

# WITH YOU TODAY



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# TODAY'S PRESENTATION

- 1. Overview of Immigration System
- 2. Review of Important Documents
- 3. Nonimmigrant Visas
- 4. Immigrant Visas
- 5. Immigration Reform



# BROAD IMMIGRATION OVERVIEW

#### 3 Categories of People in the U.S.

- Citizens
- Immigrants
- Nonimmigrants



# INVOLVED GOVERNMENT AGENCIES

#### Department of Homeland Security:

- United States Citizenship and Immigration Services USCIS (formerly the Immigration & Naturalization Service – INS or BCIS)
- Immigration & Customs Enforcement ICE
- Customs & Border Protection CBP

#### Department of Labor:

- Office of Foreign Labor Certification Customs
- PERM Processing Centers
- State Workforce Agencies (SWAs)

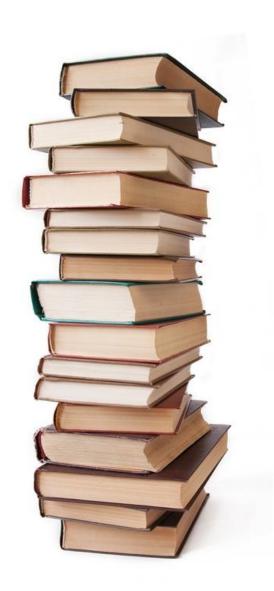
#### Department of State (DOS):

U.S. Embassies and Consulates





## LEGAL STRUCTURE & RESOURCES



- Immigration Law comes from many different places:
  - Immigration and Nationality Act (INA)
  - Regulations CFR 8 (immigration), 20 (labor), & 22 (Department of State)
  - USCIS memoranda
  - Foreign Affairs Manual (FAM)
- Two Major Themes We are Seeing:
  - Inconsistencies
  - Always changing



### VISA STAMP



### **I-94**

(3)	U.S. Customs and Securing America's Borders	Border	Protection
CARD WE			_

Get I-94 Number

1-94 FAQ

Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 69000888062

Admit Until Date (MM/DD/YYYY): 10/10/2012

Details provided on Admission(I-94) form:

Family Name:

First (Given) Name: LYDIA

Birth Date (MM/DD/YYYY): 01/01/1990

Passport Number: P123123213

Passport Country of Issuance: Mexico

Date of Entry (MM/DD/YYYY): 04/11/2012

Class of Admission: B'

Individuals can visit www.cbp.gov/I94 to retrieve a copy of their electronic Form I-94.

### I-94 D/S



### I-20 (F)

U.S. Immigration and Customs Enforcement			1-20, Certificate of Eligibility for Nonlimmigrant Student Status GMB NO. 1653-6038		
SEVIS ID: N0004705512					
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PREFERRED NAME Julya Dos-Smith		PASSFORT	AME	T	1
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ICE Ferm I-29 A-B (12/2016)					Page 1 of 3



### **DS-2019 (J)**

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gal Permanent Residence Country Code: Le			Position:			J-1
IM .	GERMANY	114		E EMPLOYEE IN CEN	TRAL	
S. Address: 1234 Main Street Alexandria, VA 22	312		G	OVERNMENT	22	2766
Program Sponsor: Pig Farming Institute				Exchange Visitor Program N P-3-10244	amber:	
rticipating Program Official Description: PROFESSOR; SHORT-TERM SCH	HOLAR; TEACHER					
rpose of this form: Replace a DS-	2019 form (Damaged)	)			- E	
Form Covers Period:	4. Exchange Visitor	Category:			-	250
rom (mm-dd-yyyy): 12-01-2002	TEACHER				200	
o (mm-dd-yyyy): 12-31-2003	Subject/Field Code: 32.0108	Subject/Field Code Description Literacy and Con	on: mmunication Sl	cills	200	
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### I-797 & I-94 CARD APPROVAL NOTICE

