



U.S. Immigration Options for Recent College Graduates

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Outline

- > Introduction
- > Non-Immigrant visas
- > Immigrant Visas
- > Questions

Three Status Classifications



Non-Immigrant Visas

- > Time limited
- > Visa issued based on the activities to be performed
- > Some NIVs allow for work authorization incident to status, some only if USCIS issues a separate EAD card, and others do not allow for work at all

Common Post-Graduate Non-Immigrant Visa Employment Options

- > F-1 OPT
- > H-1B
- > TN
- > L-1
- > O-1
- > E visa

F-1 Visa

- > Optional Practical Training (OPT)
 - Pre-completion OPT: Can work part-time while school is in session and full time when school is not in session
 - Post-completion OPT: Available upon completion of studies
 - Need EAD card
 - OPT is available for up to 12 months total
 - Time spent in pre-completion OPT is counted against available post-completion OPT time

- > 17-month STEM Extension of OPT
 - STEM → Science, Technology, Engineering, Mathematics
 - Apply for extension of EAD card prior to expiration of OPT
 - 17 month OPT extension for graduates of STEM program who work for employers enrolled in E-Verify

H-1B Visa Classification

- > Requirements:
 - Employer sponsored
 - Position must require a bachelor's degree or higher in a specific field of study
 - Foreign national must possess the required degree or equivalent combination of education and experience
 - Prevailing wage obligation
- > Duration limited to 6 years unless certain benchmarks in the green card process are met
- > New H-1B visas generally filed first week of April and take effect following October 1

H-1B Cap

- > 65,000 new H-1Bs available each year, plus an additional 20,000 for graduates of U.S. graduate schools
- > H-1B Fiscal Year 2016 USCIS received 233,500 H-1B petitions during the first week of April 2015
 - Lottery selection of filed cases
 - Approximately 65% of cases will not be selected in lottery

H-1B “Cap Gap” Protection

- > “Cap Gap” protection for F-1 students who transition to H-1B status
 - OPT often expires between April 1 and September 30
 - F-1 students with “cap gap” protection obtain extensions of F-1 status and OPT work authorization from the end of their OPT until the H-1B takes effect on October 1
 - Only available for students requesting a change of status → not for consular processing
 - Travel outside of USA between April and October can jeopardize cap gap protection

H-1B Cap-exempt Employment

- > Not subject to H-1B cap if sponsored to work at cap-exempt employer
 - Not-for-profit institution of higher education
 - For-profit entity related to or affiliated with an institution of higher education
 - Not-for-profit research organization or governmental research organization

- > Must be counted against the H-1B cap to change from cap-exempt employer to cap-subject employer

Work Authorization for Spouses of some H-1B Visa Holders

- > Spouses and children of H-1B visas can obtain H-4 status
- > H-4 visa holders are not currently eligible for work authorization
- > H-4 Work Authorization Rule change
 - Spouse of H-1B employee with either:
 - (1) approved I-140 and retrogressed priority date or
 - (2) PERM/I-140 filed and pending for at least 1 yearcan apply for work authorization
 - USCIS must issue EAD card
 - 90 day processing time
 - Rule takes effect May 26, 2015

Country-specific Visa Options

- > Citizens of Chile and Singapore – H-1B1 visas
 - Visa numbers are limited, but quotas have never come close to having been met

- > Citizens of Australia – E-3 visas
 - No quota
 - Spouses can work

- > Eligibility rules for both H-1B1 and E-3 are similar to rules for H-1B

TN Visas: Trade NAFTA

- > Available to citizens of Canada and Mexico
- > Sponsored for position appearing on list of occupations in NAFTA treaty
- > Initial duration of up to 3 years
- > No maximum period of stay
- > Spouse / dependents are eligible for TD classification
 - No work authorization
 - Can attend school



