H-1B Information Session
- Carnegie Mellon -

Presented by:

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WHAT WILL BE COVERED IN THIS SESSION?

- Transition from current status
- What is an H-1B Temporary Worker?
- Cap implications and timing issues
- OPT Cap Gap
- 17 month STEM extension
- H-1B Application process
H-1B status

- H-1B is the most common foreign employment status in the US
- It often is an option following other, more temporary legal statuses
Transition from current status

- F-1 students, Optional Practical Training (OPT)
- J-1 students, Academic Training (AT)
- J-1 researcher or professor
  - Implications of 2 year home residency
- CMU H-1Bs moving to private enterprise
- Other non-immigrants (TNs, E-3s, etc.)
H-1B general info

- H-1B = Temporary Worker Status
- Up to 3 years at a time
- 6 years total with potential for extensions beyond 6 years
- Job in “specialty occupation” must require at least a bachelor degree or equivalent in a particular field
- Foreign worker must have the appropriate credentials
- Employer-specific petition
The H-1B Cap and Exemptions

- Congress has capped (limited) the number of new H-1B petitions that may be approved annually.
- Currently 65,000 per fiscal year.
- 6,800 reserved, citizens of Chile & Singapore (leaving 58,200).
- Separate 20,000 set aside for master + PhD degree-holders from US institution.
- Employer filings far surpassed the cap in recent years—but not this year. The cap has not yet been reached.
- Demand usually, but not always, outstrips supply.
- There are exemptions from the cap count.
The H-1B Cap and Exemptions

Employment Exemptions Include:

- Employment for or at higher education institutions
- Employment for or at nonprofit organizations affiliated with an institution of higher education
- Employment for nonprofit research organizations or government research organizations
The H-1B Cap and Exemptions

- Employee Exemptions Include:

  There are also some cap-exemptions which are specific to the foreign national:

  - Foreign national has previously held H-1B status in the past 6 years and was counted toward a cap
  - Foreign national is a J-1 exchange visitor (J alien physician category only) who received a waiver of the 2-year home-presence requirement to work in underserved area
Timing Issues

• Processing times vary by USCIS Service Center and by month
  Normal processing time = 2-6 months
• Premium processing ($1,000 fee) money back guaranteed USCIS response - 15 days
• Begin H-1B process at least 6 months before other work authorization ends
• Avoid employment gaps
Academic Credentials for H-1B

- Have the degree and other credentials at time of application to the USCIS
- April 1 application window pressures students, employers and attorneys to file early
- May graduates not certified by April 1
- December, August, and Mini-3 completions / documents for April 1
Cap Gap problem for F-1s

- F-1 students may face the problem of a gap in their:
  - Ability to legally remain in the US and
  - Ability to legally work in the US
- Between the end of their OPT work authorization and the beginning of their H-1B employment on Oct. 1
- This is called “cap gap” period
Why a “Cap Gap” Problem?

- **October 1st** = Start of US gov’t Fiscal Year
- **April 1st** = First Day When employer may file an H-1B Petition for coming fiscal year

- Demand often outstrips supply
- Limit was filled within 1st week of filing (April ’08); has not yet been reached this year. Next year???
- USCIS Lottery for which petitions to adjudicate
- Cap-subject petitions that were not selected before cap is reached are out of luck until next fiscal year
Cap Gap Solution for F-1s on OPT

- Students on OPT regardless of their field of study will have their OPT extended to October 1 if:
  - The employer has filed a timely H-1B petition and change of status request with an October 1 start date
  - The H-1B petition is pending or has been approved
  - And student is still in post-completion OPT period at the time that the petition is filed (i.e. April 1)

- OPT cap gap employment authorization will end if H-1B is denied, rejected or withdrawn
Cap Gap Summary

- F-1 students in *all majors* potentially can benefit

- Cap Gap can allow
  - For continued legal presence in the US and/or
  - For continued legal work authorization in the US

- For the period between the end of OPT and the start of a change of status H-1B on Oct. 1
STEM OPT Extension

- STEM = Science, Technology, Engineering, Mathematics
- Acceptable degree fields are taken from US DOE’s Classification of Instructional Programs (CIP)
- CMU majors all have CIP code assigned
F-1 OPT STEM Extension

- F-1 students who receive a bachelor’s, master’s or PhD degree in a designated STEM (Science, Technology, Engineering or Math) field *may* be eligible for a 17 month extension of OPT.

