Immigration 101
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Broad Immigration Overview

• 3 Categories of People in the U.S.
  – Citizens
  – Immigrants
  – Nonimmigrants
Involved Government Agencies

- **Department of Homeland Security:**
  1. United States Citizenship and Immigration Services - USCIS (formerly the Immigration & Naturalization Service – INS or BCIS)
  2. Immigration & Customs Enforcement – ICE
  3. Customs & Border Protection – CBP
- **Department of Labor**
  - Office of Foreign Labor Certification
  - PERM Processing Centers
  - State Workforce Agencies (SWAs)
- **Department of State (DOS):** U.S. Embassies and Consulates
Legal Structure & Resources

- Immigration and Nationality Act (INA)
- Subsequent legislation
- Regulations – CFR 8 (immigration), 20 (labor), & 22 (Department of State)
- Operating procedures
  - inconsistent
  - always changing
- USCIS memoranda
- Foreign Affairs Manual (FAM)
Document Review

What are some of the more common documents we see in immigration?
Visa Stamp
I-94 (D/S)

Departure Number

722055896 06

U.S. IMMIGRATION NEW YORK, NY 2468

ADMITTED UNTIL 9/15 (CLASS)

Family Name
Zhang

First (Given) Name
Tong

Country of Citizenship
P.R.C, HNA

See Other Side

STAPLE HERE
**DS-2019 (J)**

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**U.S. Department of State**

**CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR (J-1) STATUS**

<table>
<thead>
<tr>
<th>Form Number:</th>
<th>DS-2019</th>
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<tr>
<td>Series:</td>
<td>J-1</td>
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</table>

**Applicant:**

- **Name:**
- **Date of Birth:**
- **Country of Birth:**
- **Sex:**
- **Status:**
- **U.S. Address:**
- **City:**
- **State/Province:**
- **Country:**
- **Phone Number:**
- **Fax:**
- **Title:**
- **Address:**
- **City:**
- **State/Province:**
- **Country:**
- **Phone Number:**
- **Fax:**

**Program:**

- **Title:**
- **Institution:**
- **Country:**
- **Type of Program:**
- **Type of Exchange Visitor:**
- **Type of Financing:**
- **Total Program Cost:**

**Person-in-Charge:**

- **Name:**
- **Address:**
- **City:**
- **State/Province:**
- **Country:**
- **Phone Number:**
- **Fax:**

**Special Conditions:**

- **Travel Validation by Responsible Officer:**
- **Signature:**
- **Date:**

**Certification:**

- **Signature:**
- **Date:**

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I-94 (Expiration Date)

 SAMPLE

 U.S. IMMIGRATION
 250 WAS

 SEP 13 1991

 ADMITTED 1-1

 UNTIL July 10, 1993

 14 Family Name D.O.E
 15 First (Given) Name JOHN
 16 Birth Date (Day-Mo-Yr) 11.04.62
 17 Country of Citizenship U.K.
Nonimmigrants

- Coming to the U.S. temporarily
- Retain residence abroad
- Dual intent - only for H’s and L’s
- “Alphabet Soup” - A-V
Business (Work) Visas

- Intracompany transferees (L-1)
- Treaty Traders and Investors (E-1 & E-2)
- Workers of Extraordinary Ability (O-1)
- Students on Practical Training (F-1 & J-1)
- Exchange Visitors (J-1)
- Most common work visas (H-1B, E-3, TN)
F-1 Students

• Six employment programs for F-1’s:
  – On campus
  – Severe Economic Hardship
  – Special Student Relief
  – Internship with international organization
  – Curricular Practical Training
  – Optional Practical Training
Curricular Practical Training (CPT)

- Integral part of established curriculum
  - Need letter from school
  - School endorsed I-20 (issued via SEVIS System)
  - Can be internship, practicum, coop, work/study, or similar program

- Attended ICE approved school for full academic year in any nonimmigrant status; certain grad students may begin immediately

- Available part-time or full-time

- One year or more of full-time CPT makes you ineligible for OPT at that educational level
Optional Practical Training (OPT)

- “Optional Practical Training:” pre- or post-graduation
  - Total = 12 months; part-time during school year, full-time during vacations and after graduation
  - Need employment authorization document (EAD);
  - Not tied to particular employer
  - Employment related to degree program
- One year of full-time OPT for each academic level (Associate’s, Bachelor’s, Master’s, Professional, PhD). OPT can’t be “saved” for future degree programs; very hard to cancel after card received
- Part-time OPT counts one-half of full-time rate
- Can have up to 90 days of unemployment (Volunteer instead!)
- You can start a business and be self-employed
STEM OPT Extension

- Student’s who majored in certain STEM (Science, Technology, Engineering, Math) fields may be eligible for a 17 month extension of work authorization.
- BUT, must have a job offer from a company that is enrolled in E-Verify.
- Allowed to have up to 120 days of unemployment.
- Must file I-765 with USCIS BEFORE current OPT expires (and preferably 120 days before expiration).
- Students CAN work with an expired OPT card when the STEM extension application is pending with USCIS.
J-1 Exchange Visitors

• Categories include trainees, interns, research scholars, specialists, students, au pairs, etc.