L-1 Visa

- > Intra-company transferees
 - One year of full-time work overseas in managerial/executive capacity or in position involving “specialized knowledge”
 - Transfer to U.S. to work for parent/subsidiary/affiliate company in managerial/executive capacity (L-1A) or in position involving “specialized knowledge” (L-1B)
- > National of any country can be sponsored
- > No quota
- > Maximum length 7 years in L-1A / 5 years in L-1B
 - Time spent in H-1B status counts against L-1 limits, and vice-versa
- > Spouse / dependents are eligible for L-2 classification
 - Spouse can obtain work authorization with EAD
 - Can attend school

E-2 Visa

- > Must be a national of a treaty country
- > Employer must be owned at least 50% by treaty national(s)
- > Individual must come to the U.S. as owner/investor OR manager/essential employee
- > Visa for 1-5 years (each entry limited to 2 years)
- > Visa can be extended indefinitely
- > Spouse / dependents are eligible for E-2 classification
 - Work authorization for spouse
 - Can attend school

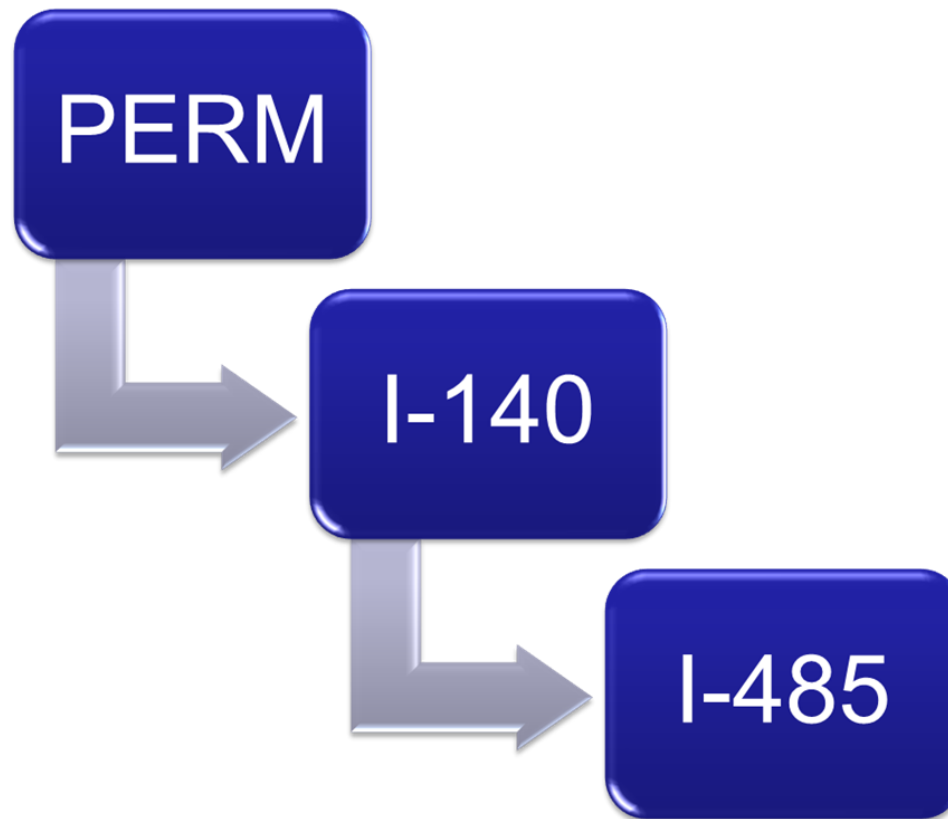
O-1 Visa

- > Individuals with Extraordinary Ability/Achievement
 - In arts, sciences, education, business, or athletics, motion picture/television industry
 - Show: sustained national or international acclaim
 - Generally reserved for those in the top 10% of their field
- > Visa for up to 3 years; extended in 1 year increments
- > Spouse / dependents are eligible for O-3 classification
 - No work authorization
 - Can attend school

Lawful Permanent Residence

- > Lawful permanent residence (“green card”) allows for presence and employment in the U.S. without time limits
- > Can be sponsored through employment, family, or lottery (for people from some countries)

