



# Post-Graduation Immigration Options

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# Disclaimer



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# Nonimmigrant Visas

# F-1 Visa For Students

- **On-Campus Employment:**

- F-1 students are allowed to work up to 20 hrs / week for on-campus employment during the semester and 40 hrs / week for on-campus employment during vacations.
- BEWARE: 12 months of full-time CPT will render a student ineligible for OPT

- **Optional Practical Training (OPT):**

- All F-1 Students are eligible for 1 year of employment after completion of a degree program.
- Employment must be related to major.
- Can be extended for an extra 24 months if employment is in a STEM area and the employer is enrolled in E-Verify.

# **H-1B Visa – Basic Requirements**

## **Bachelors or higher degree**

- Determine U.S. equivalence of foreign degree
- Combination of education and experience

## **Job Offer (that will apply the academic/ specialty knowledge)**

- Part-time or full-time

## **Specialty occupation**

- Job requires bachelors or higher degree in specific field
- Thus, music teacher easier to prove than musician

## **Prevailing wage – Labor Condition Application**

## **Requires Employer-Employee relationship (W-2 Wages)**

**Requests for Evidence and Denials receding to Obama-era levels.**

# H-1B Cap Lottery

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- **85,000 visas available** – 20,000 for U.S. Masters Graduates; 65,000 for all others.
- **Current System** – Petitions must arrive during the first five business days of April. USCIS randomly selects 65,000 visas (including U.S. Masters Petitions). All U.S. Masters Petitions that are unselected, then go into their special lottery. Unselected Petitions returned with filing fees.
- **NEW SINCE 2020** – Electronic pre-registration that will request less information and conduct randomized drawing. Only those cases selected will submit full Petitions. Approx. 500K Registrations submitted last year.
- **“Cap-Gap”** – Available to students with accepted H-1B Petitions requesting a change of status – if EAD expires between filing and October 1, employment authorization automatically extends to September 30 while the Petition is pending. Employment not authorized after September 30, or if Petition is denied earlier. If Petition denied, 60-day grace period begins. International travel strongly discouraged during this period.
- **Cap-Exempt** – Universities, teaching hospitals, or nonprofit entities formally affiliates with these organizations (and others) are cap-exempt – bypass the Lottery, file at any time.



# Immigrant Visas

# EB-2 National Interest Waiver

- **Dec. 2016 – Matter of Dhanasar case, opens door to many who couldn't qualify under old case (NYSDOT)**
  - Former stumbling block, showing that impact was “national in scope”
- **New Criteria**
  1. The proposed endeavor is of substantial merit and national importance;
  2. The applicant is well-positioned to advance the endeavor; and
  3. On balance, it would be beneficial to U.S. to bypass usual EB-2 requirement of a job offer and PERM labor market test.
- **Great for self-employed, and entrepreneurial-minded immigrants**
  - Faster, less expensive path to NIW for entrepreneurs creating jobs in the U.S.
- **Recent policy memoranda made clear that U.S. STEM PhD a very favorable trait**
  - Faster, less expensive path to NIW for STEM degrees in “Critical and Emerging Technologies”
- **May not be the best option for China/India**
- **Premium Processing now available (45 days)**



# EB-2 NIW (Shortform)

- **“Shortform” NIW Case Study**

- Given recent policy memoranda and premium processing optionality, we performed a “clinical trial” to simplify NIW legal arguments to make the process faster and less expensive
- Works best for Entrepreneurs and/or those with STEM PhDs

- **Entrepreneurs**

- Specific Evidentiary Considerations for Entrepreneurs
- “...many entrepreneurs do not follow traditional career paths ... no single way in which an entrepreneurial start-up entity must be structured.”

- **STEM PhDs**

- Described in USCIS Policy Manual as “an especially positive factor”
- Particularly applies to fields considered “Critical and Emerging Technologies” per a list published by the White House
- Success filing petitions with a short legal argument and minimal evidence (just the PhD diploma and transcripts, a CV and statement of proposed endeavor, and the relevant policy manual and STEM technologies list)

# Monitoring the Visa Bulletin

- **GANDS continues to monitor Visa Bulletin updates to advise on NIW backlogs**
- **October 2023: Dates for Filing of Employment-Based Visa Applications**

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01AUG22	01JUL19	C	C
2nd	01JAN23	01JAN20	15MAY12	01JAN23	01JAN23
3rd	01FEB23	01SEP20	01AUG12	01FEB23	01JAN23
Other Workers	15DEC20	01JUN17	01AUG12	15DEC20	15MAY20
4th	01MAR19	01MAR19	01MAR19	01MAR19	01MAR19
Certain Religious Workers	01MAR19	01MAR19	01MAR19	01MAR19	01MAR19
5th Unreserved (including C5, T5, I5, R5)	C	01JAN17	01APR22	C	C
5th Set Aside: (Rural - 20%)	C	C	C	C	C
5th Set Aside: (High Unemployment - 10%)	C	C	C	C	C
5th Set Aside: (Infrastructure - 2%)	C	C	C	C	C