• Some J’s must return to home country for 2 years after completion of program or seek waiver
  – skills list
  – government funding
  – graduate medical education

• J-1 Students can get practical training (similar to OPT)
  – 18 months max for pre-doctoral students; 36 months for Ph.D.s
  – Total training period can’t exceed the period of full course of study
  – Academic training permitted during or after school
H-1B

- “Specialty Occupation” -- Entry level requirement = minimum Bachelor Degree or equivalent
- Six-year maximum stay (can extend under certain circumstances - AC-21); 3 year increments
- 65,000 annual ceiling, of which 6,800 are set aside for citizens of Chile and Singapore
- 20,000 additional visas allocated to holders of advanced degrees from U.S. universities
- Cap Subject vs. Cap Exempt
  - Cap Subject: File on 4/1 for a start date of 10/1
  - Cap Exempt: File at any time
H-1B (continued)

- H-1B tied to employer
  - Concurrent (Dual) H-1B possible
- H-1B can be part-time or full-time
- Find out who sponsors H-1Bs: www.myvisajobs.com
- What are the government fees? ($325, $500, $750/$1500); What are standard legal fees?
- Reasonable costs of return transportation for dismissed employee
- No grace period; once you stop working must leave
- Spouse and children (H-4) not eligible to work
Wage Requirements for H-1B

- Wage offered must be the higher of Prevailing Wage or Actual Wage paid to similarly situated employees.
- What is actual wage? Actual wage is the salary paid by the employer to workers with similar skills and qualifications.
- What is prevailing wage? The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment.
Cap Gap Automatic Extension

- **Automatic Extension of your OPT work authorization to September 30th:** This happens if your approved OPT end date (on your EAD card) is April 1st, 2011 or later.
  - For example: if your OPT ended on or before March 31st, you would not be eligible for extension of work authorization until September 30th, 2011. However, you would be allowed to stay in the US if you otherwise maintain your status.

- **Extension of your F-1 “duration of status.”** This happens if your OPT had expired before April 1st, 2011. Again, you would be allowed to stay in the US if you otherwise maintain your F-1 status, but you are not authorized to work until the H-1b petition is approved and goes into effect October 1st, 2011.

- **Eligibility:**
  - H-1B petition has been timely filed (within the acceptance period)
  - Requests an employment start date of October 1st
  - Requests a change of status

- **Beware of international travel during the cap gap!!**
E-3 Visa for Australian Nationals

- Visa category for citizens of Australia to take up professional positions in the U.S. – 10,500 per year available
- Job offered must be for a “specialty occupation” as defined for H-1B visa category
- Requires certified LCA
- Visas can be applied for at consulates without prior USCIS approval
- Filings can be submitted to USCIS, but premium processing is not available
- 2-year validity; renewable indefinitely
- Dependent spouses may apply for employment authorization
- No 240 day rule; no portability; no premium processing
TN Category for Canadian and Mexican Professionals

- Must be nationals of either Canada or Mexico
- Coming to U.S. to work in profession listed on NAFTA schedule
- Generally require a Bachelors degree in field
- Canadians apply at border (non-national dependents must obtain visa at U.S. Consulate)
- Mexicans apply at Consulate
- Three year increments, renewable indefinitely
- Extensions and changes of status may be filed at USCIS Service Center
Immigrants

- “Green card holders” = “permanent residents” = “immigrants”
- Coming to U.S. permanently
- Numerically limited
  - Visa bulletin
  - Priority date
- Can become U.S. citizens after 3 - 5 years
How to Get a Green Card

- Family
- Work
- Diversity Lottery
- Asylum
- Special Legislation
Special Legislation
Diversity Lottery

• 50,000 green cards given out each year (about 14 million applicants); usually apply sometime in October of each year

• Odds of winning the powerball jackpot?? 1 in 195,249,054

• Who is NOT eligible? Persons BORN in: Bangladesh, Brazil, Canada, China (mainland born), Colombia, Dominican Republic, Ecuador, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

• Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.
Family-Based Permanent Residence

- Immediate relatives (spouses, minor children & parents of U.S. citizens)
- Other close family members of citizens or permanent residents, including:
  1. Unmarried sons & daughters of citizens (over age 21)
  2. Spouses & children of LPRs (2A) & unmarried sons/daughters of LPRs (2B)
  3. Married sons & daughters of citizens
  4. Brothers & sisters of citizens
# October 2013 Family Bulletin

## Family-Sponsored

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Employment-Based Categories

EB-1: Priority Workers

EB-2: Advance-degree professionals & aliens of exceptional ability*

EB-3: Professional, skilled & unskilled workers* (* labor certification required)

EB-4: Special Immigrants

EB-5: Employment Creation (Investors)
October 2013 Employment Bulletin

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EB-1 vs. EB-2 vs. EB-3

- EB-3: Jobs that require a bachelor’s degree
- EB-2: Jobs that require an advanced degree
- EB-1: Priority workers (no labor certification)
  - Persons of extraordinary ability (similar to the O-1 nonimmigrant category)
  - Outstanding professors & researchers
  - Multinational executives/managers
Employment-Based Permanent Residence: 2/3-Step Process

- Labor certification (where required)
  - filed by employer on behalf of foreign national
  - processed under PERM system
- Immigrant preference petition
  - filed by employer
  - processed by USCIS
- Adjustment of status or consular processing
  - filed by the foreign national & family members
EB-2 National Interest Waiver

- Aliens seeking a national interest waiver are requesting that the Labor Certification be waived because it is in the interest of the United States.
- Though the jobs that qualify for a national interest waiver are not defined by statute, national interest waivers are usually granted to those who have exceptional ability and whose employment in the United States would greatly benefit the national interest.
- Those seeking a national interest waiver may self-petition (they do not need an employer to sponsor them) and may file their labor certification directly with USCIS along with their Form I-140, Petition for Alien Worker.
- Good category for Post-Docs
What’s up in Congress?

- Comprehensive Immigration Reform in 2013?? 2014?? 2015?? Ever???
  - Dream Act?
  - STEM Bill?
  - EB-2 fix for India/China?
  - Help entrepreneurs?
www.fragomen.com