PRITITION FOR A MONIMMIGRANT WORKER FERTINGE UNIVERSITY OF MINNESOTA  SEMENTALY  Notice Type: Approval Notice  Class: HiB  Valid from 01/ /2008 to 06/ /2008  Approved. The scarue of the named foreign worker(s) in this resign worker(s) can work for the petitioner, but only as detailed in resign worker(s) can work for the petitioner, but only as detailed in resign worker(s) can work for the petitioner. But only as detailed in resign worker(s) can work for the petitioner. But only as detailed in the petitioner of the petitioner of the septiment of the petitioner of the petitioner of the petitioner of the petitioner of the petitioner.
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Notice Type: Approval Notice Class: H1B Valid from 01/ /2008 to 06/ /2008
prife the toepr portion should be given to the worker. He or 198 Author Computure Record. This should be turned in with the list of the retords. A person granted an extension of stay who leaves unics: The left part can be used in applying for the new visa. If along 11h say other required documentation, when applying for y or vis flight inspection station. The patitioner may also file flows of weldow, with this office to request that we notify a ffice of the sphowal. If granteness lengthtion status and does not guarantee that the alien a for a continuous continuous to the United States, or for an ONE A VISA.
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Receipt Number wac-08-0
Immigration and
Naturalization Service
I-94
B Departure Record Petitioner: UNIVERSITY
AVE SQ 13. First Name 15. Date of Sarts
16. Date of Birth



### **NONIMMIGRANTS**



- Coming to the U.S. temporarily
- Retain residence abroad
- Dual intent only for H's and L's
- "Alphabet Soup" A-V

### **ALPHABET SOUP OF VISAS**

- A: Govn Officials
- B: Visitors
- C: Aliens in Transit
- D: Crewmen
- E: Treaty Traders & Investors
- E-3: Australian **Temporary Workers**
- · F: Academic or **Language Students**
- G: Int'l Organization Representatives
- H: Temporary Workers
- I: Media Representatives
- J: Exchange Visitors

- K: Fiance/Spouse of **US Citizens**
- L: Intracompany **Transferees**
- M: Vocational Students
- N: Parents/Children of
   V: Spouses & Minor Special Immigrants
- O: Extraordinary **Ability**
- P: Artists, Athletes, Entertainers
- Q: Cultural Exchange
- R: Religious Workers
- S: Witnesses & Informants
- T: Victims of Human Trafficking

- TN: Canadian & **Mexican Temporary Workers**
- U: Victims of Certain Crimes
- Children of LPRs
- W, X, Y, Z: Coming Soon?





#### **H-1B**

- "Specialty Occupation" -- Entry level requirement = minimum Bachelor Degree or equivalent
- Six-year maximum stay (with exceptions); each H-1B can be valid for up to 3 years maximum
- 65,000 annual ceiling, of which 6,800 are set aside for citizens of Chile and Singapore
- 20,000 additional visas allocated to holders of advanced degrees from U.S. universities
- 4/1/17 4/5/17: 233,000 H-1B application (50,000 for Masters)
- Cap Subject vs. Cap Exempt
  - Cap Subject: File on 4/1 for a start date of 10/1
  - Cap Exempt: File at any time
    - 1) Colleges & Universities
    - 2) Organizations affiliated with colleges & universities (UM Hospital)
    - 3) Non-profit research entities and government research



### H-1B Change of Employer

- You can change employers if the new employer files a new H-1B (remember: 6 year H-1B total)
- Different Change of Employer Scenarios:
  - 1. Cap-Subject to Cap-Subject
  - 2. Cap-Subject to Cap Exempt
  - 3. Cap Exempt to Cap Exempt
  - 4. Cap Exempt to Cap Subject: This is the tough one!!
- Concurrent Employment: You could be sponsored by a cap-exempt employer and then obtain a second or dual H-1B with a cap-subject employer as long as you maintain the cap-exempt employment. This is a potential way to get around the H-1B lottery



