

FRAGOMEN

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

Immigration and Naturalization Service
I-94
Departure Record

U.S. IMMIGRATION
NEW YORK, NY 2468

ADMITTED F1
UNTIL 9/15 (CLASS)

Family Name Z h a n g	Birth Date (Day/Mo/Yr) 0 7 0 4 7 3
First (Given) Name T o n g	
Country of Citizenship P . R . C H I N A	

See Other Side

STAPLE HERE

FRAGOMEN

I-20 (F)

Immigration and Naturalization Service

Status - For Academic and Language Students (OMB NO. 1115-0051)

Please read Instructions on Page 2

This page must be completed and signed in the U.S. by a designated school official.

<p>1. Family Name (surname):</p> <p>First (given) Name: _____ Middle Name: _____</p> <p>Country of birth: _____ Date of birth (mo/day/year): _____</p> <p>Country of citizenship: _____ Admission number: _____</p> <p>2. School (School district) name:</p> <p>School Official to be notified of student's arrival in U.S. (Name and Title): _____</p> <p>School address (include zip code): _____</p> <p>School code (including 3-digit suffix, if any) and approval date: _____ approved on _____</p> <p>3. This certificate is issued to the student named above for: Initial attendance at this school.</p> <p>4. Level of education the student is pursuing or will pursue in the United States: LANGUAGE TRAINING</p> <p>5. The student named above has been accepted for a full course of study at this school, majoring in <u>English Language and Literature, General</u>. The student is expected to report to the school no later than <u>09/02/2003</u> and complete studies not later than <u>12/19/2004</u>. The normal length of study is <u>12</u> months.</p> <p>6. English proficiency: <u>English proficiency is not required because: Attending intensive English language program</u></p> <p>7. This school estimates the student's average costs for an academic term of <u>9</u> (up to 12) months to be:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td>a. Tuition and fees</td> <td style="text-align: right;">\$ <u>10,368.00</u></td> </tr> <tr> <td>b. Living expenses</td> <td style="text-align: right;">\$ <u>7,167.00</u></td> </tr> <tr> <td>c. Expenses of dependents (0)</td> <td style="text-align: right;">\$ <u>0.00</u></td> </tr> <tr> <td>d. Other (specify): <u>Books, Supplies</u></td> <td style="text-align: right;">\$ <u>1,865.00</u></td> </tr> <tr> <td style="text-align: right;">Total</td> <td style="text-align: right;">\$ <u>19,400.00</u></td> </tr> </table> <p>8. This school has information showing the following as the student's means of support, estimated for an academic term of <u>9</u> months (Use the same number of months given in item 7).</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td>a. Student's personal funds</td> <td style="text-align: right;">\$ <u>0.00</u></td> </tr> <tr> <td>b. Funds from this school</td> <td style="text-align: right;">\$ <u>0.00</u></td> </tr> <tr> <td colspan="2">Specify type:</td> </tr> <tr> <td>c. Funds from another source</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td colspan="2">Specify type:</td> </tr> <tr> <td>d. On-campus employment</td> <td style="text-align: right;">\$ <u>0.00</u></td> </tr> <tr> <td style="text-align: right;">Total</td> <td style="text-align: right;">\$ _____</td> </tr> </table> <p>9. Remarks: _____</p> <p>10. School Certification: I certify under penalty of perjury that all information provided above in items 1 through 9 was completed before I signed this form and is true and correct; I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts, or other records of courses taken and proof of financial responsibility, which were received at the school prior to the execution of this form; the school has determined that the above named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6); I am a designated official of the above named school and am authorized to issue this form.</p>		a. Tuition and fees	\$ <u>10,368.00</u>	b. Living expenses	\$ <u>7,167.00</u>	c. Expenses of dependents (0)	\$ <u>0.00</u>	d. Other (specify): <u>Books, Supplies</u>	\$ <u>1,865.00</u>	Total	\$ <u>19,400.00</u>	a. Student's personal funds	\$ <u>0.00</u>	b. Funds from this school	\$ <u>0.00</u>	Specify type:		c. Funds from another source	\$ _____	Specify type:		d. On-campus employment	\$ <u>0.00</u>	Total	\$ _____	<p style="text-align: center;">SEVIS</p> <p style="text-align: center;">Student's Copy</p>
a. Tuition and fees	\$ <u>10,368.00</u>																									
b. Living expenses	\$ <u>7,167.00</u>																									
c. Expenses of dependents (0)	\$ <u>0.00</u>																									
d. Other (specify): <u>Books, Supplies</u>	\$ <u>1,865.00</u>																									
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Specify type:																										
c. Funds from another source	\$ _____																									
Specify type:																										
d. On-campus employment	\$ <u>0.00</u>																									
Total	\$ _____																									
<p>11. Student Certification: I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay as specified on page 2. I certify that all information provided on this form refers specifically to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on page 1 of this form. I also authorize the named school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3(g) to determine my nonimmigrant status.</p>		<p>For Immigration Official User</p> <p>Visa issuing post: _____ Date Visa Issued: _____</p> <p>Reinstated, extension granted to: _____</p>																								
<p>Name of School Official _____ Signature of Designated School Official _____ Title _____ Date Issued _____ Place Issued (city and state) _____</p>		<p>Name of Student _____ Signature of Student _____ Date _____</p>																								
<p>Name of parent or guardian _____ Signature of parent or guardian _____ Address (city) _____ (State or Province) (Country) _____ (Date) _____</p> <p>If student under 18</p>		<p>Name of Student _____ Signature of Student _____ Date _____</p>																								