# FOR FURTHER INFORMATION



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**PURDUE**  
UNIVERSITY



# Immigration for Entrepreneurs

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# US Immigration Law 101

- **Immigrant Visa – Green Card**
  - Indefinite Admission
  - Route to citizenship
  - 5 years default
  - 3 years if married to and living with U.S. Citizen
  - Derivatives for spouse / Minor Children
  - Loss if stay out of U.S. for too long, crimes, or give up “voluntarily”
- **Always a petition process, separate application for Green Card**
  - In U.S. = “Adjustment of Status”
  - Outside of U.S. = “Consular Processing”
- **U.S. Citizenship**
  - Naturalization always optional (may lose original citizenship)
  - Right to vote, run for public office
  - Responsibilities
  - Sponsor more family members
  - Pass citizenship by blood (jus sanguinus)





# Nonimmigrant Visas



# Nonimmigrant Visa Options

## Visas for Business Visitors

- Visa Waiver Program (VWP) | B-1

## Visas for Visiting Scholars and Researchers

- J-1

## Visas for Treaty Countries

- E-2 (Treaty Investors – Managers, Executives, Specialized Knowledge)

## Visas for Professional Specialty Occupations

- H-1B
- TN (NAFTA Canada, Mexico)

## Visas for Intercompany Transfers

- L-1A (Managers / Executives)
- L-1B (Specialized Knowledge)

## Visas for those with Extraordinary Ability

- O-1

# B1- Visas

- **For business travelers**
  - Meetings, litigation, market research, etc.
- **Also, a way for entrepreneurs to engage in startup activities**
- **Max 6-months maybe renewed once**
- **MUST maintain their residence abroad**
- **Do NOT provide work authorization**
- **Do NOT allow recipients to manage a business**

# J-1 Visiting Scholars and Researchers

## Key Facts:

- College / University must have Department of State authorization.
- Can be granted for up to 5 years.
- Spouses are permitted to work but must apply for/receive EAD.
- Depending on field of endeavor and/or source of funding for J-1 program, scholar can be required to return to home country for 2 years before getting a green card or assuming H or L status.
- Waiver does not apply to all nonimmigrant visa classifications – e.g., E, O, P, TN not subject. Canadian/Bahamian Citizens visa-exempt as well.
- If subject to the 2-year home residency requirement, must either comply or obtain waiver via (a) No Objection Letter from home government; (b) Interested U.S. Gov't Agency; (c) Persecution; (d) Exceptional hardship to U.S. Citizen/LPR immediate relative; or (e) Conrad 30 [only for MDs].

# **J-1 Options Specific to Purdue University – Research Scholars accepted to the Purdue Foundry**

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- **Purdue is one of a select few U.S. universities that have expanded its J-1 program to include research scholars participating in the on-campus Purdue Foundry, which is based in the Burton D. Morgan Center for Entrepreneurship.**
  - Must complete selection process and be accepted into the Foundry.
  - Up-to-5-years of J-1 as a Research Scholar, which is ample time to develop a marketable technology, on-campus, under the training/supervision of Krannert School of Management and College of Engineering Faculty, and Foundry Entrepreneurs in Residence.
  - More than personnel, the Foundry offers access to world-class, award-winning facilities (labs, classrooms, conference/meeting spaces) at the Center for Entrepreneurship and Purdue Research Park Network (one of the largest university-affiliated business incubation complexes in the United States)

# E-2 Investor Visa

- **E-2 Treaty Investor – Available to only nationals of countries where U.S. has E-2 treaty.**  
<http://travel.state.gov/content/visas/english/fees/treaty.html>
  - No treaty with Brazil, Russia, India, China, South Africa
- **Needs to be a “Substantial investment.” No exact amount but proportional to start up costs.**
- **E-2 and company must have nationality of the Treaty country.**
- **Investor or employee (executive, supervisory or essential skill)**
- **Business needs to be real “Real and operating” business.**
  - Show with lease, license, capitalization
- **Cannot be marginal – show income to other people than investor**
- **Spouses CAN work by virtue of their status (E-2S).**

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# TN NAFTA Professionals

- For nationals of Canada and Mexico.
- Occupation must be on the specified list.
- Available in 3-year increments and theoretically renewable indefinitely.
- Spouses are not permitted to work.