### H-1B FAQ'S

- Who can you work for?
  - Only the employer who sponsored you (H-1B tied to employer)
  - Concurrent (Dual) H-1B possible if both employers sponsor you
- Can the H-1B be part-time?
  - Yes, H-1B can be part-time or full-time
- What happens if you get a promotion while on the H-1B?
  - Employer is required to file amendment with USCIS before promotion or job change can occur
  - Beware of increasing site visits!
- What happens if you lose your job?
  - As of Jan 17<sup>th</sup>, there is a grace period!
  - Reasonable costs of return transportation for dismissed employee



### H-1B FAQ'S

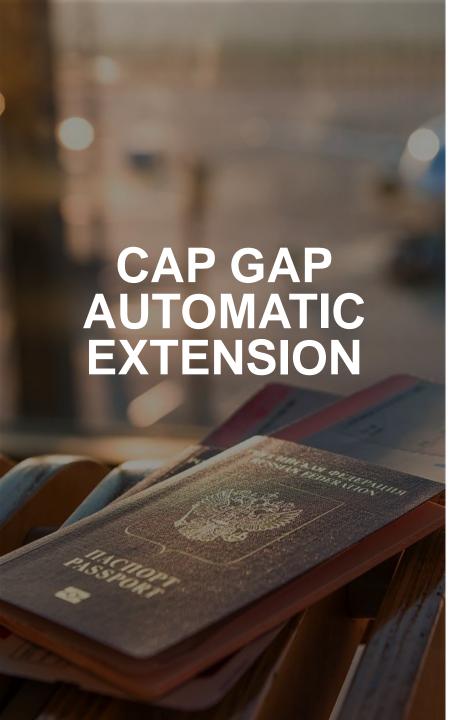
- Can I study while on H-1B?
  - Yes, part-time study is permitted
- What do I need to travel internationally?
  - Must apply for visa (if don't already have one) at US Consulate/Embassy
  - File DS-160 and bring I-797 approval notice and other supporting documents required by the Consulate
- What happens to my spouse/children?
  - Spouse and children (H-4) not eligible to work (except for some narrow exceptions), but can study
- Who can pay H-1B fees? <u>EMPLOYER ONLY</u>
- What are the government fees?
  - Filing Fee: \$460
  - Anti-Fraud Fee: \$500
  - Training Fee: \$750 (\$1500 if over 25 full-time employees)
  - Premium Processing: \$1225
- What are standard attorney/legal fees?
  - Varies depending on attorney, employer, position, location



# WAGE REQUIREMENTS FOR H-1B



- Wage offered must be the higher of Prevailing Wage or Actual Wage paid to similarly situated employees
- What is actual wage? Actual wage is the salary paid by the employer to workers with similar skills and qualifications.
- What is prevailing wage? The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment.



- Automatic Extension of your OPT work authorization to September 30<sup>th</sup>: This happens if your approved OPT end date (on your EAD card) is April 1<sup>st</sup> or later.
  - For example: if your OPT ended on or before March 31st, you would not be eligible for extension of work authorization through September 30th, 2017. However, you would be allowed to stay in the US if you otherwise maintain your status.
- Extension of your F-1 "duration of status." This happens if your OPT had expired before April 1st, 2017. Again, you would be allowed to stay in the US if you otherwise maintain your F-1 status, but you are not authorized to work until the H-1b petition is approved and goes into effect October 1st, 2017.

#### Eligibility:

- H-1B petition has been timely filed (within the acceptance period)
- Requests an employment start date of October 1st
- Requests a change of status
- Beware of international travel during the cap gap!