Form I-20 A-B (Rev. 04-27-88)N

For Official Use Only
Microfilm Index Number

DS-2019 (J)

U.S. Department of State
CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR (J-1) STATUS

OMB APPROVAL NO. 1405-0119
EXPIRES: 04-30-2008
ESTIMATED BURDEN TIME: 45 min
*See Page 2

1. Family Name: PROYKO		First Name: Patric		Middle Name:		Gender: FEMALE		NO:002222222			
Date of Birth (mm/dd/yyyy): 05/15/1985		City of Birth: Sofia		Country of Birth: BULGARIA		Citizenship Country Code: BU		Originating Country: BULGARIA			
Legal Permanent Resident Country Code: BU		Legal Permanent Resident Country: BULGARIA		Passport Code: 215		Position: UNIVERSITY UNDERGRADUATE STUDENTS					
U.S. Address: 415 South St., Waltham, MA 02454											
2. Program Sponsor: Brandeis University								Exchange Visitor Program Number: P-1-01781			
3. Participating Program Official Description: PROFESSOR; RESEARCH SCHOLAR; SHORT-TERM SCHOLAR; SPECIALIST; STUDENT ASSOCIATE; STUDENT BACHELORS; STUDENT DOCTORATE; STUDENT MASTERS; STUDENT NON-DEGREE											
Purpose of this form: Begin new program; accompanied by number (1) of immediate family members.											
3. From (mm/dd/yyyy): 08-30-2007		4. Exchange Visitor Category: STUDENT BACHELORS									
To (mm/dd/yyyy): 05-31-2008		Subject/Field Code: 42.0101		Subject/Field Code Research: Pursuing Bachelor's degree as a double major in Psychology and Economics							
5. During the period covered by this form, the total estimated financial support (U.S. \$) to be provided to the exchange visitor by: Current Program Sponsor: funds - \$30,000 Personal funds: \$20,000 Total: \$50,000											
6. U.S. DEPARTMENT OF STATE/DSO USE OR CERTIFICATION BY RESPONSIBLE OFFICER (THIS AGENCY/SECTION COPY OF THIS FORM HAS BEEN PROVIDED TO THE U.S. DEPARTMENT OF STATE (INCLUDE DATE)).				7. Shohreh Harris				Alternate Responsible Officer			
				Name of Official Preparing Form: 415 South Street Waltham, MA 02454				Title: 781-736-1480			
				Signature of Responsible Officer: <i>[Signature]</i>				Telephone Number: 08-14-2207		Date (mm/dd/yyyy): 08-14-2007	
				Signature of Alternate Responsible Officer: <i>[Signature]</i>							
8. Statement of Responsible Officer for Issuing Certificate (FOR TRANSFER OF PROGRAM) (Effective 04/01/07) Transfer of this exchange visitor from program number _____ sponsored by _____ to the program specified in item 2 is necessary or highly desirable and is in conformity with the objectives of the Mutual Educational and Cultural Exchange Act of 1961, as amended.											
Signature of Responsible Officer or Alternate Responsible Officer				Date (mm/dd/yyyy) of Signature							
PRELIMINARY ENDORSEMENT OF CONSUL OR EMBASSY OFFICER REGARDING SECTION 2(b)(2) OF THE IMMIGRATION AND NATIONALITY ACT AND PL 94-484, AS AMENDED (see item 7(a) of page 2)						TRAVEL VALIDATION BY RESPONSIBLE OFFICER (Minimum validation period is one year*)					
The Exchange Visitor in the above program: 1. <input type="checkbox"/> Not subject to the two-year residence requirement. 2. <input type="checkbox"/> Subject to two-year residence requirement based on: A. <input type="checkbox"/> Government financing and/or B. <input type="checkbox"/> The Exchange Visitor Skills List and/or C. <input type="checkbox"/> PL 94-484 as amended.						*EXCEPT: Maximum validation period is up to six months for Short-term Scholars and four months for Camp Counselors and Summer Travel/Work. (1) Exchange Visitor is in good standing at the present time. 11/22/2007 Date (mm/dd/yyyy) Travel Signature Here Signature of Responsible Officer or Alternate Responsible Officer (2) Exchange Visitor is in good standing at the present time.					
Name _____ Title _____ Signature of Consul or Embassy Officer _____ Date (mm/dd/yyyy) _____						Signature of Responsible Officer or Alternate Responsible Officer _____ Date (mm/dd/yyyy) _____					
THE U.S. DEPARTMENT OF STATE RESERVES THE RIGHT TO MAKE FINAL DETERMINATION REGARDING THIS											
EXCHANGE VISITOR CERTIFICATION: I have read and agree with the statement on item 2 on page 2 of this document.											
Signature of Applicant _____						Place _____		Date (mm/dd/yyyy) _____			

