A WELL TRAVELED PATH

An Immigration Overview
For
Carnegie Mellon University
October 10, 2007
Introduction to U.S. Immigration Law

- Constantly changing and reactive to the nation’s concerns
- Basic law found in the Immigration and Nationality Act of 1952 (8 USC 101, et seq)
- Administered by several U.S. government agencies
The Three Agencies Under DHS

- **US Citizenship and Immigration Services (USCIS)**
  - Responsible for Immigration Benefits
- **US Immigration and Customs Enforcement (ICE)**
  - Responsible for Enforcement
- **US Customs and Border Protection (CBP)**
  - Responsible for Border Protection
Agency Websites

- DHS: www.dhs.gov/dhspublic
- USCIS: www.uscis.gov
- US ICE: www.ice.gov
- US CBP: www.cbp.gov
- US Department of State: www.travel.state.gov
The Immigration Stages

Nonimmigrant Visas → Immigrant Visas → Lawful Permanent Residence → Naturalization to U.S. Citizenship
A Common Pathway

F-1 Visa ➔ H-1B Visa ➔ Immigrant Visa Process ➔ Lawful Permanent Residence (Greencard)
Immigrant Visas

- Employment
- Family
- Lottery
- Refugee/Asylee
Employment Based

- **EB-1**
  - Aliens of Extraordinary Ability
  - Outstanding Professors or Researchers
  - Executives and Managers of Multinational Corporations

- **EB-2**
  - Advanced Degree Professionals with Alien Labor Certification
  - Advanced Degree Professionals whose work serves the National Interest

- **EB-3**
  - Skilled workers with Alien Labor Certification
EB-1 - Extraordinary Ability
“Top of the Field”

- Sustained National or International Acclaim – 3 of the Following:
  1) Nationally or internationally recognized prizes or awards for excellence of work
  2) Membership in associations based on accomplishments
  3) Published materials about the alien’s work or citations to alien’s work

(Continued)
EB-1 - Extraordinary Ability
“Top of the Field”

4) Judging the work of others
5) Original contributions to the field
6) Authorship of scholarly articles
7) Display of alien’s work at artistic exhibitions
8) Performance of a leading or critical role for distinguished establishment

(Continued)
EB-1 - Extraordinary Ability
“Top of the Field”

9) Evidence of high salary or compensation
10) Commercial success
11) Anything else

MAY SELF PETITION
EB-1 - Outstanding Professor or Researcher

“Internationally Recognized Professor or Researcher”

- Must have 3 years in the field and at least 2 of:
  1) Major prizes or awards for outstanding achievement
  2) Membership that requires outstanding achievement
  3) Published material about the alien’s work

(Continued)
EB-1 - Outstanding Professor or Researcher
“Internationally Recognized Professor or Researcher”

4) Judging the work of others
5) Original Contributions to the field
6) Authorship of books or articles

- Permanent Position:
  □ Tenure track or permanent research
  □ “Permanent” a position of unlimited or indefinite duration; one in which alien has experience of ongoing employment unless there is good cause for termination

EMPLOYER SPONSOR
EB-2 / EB-3 Labor Certification

- Must have offer of “permanent” employment
- Must pay at least the prevailing wage
- Focus is on protection of U.S. workers through recruitment and posting
“Permanent” Offer

- “Permanent” employment does not mean a lifetime position
- It is a position with an indefinite duration that the parties expect to continue into the future
- Offer of future employment to perform described duties, requiring specific training, education, and experience
Basics of Alien Labor Certification

- Employer’s petition
  - Requires departmental approval

- Job Description
  - As offer of future employment may describe position alien WILL be doing

- Minimum Requirements
  - Alien must have had credentials at time of hiring
    - Except self-paid academic credentials
Basics of Alien Labor Certification

- Employer must offer to pay the prevailing wage
  - Average wage paid in academic setting for alien’s job in Pittsburgh area
  - Extensive Recruitment to determine if alien is taking job from U.S. worker ready, willing and able to take position
  - Alien may NOT interview or screen candidates
EB-2 --or-- EB-3

- EB-2 Advanced Degree Professional
  - Certified positions requiring a Master’s degree or greater education
  Or
  - Baccalaureate + 5 years of increasingly responsible job experience
EB-3
- Certified positions requiring less than a Master’s degree

