



WORK OPTIONS FOR FOREIGN STUDENTS

Mark B. Rhoads, Esquire
Phone: (804) 775-3824
Email: mrhoads@lawmh.com

Helen L. Konrad, Esquire
Phone: (804) 775-3825
Email: hkonrad@lawmh.com

McCandlish Holton PC
Website: www.lawmh.com

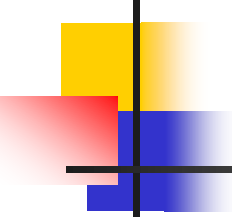
VISA CATEGORIES FOR STUDENTS



- F-1 – Foreign students attending academic college or university
- J-1 – “Exchange visitor” or trainee often used for graduate students, medical residents, etc.

Dependent Visas – Students whose parents are in the U.S. on a work visa such as H-1B (H-4), L-1 (L-2), E Visa, etc.

PRE-GRADUATION WORK (F-1)



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



POST-GRADUATION EMPLOYMENT

- Employers like qualities of international students - - smart, independent, motivated
- Employers do not understand visas
- Students must understand the immigration process, and be able to explain



TYPICAL POST- COMPLETION EMPLOYMENT PATH

- F-1 - Optional Practical Training (12 or 29 months)
 - or
- J-1 – Academic Training (18 or 36 months)
 - then
- H-1B – Most common work visa (6 years of work eligibility)



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



EMPLOYER CONCERNS

- Cost
- Timing
- Obligations and Responsibilities



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



OPT EXTENSION

- **17 months of post-graduation employment AFTER completion of initial 12 months of OPT**
 - Must be applied for during 12 months validity of initial OPT
 - F-1 student must be completing initial OPT based on Science, Technology, Engineering or Math (STEM) degree
 - Employer F-1 will work for MUST be enrolled in E-Verify
 - No more than 120 days of unemployment, including time during initial 12 months of OPT
 - Employer agrees to notify school within 48 hours of termination



E-VERIFY

- **Web based system for verifying work authorization**
 - Required for employers seeking 17 month STEM extension
 - Required for companies which have federal contracts or subcontracts
 - For others, it is voluntary



TRAVEL ON OPT

- ANY travel by an F-1 student is risky because you MUST show intent to return to home country
- If you choose to travel, you will need
 - Endorsed I-20
 - Valid Visa
 - Employment Authorization Document (EAD)
 - Employment letter
- Absence of ANY presents additional risk
 - Travel after applying for H-1B is not advised



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
 - 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 ISSUES

- **Cost - Who Pays?**

- Legal Fee
- CIS Filing Fees
 - Base fee - \$325
 - Fraud Prevention Fee - \$500
 - “Training Fee” - \$1500 (\$750 for 25 employees or less)
 - Optional Premium Processing Fee (15 days) - \$1225
 - Additional \$2000 fee for companies with 50 or more employees, and 50% or more of workforce is H-1B or L.

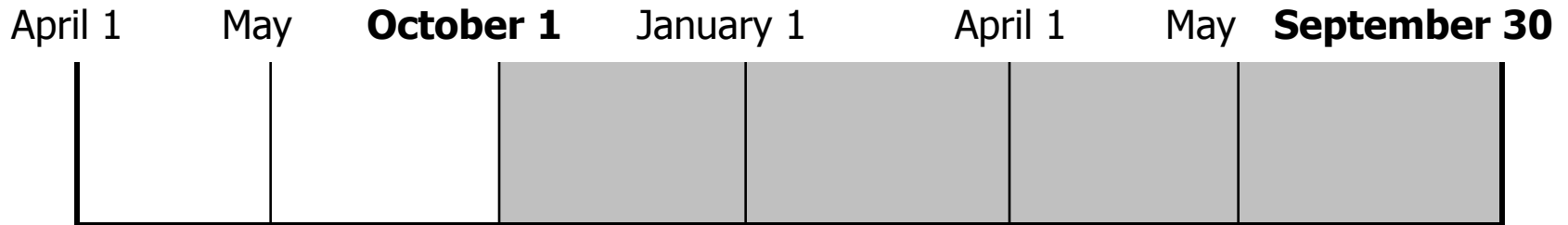


H-1B QUOTAS

- **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
- April 1 – pre-filing for new quota
- May/Dec – graduation & OPT



H-1B “CAP GAP” RELIEF

- If you file an H-1B application on or after April 1,
AND
- OPT is still valid at the time of filing,
THEN
- OPT is extended until September 30



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



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

EXTEND H-1B BEYOND 6 YEARS



- Normal length of H-1B – 6 years
- Can Extend for the following:
 - Recapture time outside the U.S.
 - Green card pending at least 1 year – can extend H-1B in 1 year increments
 - Approved I-140, but no quota number to adjust - - 3 year extension



CHOOSING AN ATTORNEY

- Location - Irrelevant
 - Immigration law is federal, not state specific
 - All H-1B filings are done centrally in California or Vermont
- Knowledge and Experience – Very Relevant
 - Cheaper is NOT better
 - One chance to file



RESOURCES

- www.lawmh.com
 - Practice Areas
 - Immigration
- *Mark Rhoads*
mrhoads@lawmh.com
(804) 775-3824
- *Helen Konrad*
hkonrad@lawmh.com
(804)775-3825