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Post- Graduation Immigration Options

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Topics

- F-1/J-1 and OPT/STEM Tips for successful transition to employment
- H-1B and Upcoming Changes to Lottery System
- Other non-immigrant options
 - O-1
 - TN
 - L-1
 - E-3

F-1/J-1 Tips and OPT/STEM Tips

- Focus on maintenance of status- USCIS is actively checking compliance in reviewing H-1B applications
 - Compliance with course load requirements
 - Status violations
 - Compliance with STEM programs/encourage students to engage with employers about importance
 - Make sure training plans are in order
 - Evaluations done regularly
 - Terms of training plan are accurate and comport with company records and statements in H-1B
 - Third-party worksite

H-1B Specialty Occupation

- A “specialty occupation” is defined as “an occupation that 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.”
- To establish that a job qualifies as a specialty occupation under USCIS regulations, one or more of the following criteria must be met:
 - A bachelor’s or higher degree or its equivalent that is normally the minimum entry requirement for the position; the required degree must be related to the position to be filled.
 - The degree requirement is common to the industry, or in the alternative, the position is so complex or unique that it can be performed only by an individual with a degree;
 - The employer normally requires a degree or its equivalent for the position; or
 - The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree.

H-1B Lottery for Cap Subject Employers

- H-1B regulations currently allow for an annual allotment of 65,000 H-1B petitions along with an additional 20,000 for professionals with a U.S. Master's degree or higher. Each year, employers file H-1B petitions for potential employees on April 1.
- **Changes Coming (Timing of implementation uncertain)**
 - DHS will designate a registration period prior to opening of cap, during which employers can “pre-register” an employee for an H-1B cap number.
 - From the initial registration period, DHS will randomly select a sufficient number of electronic registrations to fill the available visa numbers.
 - Information needed to complete pre-registration for an individual employee will likely include biographic data such as Name, Date of Birth, and Country of Birth.
 - Selected registrations will be notified with a “window” of filing time. A selected registration will be given a 60-day window to complete and file the H-1B petition. In order to stagger volume of applications received and in effort to increase adjudication efficiency, the 60-day window will vary.
 - In an effort to curb H-1B abuse, each beneficiary will be allotted only one opportunity at pre-registration per company.
 - USCIS will maintain a “wait list” of reserve registrations to ensure the applicant pool is sufficient to fill H-1B quota regulations.
 - Should USCIS receive too few pre-registrations, the registration process can be re-opened by USCIS to secure more H-1B registrations.

Focus on Retention of Highly Skilled

- **Changes to Master's Cap Selection Process**

- Under current protocol, the lottery for petitions filed for the “Master’s cap” are selected first and any unselected petitions are included in the lottery for the “Regular cap.” Under the proposed rule, USCIS would include all petitions received in the first lottery and then move any remaining Master’s cap eligible filings to the 2nd lottery, with the expectation that this will increase the overall percentage of H-1B cap cases selected for advanced degree professionals.

- DHS indicates that this rule is consistent with the administration’s stated goals in the Executive Order 13788, “Buy American Hire American,” to ensure that “H-1B visas are awarded to the most-skilled or highest paid petition beneficiaries.”

H-1B Alternatives

- TN- NAFTA Professional: Canadian or Mexican
 - Occupation must be on NAFTA Occupations List
 - Each occupation has minimum requirements
 - No “dual intent”
 - Canadian’s can bypass consulate and apply directly at border
- E-3- Australian
 - Similar to H-1B, but can apply directly at Consulate with LCA and supporting documents

H-1B Alternatives cont.

■ O-1A

- Individuals with extraordinary ability in the sciences, education, business, or athletics. Must be able to document **at least 3** of the following:
 - Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
 - Membership in associations in the field for which classification is sought which require outstanding achievements, as judged by recognized national or international experts in the field
 - Published material in professional or major trade publications, newspapers or other major media about the beneficiary and the beneficiary's work in the field for which classification is sought
 - Original scientific, scholarly, or business-related contributions of major significance in the field
 - Authorship of scholarly articles in professional journals or other major media in the field for which classification is sought
 - A high salary or other remuneration for services as evidenced by contracts or other reliable evidence
 - Participation on a panel, or individually, as a judge of the work of others in the same or in a field of specialization allied to that field for which classification is sought
 - Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation

O-1A

- Difficult for a student to demonstrate national/international recognition right out of school, but can encourage students to prepare early for this type of filing.
- Often used as a back-up filing for graduating PhDs and Post-docs.
- Adjudication is subjective and scrutiny is increasing in current administration.

L-1A/L-1B

- Intra-company Transferee
 - L-1A Manager/Executive
 - L-1B Specialized Knowledge
 - Must spend one year in last three years with affiliated employer abroad.
 - Option that students should be aware of if they do not have employment offer in the U.S. but may want to transition back to U.S. at some point in the future.

What's going on at USCIS? Issues in immigration that may affect students transitioning to employment based visas.

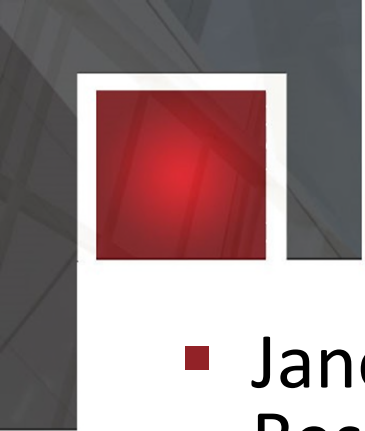

Progressively restrictive interpretations of H-1B regulations since “Buy American Hire American” Executive Order (April 2017)

- Computer Occupations Memo (May 2017)
- No more deference (October 2017)- every case should be documented like a new case
- NTA Memo (June 2018)
- Initial Evidence Memo (July 2018)
- Unlawful Presence Memo (August 2018)

- **RFE Rate jumped to nearly 70% in Qtr 4 of 2017, from 23% in Qtr 3 of 2017.**
- **Approx. 23% denial rate by 4th Qtr of 2017.**
- **Delays in adjudication- many cap cases filed in FY 2019 still pending; Premium processing reopened on 1/25 for those cap cases.**


Hypotheticals- What would you advise?

- Jimmy, a citizen of France, graduated 6 months ago with a Bachelor's degree Computer Engineering. Since then, he has worked under OPT with Computer Corporation. He has received a job offer with Computer Corporation as a Software Security Engineer and comes to you discuss his options for extending his employment authorization. What do you suggest and why?

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- Jane is Canadian citizen currently on a J-1 Research Scholar program with your university in the field of robotics engineering. She has amassed a lot of notoriety for a surgical robot that she designed and patented during the course of her post-doctoral research. A surgical robotics company has approached Jane about coming to work for them as an engineer on a new product line they are developing, but she must be able to start work within the next three months. What do you suggest to Jane? What concerns do you have?
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Hypotheticals- What would you advise?

- Dan, a citizen of Australia, is graduating with his Master's degree in Architecture in a few months. Dan has a bachelor's degree in structural engineering. Dan has a job offer with Four Walls Architecture, a multi-national architecture firm with offices in many countries around the world. Four Walls is known for its specialized engineering designs for clients building round and domed structures. Dan is concerned because the company intends to send Dan to work out of the headquarters in Australia so that he can be trained on their specialized design methods. Dan has a girlfriend in the U.S. and wants to make sure he has options to come back to the U.S. once he is more settled in his career. What can you suggest to Dan to prepare him for future employment?



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