I-94 (Expiration Date)

Departure Number: 742832036 01

U.S. IMMIGRATION
250 WAS

Immigration and
Naturalization Service

SEP 13 1991

I-94
Departure Record

ADMITTED L-1
UNTIL July 10, 1993 (CLASS)

14. Family Name <u>DOE</u>	16. Birth Date (Day Mo. Yr.) <u>16.04.62</u>
15. First (Given) Name <u>JOHN</u>	
17. Country of Citizenship <u>U.K.</u>	

I-797 Approval Notice & I- 94 Card

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Action

THE UNITED STATES OF AMERICA			
RECEIPT NUMBER WAC-04-357-51800	CASE TYPE 1129	PETITION FOR A NONIMMIGRANT WORKER	
RECEIPT DATE September 23, 2004	PRIORITY DATE	PETITIONER XYZ CORPORATION	
NOTICE DATE September 27, 2004	PAGE 1 of 1	BENEFICIARY TANAKA, TARO	
BRANDON C. VALVO VALVO & ASSO INC RE: XYZ CORPORATION 700 S FLOWER ST STE 2450 LOS ANGELES CA 90017		Notice Type: Approval Notice Class: H1B1 Valid from 01/01/2005 to 12/31/2007	
<p>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 period authorized. Any change in employment requires a new petition. Since this employment authorization stems from the filing of this petition, separate employment authorization documentation is not required. Please contact the IRS with any questions about tax withholding.</p> <p>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, <i>Arrival-Departure Record</i>. This should be turned in with the I-94 when departing the U.S. The left part is for his or her records. A person granted a change of status who leaves the U.S. must normally obtain a visa in the new classification before reentering. 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-824, <i>Application for Action on an Approved Application or Petition</i>, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.</p> <p>THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.</p>			
<p>Please see the additional information on the back. You will be notified separately about any other cases you filed.</p> <p>IMMIGRATION & NATURALIZATION SERVICE CALIFORNIA SERVICE CENTER P. O. BOX 30111 LAGUNA NIGUEL CA 92607-0111 Customer Service Telephone: (800) 375-5283 Form I797A (Rev. 09/07/03)N</p>			

Detach This Half for Personal Records

Receipt # WAC-04-357-51800
I-94# 886396400 07
NAME TANAKA, TARO
CLASS H1B1
VALID FROM 01/01/2005 UNTIL 12/31/2007
PETITIONER: XYZ CORPORATION
123 FLOWER STREET,
LOS ANGELES, CA 90017

886396400 07

Receipt Number WAC-04-357-51800
Immigration and
Naturalization Service
I-94
Departure Record Petitioner: XYZ CORP.

14. Family Name TANAKA	15. Date of Birth 08/17/1972
16. First (Given) Name TARO	
17. Country of Citizenship JAPAN	

Form I797A (Rev. 09/07/03)N

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 (**S**cience, **T**echnology, **E**ngineering, **M**ath) 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	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01OCT06	01OCT06	01OCT06	22SEP93	01JUN01
F2A	08SEP13	08SEP13	08SEP13	01SEP13	08SEP13
F2B	01MAR06	01MAR06	01MAR06	08MAR94	08FEB03
F3	22JAN03	22JAN03	22JAN03	22MAY93	01JAN93
F4	08AUG01	08AUG01	08AUG01	15OCT96	22MAR90

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

Employment- Based	All Chargeability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	15SEP08	15JUN08	C	C
3rd	01JUL10	01JUL10	22SEP03	01JUL10	15DEC06
Other Workers	01JUL10	22SEP04	22SEP03	01JUL10	15DEC06
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Targeted Employment Areas/ Regional Centers and Pilot Programs	C	C	C	C	C

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?

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