# L-1 for Intracompany Transferees

## General Requirements:

- The U.S.-based company must have a qualifying relationship with a foreign company (parent company, subsidiary, affiliate, branch etc.)
- The company does business in the U.S., and in at least one other country while the employee is on an L-1.

## • Types of L-1 Visas:

- **L-1A:** Valid for up to 7 years
  - Employee must have worked for the same company abroad for at least one continuous year of the last three prior to the transfer.
  - Must have held qualifying experience with the company abroad.
  - Must be coming to the U.S. to work in an executive or managerial capacity.
  - May transition to EB-1C Green Card (Multinational Manager/Executive)

# L-1 for Intracompany Transferees continued

## **L-1B: Valid for up to 5 years**

- Employee must have worked for the same company abroad for at least one continuous year of the last three prior to the transfer.
- Must be coming to the U.S. to work in a position utilizing their specialized knowledge (i.e., not generally found in industry)

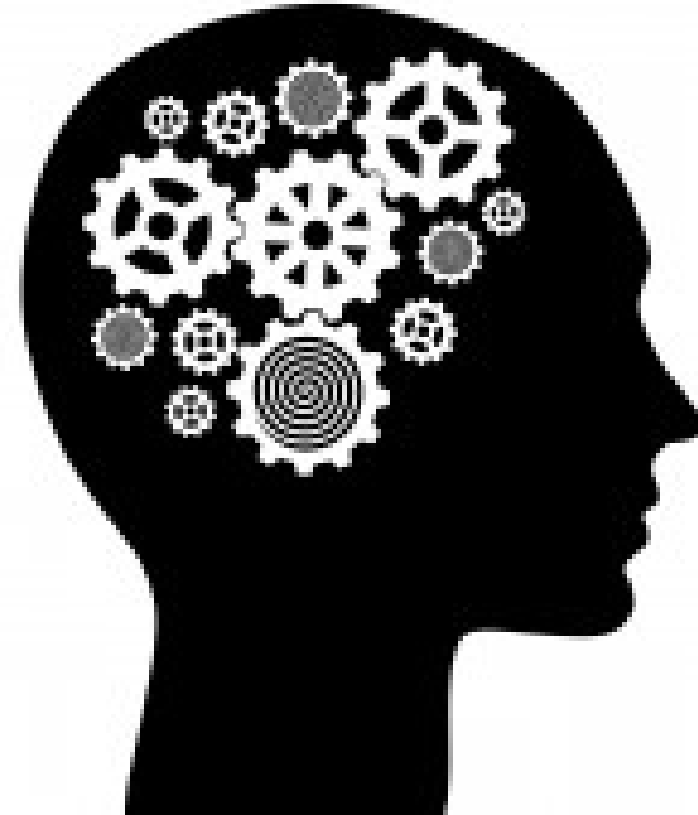
**New Office L-1:** For executive or managerial employees seeking to establish a new office in the U.S., valid for 1 year if:

- The company has secured physical premises to house the new office;
- The company has a strong business plan demonstrating how the business has and will grow financially and physically; and
- The employee meets L-1 criteria.
- 2-year extensions thereafter.

**L-2 available to spouses and unmarried children 21 and under – L-2 spouses get work authorization by virtue of their status (L-2S)!**

# O-1 Visa: Individuals with Extraordinary Ability or Achievement

- O-1A: Extraordinary Ability in the sciences, education, business, or athletics
- O-1B: Extraordinary Ability in the arts or Extraordinary Achievement in motion picture or television industry
- O-2: Essential individuals who will accompany an O-1, artist or athlete (does not apply to business)
- O-3: Dependents of O-1s (spouses, unmarried children under 21)
  - No work authorization



# O-1 Visa

- O-1A (Sciences, athletics, and business): “one of the small percentage who have arisen to the very top of the field of endeavor.”
- O-1B (Arts) standard is “distinction”
  - Distinction = “a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts”
- O-1B (Film/Television Industry) also available, standard between O-1A and O-1B for Arts
- Must be filed by U.S.-based employer or agent
  - 2016 Foreign Affairs Manual revisions: “USCIS regulations provide that the petitioner may be either an employer or agent. While O-1 beneficiaries may not self-petition, a separate legal entity owned by the O-1 beneficiary may be eligible to file a petition on behalf of the O-1 beneficiary.”
  - Practical Aspects
  - If Agent, must provide Itinerary/proof of prospective activities
- Peer consultation/advisory opinion required
- Length of Stay- 3 year initial, with 1-year extensions; can extend indefinitely. Or can create a new “event.”
- Recent policy memoranda instructs adjudicators to give greater weight to criteria achieved while a student.

