WORK VISA OPTIONS FOR FOREIGN STUDENTS

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INTRODUCTION TO U.S. IMMIGRATION LAW

- Permanent Resident Green Cards:
  - Live forever in the United States
  - Ease of Employment
  - Ease of Travel
  - Only limited ways to obtain / lengthy processing

- Temporary Non-Immigrant Visas:
  - Many categories (A – V)
  - Few allow employment
  - Focus on:
    - F-1 – OPT
    - H-1B
1. **On-campus employment**

2. **Curricular Practical Training (CPT)** – Integral part of established program (work/study)

3. **Optional Practical Training (OPT)** – 12 months of OPT for F-1; use during degree program or after graduation

4. **Economic Hardship** – Extreme, unforeseen economic hardship such as loss of parents, currency crisis, political unrest

5. **Designated International Organizations** – Certain organizations are permitted to hire F-1 students for work experience (United Nations, IMF, World Bank, etc.)

6. **Volunteer** – Almost never an option
TYPICAL POST-COMPLETION EMPLOYMENT PATH

- F-1 - Optional Practical Training (12 or 36 months)
  - or
- H-1B – Most common work visa (6 years of work eligibility)
- Then Green Card (if desired)
  - Family-based
  - Employment-based
WORK AFTER GRADUATION

- **Optional Practical Training (F-1)**
  - 12 months of OPT post-graduation (reduced by OPT used pre-graduation)
  - Allows work for any job related to degree
  - Must get work card (Employment Authorization Document)
  - Can apply for card up to 90 days before completion of program, or up to 60 days post-completion
  - Must apply within 30 days of OPT authorization from Foreign Student Advisor
  - Can make card effective up to 60 days post-completion
  - 90 – 120 day processing time
  - No more than 90 days of unemployment permitted
“STEM” OPT EXTENSION

- **24** months of post-graduation employment AFTER completion of initial 12 months of OPT

  - F-1 student must have obtained qualifying Science, Technology, Engineering or Math (STEM) degree
  - Must apply **before** initial OPT expires **and** within 60 days of Foreign Student Advisor’s authorization for STEM extension
  - Employer MUST be enrolled in E-Verify
  - Students/employers must prepare a “Training Plan”
WORK AFTER GRADUATION

- **H-1B – Most Common Work Visa**
  - Employer must “sponsor” (offer a job that requires a degree)
  - Applicant must have degree
  - Degree must relate to the job
    - Employer must pay “prevailing wage”
    - No need to advertise for U.S. workers
H-1B ISSUES

- **Duration**
  - 3 years initially
  - 3 year extension
  - 6 year maximum

- **Scope of H-1B Authorization**
  - Can only work for this employer, doing what was described on the petition in the location described on the petition

- **Change Employer**
  - New employer must file new petition
  - But can begin working as soon as new petition is filed without waiting for approval
H-1B QUOTAS

- **CIS FISCAL YEAR:** October 1 – September 30

- **Quotas:**
  - 85,000 H-1Bs available
  - U.S. Advanced Degree Applicants – 20,000
  - All Degrees – 65,000

- **Current availability:** ?
BEAT THE H-1B CAP

- October 1 – new quota released
- March 9-25 – pre-registration for new quota
  - Lottery Selection: 90 days to file H-1B petition
- May/Dec – graduation & OPT
H-1B EXEMPT ORGANIZATIONS

- Universities

- Non-profit organizations affiliated with universities (such as research facilities or hospitals)

- Non-profit research organizations, engaged primarily in basic or applied research

- Governmental research organizations (federal, state, or local government)
H-1B ALTERNATIVES

- Canada, Mexico, Chile, Singapore, Australia
- L-1 Manager / Executive / Specialized Knowledge. Work overseas for one year; now working for affiliate in United States
- E treaty investor/trader (not China, India) working for companies owned by citizens of your country in the United States
- Re-enroll in full-time study (F-1 or J-1)
- Other possible options are very limited (O-1, Q, J-1). Consult qualified immigration specialist
GREEN CARD

- **Limited Ways to Obtain**
  - Family Relationships
  - Lottery
  - Employment/Special Skills
    - EB-1 – Extraordinary / Outstanding / Multi-national
    - EB-2 - Advance Degree / Exceptional
    - EB-3 - Bachelor’s Degree/ Skilled worker
- PERM Processing – lengthy
- Must maintain non-immigrant status
RESOURCES

- www.lawmh.com
  - Practice Areas
  - Immigration

- Mark Rhoads
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