### H-1B OBSTACLES

- 1. Find a job
- 2. Find an employer willing to sponsor you
- Find an employer willing to pay the H-1B fees AND pay you at or above the prevailing wage
- 4. File H-1B by the strict April deadline
- 5. Win the lottery
- 6. Get the H-1B approved by USCIS





# WHAT IF YOU CAN'T GET AN H-1B?

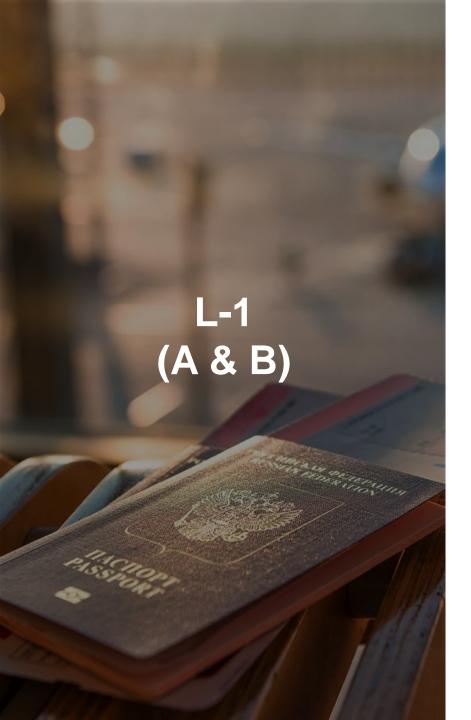
 Work using your OPT (F-1) or Academic Training (J-1) for as long as possible

 Consider going back to school to obtain an advanced degree

#### OR

- Intracompany transferees (L-1)
- Treaty Traders (E-1) and Investors (E-2)
- People of Extraordinary Ability (O-1)
- Exchange Visitors (J-1)
- Athletes/Artists/Entertainers (P-1)
- Country Specific Work Visas (H-1B1, E-3, TN)





- Allows for Dual Intent
- Intracompany Relationship:
  - Parent, subsidiary, affiliate, branch or joint venture
- Prior Employment Abroad:
  - 1 year within 3 years preceding transfer to U.S.
- Qualifying Capacity:
  - Executive, Managerial (L-1A)
  - "Specialized" Knowledge (L-1B)
- Duration:
  - L-1A = 7 years
  - L-1B = 5 years

### E-1 & E-2

#### **Treaty Countries**

Country	Classification
Albania	E-2
Argentina	E-1 & E-2
Armenia	E-2
Australia	E-1 & E-2
Austria	E-1 & E-2
Azerbaijan	E-2
Bahrain	E-2
Bangladesh	E-2
Belgium	E-1 & E-2
Bolivia	E-1 & E-2
Bosnia and	E-1 & E-2
Herzegovina	E-1 & E-2
Brunei	E-1
Bulgaria	E-2
Cameroon	E-2
Canada	E-1 & E-2
Chile	E-1 & E-2
China (Taiwan)	E-1 & E-2
Colombia	E-1 & E-2
Congo (Brazzaville)	E-2
Congo (Kinshasa)	E-2
Costa Rica	E-1 & E-2
Croatia	E-1 & E-2
Croatia	E-2
Czech Republic	E-2
Denmark	E-1 & E-2
Ecuador	E-2
Egypt	E-2
Estonia	E-1 & E-2

Country	Classification
Ethiopia	E-1 & E-2
Finland	E-1 & E-2
France	E-1 & E-2
Georgia	E-2
Germany	E-1 & E-2
Greece	E-1
Grenada	E-2
Honduras	E-1 & E-2
Iran	E-1 & E-2
Ireland	E-1 & E-2
Israel	E-1
Italy	E-1 & E-2
Jamaica	E-2
Japan	E-1 & E-2
Jordan	E-1 & E-2
Kazakhstan	E-2
Korea (South)	E-1 & E-2
Kosovo	E-1 & E-2
Kyrgyzstan	E-2
Latvia	E-1 & E-2
Liberia	E-1 & E-2
Lithuania	E-2
Luxembourg	E-1 & E-2
Macedonia	E-1 & E-2
Mexico	E-1 & E-2
Moldova	E-2