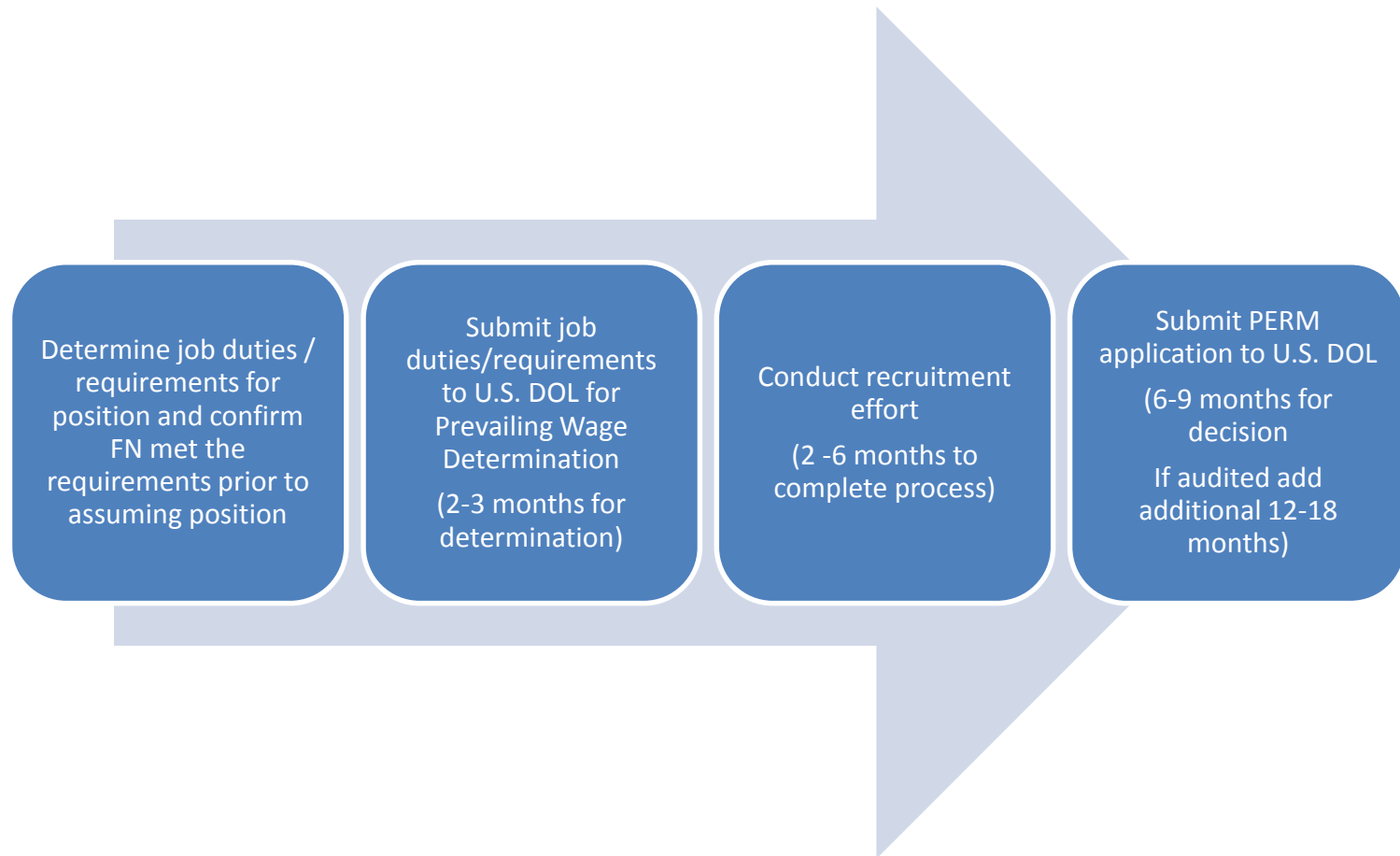
Three Steps in the PERM Green Card Process



