H1B and Green Card: What you need to know

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Session Overview

- H1B Specialty Occupation
  - Basic information
  - Timing, limits, and “the cap”
  - Planning for the future
- Other work categories
- US Legal Permanent Residency (LPR)
  - Pathways to US LPR
  - Current challenges
Typical trajectory for students

- F1/J1 foreign students
- F1 OPT or J1 Academic Training
- H1B or other work category (TN, O, L)
- LPR “green card”
- Naturalized US citizen
“H” category is for the temporary employment or training of foreign nationals by a specific employer.
H-1B / Specialty Occupation

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 it’s equivalent) as a minimum for entry into the occupation in the United States.
General Information

- Employer petitions USCIS (not individual)
- Application is job specific, wage specific, and for a specific time period
- 6 year limit (max. 3 years per request)
- Extensions allowed beyond 6 yrs / limited situations
Application Process

- Labor Condition Application - 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 person already in U.S.
Part 1/Labor Condition App (LCA)

- Employer certification of fair wage and fair labor and hiring practices
- Protects U.S. workers (& international)
- Wage paid is…
  - in line with actual wages paid to other employees or
  - 100% or more of the prevailing wage
- Approved LCA sent with H-1B app
Part 2 / H-1B Application

- Form I-129, H Supplement, & I-129W
- Fees
- Approved LCA
- Employer letter of request
- Copies of current immigration docs
- Documents for “specialty occupation” i.e. academic credentials, letters of recommendation, publications, etc.
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 spouse/kids $300
- Training fee $750/$1,500
- Attorney fees - $1,500 and up
Timing Issues

- Processing times vary by USCIS Service Center and by month
- USCIS Vermont allow 3 to 4 months
- Premium processing ($1,000 fee) guarantees USCIS response in 15 days
- Begin H-1B process at least 6 months before other work authorization ends
- Avoid employment gaps/consider cap
Resulting Documents

- RFE – Request for Evidence (blue)
- USCIS Approval Notice to employer or attorney
- Employee receives:
  - Approval Notice
  - Original H1B I-94 card
  - Copy of Approved LCA
  - Copy of I-129
Limitations

- J Status & 2-year home residency rule
- Foreign travel limitations
  - While change of status is pending
  - Employer concerns about US return
- Some jobs restricted to US citizens and LPRs (legal permanent residents)
- Academic document availability
Academic Credentials

- Have the degree and other credentials at time of application to the USCIS
- April 1 deadline 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
The “Cap”

- “Cap” or limit on new H petitions
  - Limit set by US Congress
  - Cap is tied to US government fiscal year (FY)
  - FY is Oct. 1 to Sept. 30
  - 65,000/year for new H-1B petitions from private industry
  - 20,000/year for new Hs w/ US MA/MS and PhD degrees
  - FY08 cap (10/1/2007 to 9/30/2008) of 65,000 filled in two days (April 2-3, 2007); no new H1Bs
  - FY08 20,000 for new H-1B petitions for workers with a US masters or PhD filled April 30, 2007; no new H1Bs
  - Universities excluded from cap
The FY08 “Lottery”

- April 2-3, 2007, 140,000 H applications rec’d for 65,000 + 20,000 H cap #s
- All petitions were received and entered
- Lottery: accept certain # for adjudication, reject 10,000’s of petitions
- No more Hs available until Oct. 1, 2008
- Assume that cap will fill on April 1, 2008 for FY09 (Oct. 1, 2008 to Sept. 30, 2009)
H1B Application Timelines

May Graduates
F1 Opt / July 2008
H1B application/April 2008

June 2009
H1B Oct. 1, 2008 - ?

December Graduates
F1 OPT / Jan 2008
H1B application/April 2008

Dec. 2008
H1B Oct. 1, 2008 - ?
H Planning Issues

- Prior H-cap counted/6 year window
- Prior H or L status count against 6 yrs
- Move from University to private employer
- Apply for OPT, use *all* 12 months
- 12 months of OPT for each *higher* degree level
- Un-used OPT can not be gained back
Related issues:

- Negotiating H1B/cap with your new employer
- Can I change employers?
- H-1B visa stamp and travel
- Tax implications
- Grace period - 10 days
- Dual Intent
- Dependents - H4 status
Other options

- J1/J2 exchange visitor (universities, research)
- H1Bs for Singapore, Chile (6,800)
- O1s / extraordinary ability
- TNs / Canadians & Mexicans (limited fields)
- E3s / Australians (specialty occupations)
- L1s / Intracompany Transferee
- Gs / international agencies
- Work outside the US/return later
Additional Resources

- USCIS Website
  - www.uscis.gov

- U.S. Department of State
  - www.travel.gov (for visa info)
  - http://www.travel.state.gov/visa/tempvisitors_info_waivers.html (waiver)

- Office of International Education
  - www.cmu.edu/oie/