Country	Classification
Mongolia	E-2
Montenegro	E-1 & E-2
Morocco	E-2
Netherlands	E-1 & E-2
Norway	E-1 & E-2
Oman	E-1 & E-2
Pakistan	E-1 & E-2
Panama	E-2
Paraguay	E-1 & E-2
Philippines	E-1 & E-2
Poland	E-1 & E-2
Poland	E-2
Romania	E-2
Serbia	E-1 & E-2
Serbia	E-2
Senegal	E-2
Singapore	E-1 & E-2
Singapore	E-2
Slovak Republic	E-2
Slovenia	E-1 & E-2
Slovenia	E-2
Spain	E-1 & E-2
Sri Lanka	E-2
Suriname	E-1 & E-2
Sweden	E-1 & E-2
Switzerland	E-1 & E-2

Country	Classification	
Thailand	E-1 & E-2	
Togo	E-1 & E-2	
Trinidad & Tobago	E-2	
Tunisia	E-2	
Turkey	E-1 & E-2	
Ukraine	E-2	
United Kingdom	E-1 & E-2	
Yugoslavia	E-1 & E-2	



#### E-1 & E-2

- E-1/E-2 Countries: Established by treaties, some of which are over 200 years old
- Major Countries Missing: India, China, Russia, Brazil
- Yugoslavia: Country no longer exists but nationals of Bosnia and Herzegovina, Croatia, the Republic of Macedonia, Slovenia, Montenegro, Serbia, and Kosovo can utilize the E-1/E-2 visa.



### **E-1**

#### • E-1 Visa Requirements:

- You must be a citizen of a treaty country.
- The trading firm for which you plan to come to the United States must have the nationality of the treaty country, meaning persons with the treaty country's nationality must own at least 50 percent of the enterprise.
- The international trade must be substantial, meaning that there is a sizable and continuing volume of trade.
- More than 50 percent of the international trade involved must be between the United States and the treaty country.
- Trade means the international exchange of goods, services, and technology.
   Title of the trade items must pass from one party to the other.
- You must be an essential employee, employed in a supervisory or executive capacity, or possess highly specialized skills essential to the efficient operation of the firm. Ordinary skilled or unskilled workers do not qualify.



### **E-2**

#### • E-2 Visa Requirements:

- The investor, either a person, partnership or corporate entity, must have the citizenship of a treaty country.
- If a business, at least 50 percent of the business must be owned by persons with the treaty country's nationality.
- The investment must be substantial, with investment funds or assets committed and irrevocable. It must be sufficient to ensure the successful operation of the enterprise.
- The investment must be a real operating enterprise, an active commercial or entrepreneurial undertaking. A paper organization, speculative or idle investment does not qualify. Uncommitted funds in a bank account or similar security are not considered an investment.
- It must generate significantly more income than just to provide a living to you and family, or it must have a significant economic impact in the United States.
- You must have control of the funds, and the investment must be at risk in the commercial sense. Loans secured with the assets of the investment enterprise are not allowed.
- You must be coming to the United States to develop and direct the enterprise. If you
  are not the principal investor, you must be considered an essential employee,
  employed in a supervisory, executive, or highly specialized skill capacity. Ordinary
  skilled and unskilled workers do not qualify



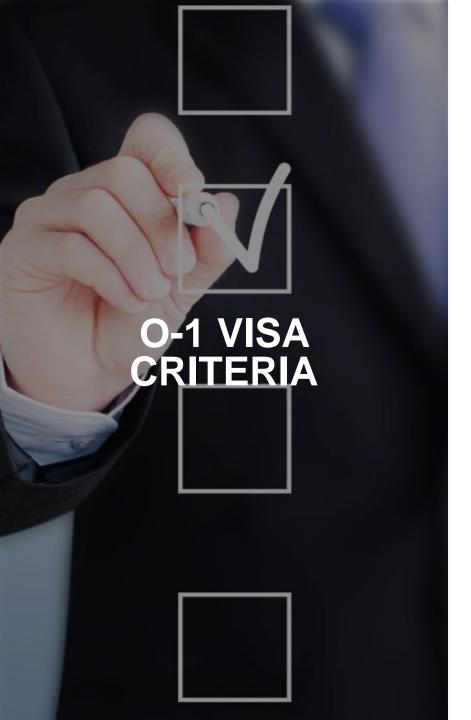
# O-1 VISA FOR PEOPLE OF EXTRAORDINARY ABILITY