# O-1 Visa

- Evidence needed:
  - Receipt or nomination of major national or international award such as a Nobel Prize;
- OR 3 of the following (paraphrasing):
  - Significant and original contributions
  - Authorship of scholarly articles in journals;
  - Media attention (Press)
  - Membership in Associations which require outstanding achievements
  - High Salary
  - Recognition from Experts
  - Judging the work of others
  - Other comparable evidence

See 8 CFR 214.2(o)(3)(iii) – (v)



# Immigrant Visas

# Routes To Permanent Residency

- **Preference Categories**

- EB (our focus today) and FB
- Separated by Preference Category (EB-1 through EB-5; FB-1 through FB-4)
- Tremendous backlogs in some categories
- Oversubscription: Throttles visas based on country of BIRTH (not nationality)
- Filing date = your place in line. First-in, First-out system.

- **Immediate Relative**

- US Citizen Spouses, Children, parents – Never a backlog

# Employment-based Preference Categories (Self-Sponsorship Options)

- **1st Preference (EB-1):**  
Extraordinary Ability, Outstanding Researcher / Professor
- **2nd Preference (EB-2):** National Interest Waiver (for self-sponsorship) or Labor Market Test (PERM)
- **3rd Preference (EB-3):** Requires Employer Sponsorship





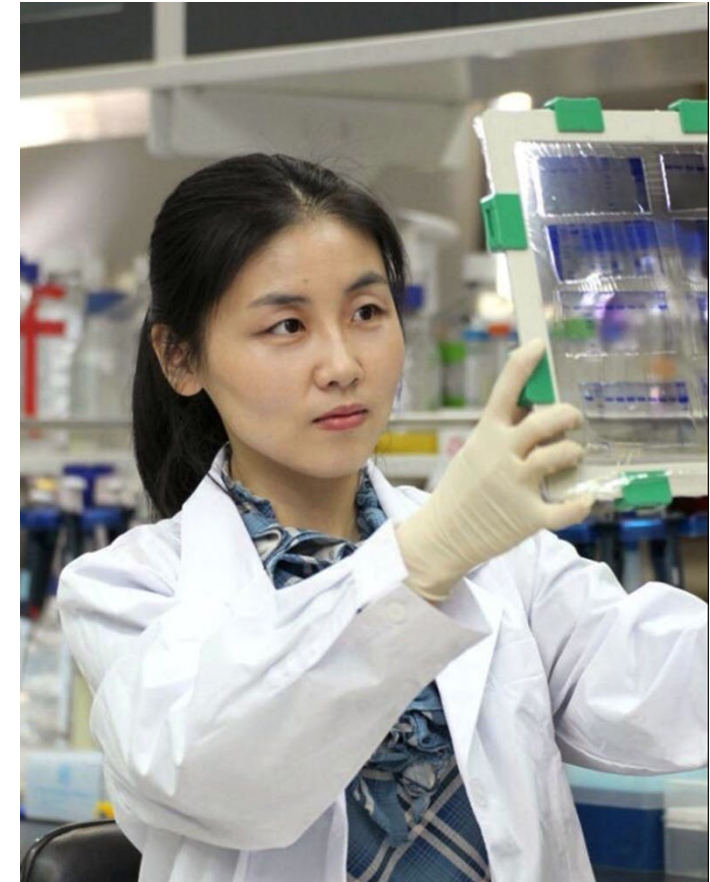
# EB-1A – Extraordinary Ability

- **“Alien of Extraordinary Ability”- INA 203(b)(1)(A); 8 C.F.R. Section 204.5(h)(3)**
- **Evidence is similar to that needed for O-1 visa, but standard much higher**
  - “One of a Few at the Top” & “Sustained National or International Acclaim”— One time (e.g. Grammy Award); or
  - As determined by establishing at least 3 of 10 identified criteria
  - Standard is the same for all professions
  - Can self-sponsor OR file through employer, unlike an O-1; must intend to continue work in area of endeavor



# EB-1B – Outstanding Researcher / Professor

- **Key Points**
  - Does not require PERM.
  - Foreign National can NOT self-sponsor.
  - Lower standard than EB-1 Extraordinary Ability.
  - Cannot be used for Post-Docs.
- **Requirements**
  - Must show sustained national or international acclaim through extensive documentation.
  - Must prove that foreign national has 3 years of professional experience prior to filing.
  - Issues with using post-doc experience



# EB-1C – Executives/Managers

- No guarantee, but regulations and statute are quite similar, evidence can be re-used
- Case law allows de novo review
- Need to show the position is permanent
- Need to go onto U.S. payroll. Can the entity pay? If not, more investment from abroad
- Sometimes L-1 extension required (always in 2-year increments)
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