- The Difference: TIME
# Visa Bulletin - October 2007

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PERM Processing

- Prevailing Wage Request
- Job Order
  - Commonwealth Workforce Development System (CWDS)
- Internal Posting
- External Recruitment
- File electronically within 180 days of initial recruitment
PERM For Teachers

- Normal competitive process
- Recruitment Report
- Alien more qualified than U.S. workers
- File within 18 months of selection
PERM Filing

- Fill out Form ETA 9089
- File electronically
- Retain all documents for 5 years
NATIONAL INTEREST WAIVER:
- Neither job offer nor labor certification required for aliens of exceptional ability whose work in sciences, arts or business advances the national interest
National Interest Waiver

- National Interest Requires:
  1) Work in an area of substantive intrinsic merit
  2) Work that will be national in scope
  3) National interest adversely affected if labor certification required
National Interest Waiver

- Consider
  - Stature of alien in field
  - Preparation required to perform duties
  - Eligibility for Alien Labor Certification – self employment
  - Unsuccessful recruitment for a person with alien’s unique skills

(Continued)
National Interest Waiver

Consider

- But not available just to ameliorate labor shortage
- Alien’s unique skills outweigh protection of U.S. workers by the Alien Labor Certification
- Alien’s track record of success
The Path Continues…

- Family Based Immigration
- Diversity Visa (DV) Lottery
- Asylum
Family Based Immigration

- Preference Aliens
  - Subject to numerical limits
  - Siblings and adult children of U.S. citizens
  - Spouses, children and unmarried sons/daughters of Permanent Residents
Family Based Immigration

- Immediate relatives of U.S. citizens
  - No numerical limit
  - Spouse of U.S. citizen
    - Conditional permanent residence
  - Parent of U.S. Citizen
  - Child, under 21 of U.S citizen
Diversity Visa (DV) Lottery

- Open for online applications from October 3, 2007 to December 2, 2007
- [www.travel.state.gov](http://travel.state.gov/visa/immigrants/types/types_1318.html)
Asylum

- Well-founded fear of persecution on account of:
  - Race
  - Religion
  - Nationality
  - Membership in a particular Social Group or Political Opinion
The Path Continues…

Adjustment of Status to Permanent Residence in the U.S.
Permanent Residence

- Gives the alien and family (spouse and children under 21) the right:
  - to live and work in the U.S. on a permanent basis
  - to enter the U.S. without securing a visa
  - to be eligible for naturalization
Concurrent filing of immigrant visa (I-140) petitions and adjustment of status (I-485) applications, if visas are immediately available
EB-2 & EB-3/Labor Cert Based I-140 Immigrant Visa Petitions

- Must have approved alien labor certification (ALC)
- Must have proof that employee had minimum qualifications for the position at time employment began with petitioning employer
- Must have proof that employer had ability to pay the employee at the time the alien labor certification was filed through the present time
I-485 Adjustment to Permanent Residence

- I-485 application is mostly biographical
- Need medical examination, photos, birth, marriage, and divorce records

To adjust alien must be:

- “Admissible”
- In Status
- Or, not out-of-status for more than 180 days (245(k))
- Or, a beneficiary of 245(i)
Admissibility

- No crimes of moral turpitude or aggravated felonies
- No material misrepresentations to Immigration or consular officials
- No diseases of public health significance that cannot be waived
- No unwaived or served 212(e) requirements
- Other grounds
- If inadmissible, may also be removable
Responsibilities of Adjustment Applicant

- Secure documents for self and family
- Secure and maintain Advance Parole Travel Document before traveling after I-485 is filed
- Secure and maintain employment authorization document (EAD) after I-485 is filed
- No premature changing of employers (portability) during process
- Tell the truth, and remain admissible
- AR-11 for change of address within 10 days
  - Now automatically online: [www.uscis.gov](https://egov.uscis.gov/crisgwi/go?action=coa)
Conclusion

- There are many pathways to permanent residence in the United States.
- Each person's path to permanent residency requires unique planning and development of a strategy implemented over time.
- Each path places responsibility on the alien to remain in status and to abide by and to know the law.