- The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics
- To qualify for an O-1 visa, the beneficiary must demonstrate extraordinary ability by sustained national or international acclaim and must be coming temporarily to the United States to continue work in the area of extraordinary ability.
- Employer specific; but can hold dual O-1s
- Anyone still subject to INA 212e (J-1 2 year home residence requirement) can obtain an O-1 visa
- 3 years for first O-1 (1 year renewals), renewable indefinitely
- Inconsistent Adjudications: Weak cases approved; strong cases denied
  - May be worth looking into for individuals with Ph.D.s or individuals with strong business backgrounds, high salaries, etc.









#### \*\*\*MUST MEET 3 OF THE BELOW CRITERIA\*\*\*

- 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

# J-1 EXCHANGE VISITORS

- Categories include trainees, interns, research scholars, specialists, students, au pairs, etc. (approximately 15 total)
- Some J's must return to home country for 2 years after completion of program or seek waiver
  - Skills list
  - Government funding
  - Graduate medical education
- J-1 Students can get practical training (similar to OPT)
  - 18 months max for pre-doctoral students; 36 months for Ph.D.s
  - Total training period can't exceed the period of full course of study
  - Academic training permitted during or after school
- J-1 Intern: Must be attending school ABROAD or must have graduated from a post-secondary school ABROAD within last 12 months
- J-1 Trainee: Foreign post-secondary degree + 1 year experience ABROAD or 5 years of experience ABROAD



# H-1B1 FOR CHILE/SINGAPORE NATIONALS

- - For citizens of Chile and Singapore only
  - Similar to the H-1B in that the primary requirement is an offer of employment in a specialty occupation
  - Prevailing wage and LCA required; but can apply directly at the Embassy (similar to E-3)
  - NO dual intent
  - 1,400 available for Chile
  - 5,400 available for Singapore
  - 1 year validity; renewable indefinitely





# E-3 VISA FOR AUSTRALIAN NATIONALS



- Visa category for citizens of Australia to take up professional positions in the U.S. – 10,500 per year available
- Job offered must be for a "specialty occupation" as defined for H-1B visa category
- Requires certified LCA and prevailing wage determination
- Visas can be applied for at consulates without prior USCIS approval
- Filings can be submitted to USCIS, but premium processing is not available
- 2-year validity; renewable indefinitely
- Dependent spouses may apply for employment authorization
- 240 day rule DOES apply; but NO portability; NO premium processing



## TN CATEGORY FOR CANADIAN & MEXICAN PROFESSIONALS



- Must be nationals of either Canada or Mexico
- Coming to U.S. to work in profession listed on NAFTA schedule and must be sponsored by employer
- Generally require a Bachelors degree in field
- Canadians apply at border (non-national dependents must obtain visa at U.S. Consulate)
- Mexicans apply at Consulate
- Three year increments, renewable indefinitely
- Extensions and changes of status may be filed at USCIS Service Center



## TN JOBS

### **General**

- Accountant
- Architect
- Computer Systems Analyst
- Disaster Relief Insurance Claims Adjuster
- Economist
- Engineer
- Forester
- Graphic Designer
- Hotel Manager
- Industrial Designer
- Interior Designer
- Land Surveyor
- Landscape Architect
- Lawyer
- Librarian
- Management Consultant
- Mathematician
- Range Manager/ Range Conservationalist
- Research Assistant
- Scientific Technician/Technologist
- Social Worker