PERM Labor Certification

- > Employer must prove to the U.S. Department of Labor (DOL) that it has been unable to find an available “minimally qualified” U.S. worker in the local labor market to fill position offered to the foreign worker
- > Time consuming and detailed process
 - 60+ days to obtain prevailing wage determination from DOL
 - 60+ day recruitment period
 - 6-9 months for decision by DOL
 - Additional 12-18 months if case is audited

PERM Labor Certification Process



Immigrant Visa Petition

- > Petition to USCIS seeking to qualify individual for permanent residence
- > Most employment-based petitions require an employer sponsor
 - Key exceptions: Extraordinary Ability (EB-1) and National Interest Waiver (EB-2)
- > Filed on Form I-140
 - Current processing time is 6-8 months
 - Premium processing available for most petitions, allowing for decision in 15 days
- > For PERM cases I-140 must be filed within 180 days of PERM approval

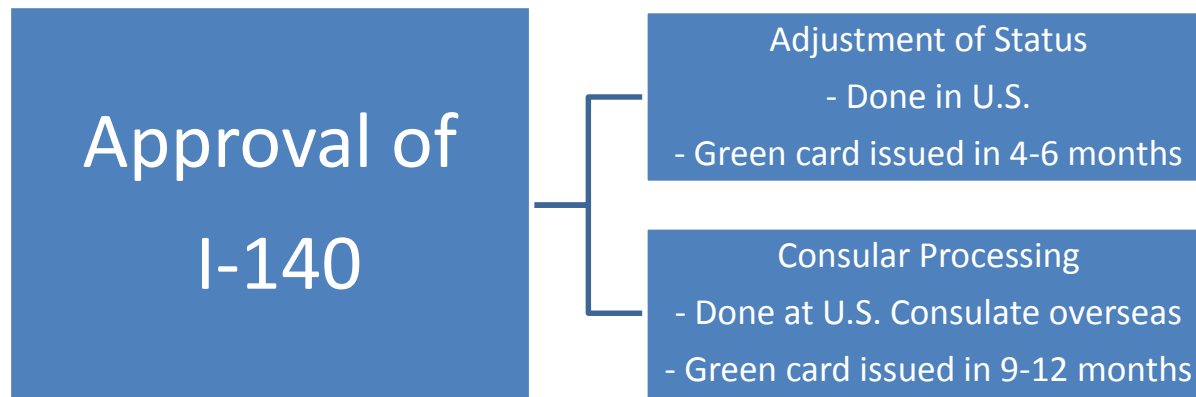
Employment-based Preference Categories

- > EB-1: Multinational Managers/Executives; Aliens of Extraordinary Ability; Outstanding Professors/Researchers
 - Not currently subject to retrogression
- > EB-2: Advanced degrees or Bachelor's degree + 5 years of progressive work experience; National Interest Waiver
 - Not currently subject to retrogression, except for those born in India or China
- > EB-3: Bachelor's degree or 2 years of work experience
 - All countries subject to retrogression

National Interest Waivers

- > Green card option that can avoid the PERM process in the “national interest”
- > Falls under EB-2 category → advanced degree professional or alien of exceptional ability
- > Three broad criteria:
 - Employment in an area of substantial intrinsic merit
 - Benefit individual will provide will be national in scope
 - National interest will be adversely affected if a PERM is required → Why you and not a minimally qualified U.S. worker?
- > Can be self-petitioned

Adjustment of Status vs. Consular Processing



Adjustment of Status

- > Application filed by individual to become permanent resident in the United States
- > Filed on Form I-485
 - Current processing time is 4-6 months
 - Premium processing not available
- > Separate I-485 required for each individual
- > Can only be filed when priority date is current
- > Can apply for work authorization and travel document together with I-485

Questions



Disclaimer

This presentation outline and the presentation itself are for general educational purposes only and are not intended to provide specific guidance or legal advice about what to do or not to do in any particular case. You should not rely on this general information to make decisions about specific immigration matters. You should seek the assistance of an immigration lawyer to help you resolve these issues. Thank you.

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