- CMU STEM majors and CIP codes can be found in News section of OIE website at: http://www.studentaffairs.cmu.edu/oie/newsandevents/news/07-08/june/061208updated.html
F-1 OPT STEM Extension

- STEM OPT extension (17 extra months) criteria
  - Must be in a period of OPT based on a Bachelor, Master or PhD in a designated STEM field
  - **Employer must participate in e-Verify program**
  - Student and employer agree to reporting requirements

- More information is on the Employment section of our website at: http://www.studentaffairs.cmu.edu/oie/forstu/pdf/OPT_17_month_extension_request.pdf
No STEM extension if...

- CMU major CIP code is not designated as STEM
- Employer not in E-Verify
- PRIOR degree in a STEM field (but not most recent degree on which OPT is based)
- Minor in a STEM field
- CIP code assigned to major ends in “99” (CIS considers these to be “catch all” categories which are general)
OPT STEM extension summary

- Benefits F-1 students in STEM fields at all levels of study (BA/BS, masters, PhD)
- 17 month OPT extension
- Strict application and reporting criteria
- E-Verify is serious limiting factor
- Students still must maneuver F to H-1B transition with care
What is E-Verify?

- US government web-based system used to verify employment eligibility of persons seeking employment in the US.
- Voluntary enrollment by employers; only a small percentage of US employers are enrolled.
- E-Verify imposes obligations upon employers and exposes employers to potential risks. Some employers are resistant to enroll.
- E-Verify impacts all employees (not just F-1 STEM students).
Other options

- J-1/J-2 exchange visitor (universities, research)
- H-1B for Singapore, Chile (6,800)
- O-1 / extraordinary ability
- TN / Canadians & Mexicans (limited fields)
- E-3 / Australians (specialty occupations)
- L-1 / Intracompany Transferee
- G / international agencies
- Work outside the US/return later
Demystifying H-1B status

I.N.A. Section 214.(i)(l)

...”specialty occupation” means a job requires

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.
H-1B employer obligations

- Employer must...
  - Have an employment opening in a job requiring at least a bachelor degree
  - Determine and offer to pay at least prevailing wage for job in the location where the worker will be placed
  - Make attestations regarding the employment to the DOL
  - Comply with documentation and document retention requirements
Application Process

• Labor Condition Application (LCA) - U.S. Department of Labor (US DOL)

• H-1B petition - U.S. Citizenship and Immigration Services (USCIS)
  • H-1B status for qualified temporary worker
  • Change of status for in status person already in U.S.
H-1B Application

- Form I-129, H Supplement, & I-129W
- Fees
- Approved LCA
- Employer letter of request
- Copies of current immigration documents
- Documents proving qualified for “specialty occupation,” i.e. academic credentials, letters of recommendation, publications, etc.
- H-4 for dependent spouse/children
Costs and Fees

- Basic fee is $320 (required for all)
- $500 “anti fraud” fee (paid by employer)
- Premium Processing Fee $1,000 (optional)
- Change of status for dependents $300
- Training fee $750/$1,500
- Attorney fees - $1,500 and up
Issues related to H employment

- Negotiating H-1B/cap with your new employer
- Can I change employers?
- Concurrent employment
- H-1B visa stamp and travel
- Dual Intent
- Dependents – H-4 status
Beyond H status—Pathways to Permanent Residency

- Various pathways to legal permanent residency
  - Employer based
  - Family based
- Diversity Lottery
- Asylum
- Limits by category
- Limits by country of birth
Questions from the Audience