for EAD and advance parole “travel document” with adjustment application
- Spouse and unmarried minor children can file AOS at same time
- After Adjustment of Status application has been pending for 180 days, you can move to “same or similar employment” with a new employer without having to start all over

Finding an Immigration Attorney

- ◉ Discuss with your employer
- ◉ Ask friends, your advisor, and others for references
- ◉ Probably a good idea to beware of those who
 - Claim to be experts in immigration and other areas (divorce, injuries, etc.)
 - Have little or no experience with students (you are subject to complex rules)
 - Offer a guaranteed result or offer to charge you only if they are successful
 - Will not agree to a “flat fee” (unless your case is unusual or complex)
 - Are not familiar to anyone else, especially your advisor
 - Are unusually cheap or promise results different from other lawyers you consult
 - Who ask you to sign things that are not true, or without reading them first (fraud carries permanent and possibly criminal penalties)
 - Who don't call you back or don't send you copies of their work on your behalf
 - Are of interest to you **only** because they were born in your home country
 - Are of interest to you **only** because they have an office near you

Wrap-Up

- ◎ Questions?
- ◎ For more information
 - E-mail
 - dware@david-ware.com
 - See www.David-Ware.com
 - Get on our electronic update list: go to website or send me an email