- Sylviculturist
- Technical Publications Writer
- Urban Planner
- Vocational Counsellor

### **Medical/Allied Professional**

- Dentist
- Dietitian
- Medical Laboratory Technologist
- Medical Technologist
- Nutritionist
- Occupational Therapist
- Pharmacist
- Physician
- Physiotherapist/Physical Therapist
- Psychologist
- Recreational Therapist
- Registered Nurse
- Veterinarian

### <u>Scientist</u>

- Agriculturist
- Animal Breeder
- Animal Scientist

- Apiculturist
- Astronomer
- Biochemist
- Biologist
- Chemist
- Dairy Scientist
- Entomologist
- Epidemiologist
- Geneticist
- Geologist
- Geochemist
- Geophysicist
- Horticulturist
- Meteorologist
- Pharmacologist
- Physicist Plant Breeder
- Poultry Scientist
- Soil Scientist
- Zoologist

### **Teacher**

- College
- Seminary
- University



# ANOTHER WAY TO AVOID THE H-1B QUOTA

- It may be possible to apply directly from F-1/OPT or even J-1 (assuming you are not subject to 212e) straight to a green card.
- This is normally not possible for individuals born in India/China/Philippines due to lengthy backlogs in green card processing.
- This option is ideal for individual eligible for the STEM OPT extension, but it may be possible for everyone else.
- **WARNING:** Must be very careful as F-1 and F-1 OPT do NOT allow for dual intent (issues can arise when filing for a green card while being in F-1 or J-1 status).





### **IMMIGRANTS**



- "Green card holders" = "Permanent residents" = "Immigrants"
- Coming to U.S. permanently
- Numerically limited
  - Visa bulletin
  - Priority date
- Can become U.S. citizens after 3 5 years



# HOW TO GET A GREENCARD

- 1. Family
- 2. Work
- 3. Diversity Lottery
- 4. Asylum
- 5. Cuban-Adjustment Act



## DIVERSITY LOTTERY

- 50,000 green cards given out each year (about 15 million applicants); must apply during the month of October at this website: https://www.dvlottery.state.gov/
- Odds of winning the Powerball jackpot?
   1 in 195,249,054
- Who is NOT eligible? Persons BORN in: Bangladesh, Brazil, Canada, China (mainland born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent
- Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.

territories, and Vietnam.

 Last year, the most winners came from: Ethiopia, Cameroon, Liberia, Congo, Egypt, Iran, Nepal, Russia, Ukraine, Uzbekistan

# FAMILY-BASED PERMANENT RESIDENCE

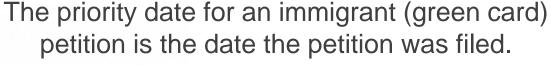
- Quick Process: Immediate relatives (spouses, minor children & parents of U.S. citizens)
- Slow Process: Other close family members of citizens or permanent residents can sponsor you, including:
  - 1. Unmarried sons & daughters of citizens (over age 21)
  - 2. Spouses & children of LPRs (2A) & unmarried sons/daughters of LPRs (2B)
  - 3. Married sons & daughters of citizens
  - 4. Brothers & sisters of citizens



# NOVEMBER 2017 FAMILY BULLETIN

Family- Sponsored	All Chargeability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIPPINES
F1	22JAN11	22JAN11	22JAN11	01APR96	01JAN07
F2A	15NOV15	15NOV15	15NOV15	01NOV15	15NOV15
F2B	15NOV10	15NOV10	15NOV10	22JUL96	01JAN07
F3	15AUG05	15AUG05	15AUG05	08MAY95	01MAR95
F4	22MAY04	22MAY04	22OCT03	08OCT97	08JUN94

# PRIORITY DATE (PD)



The Priority Date can tell you (approximately) how long it will take to obtain the green card, by checking the monthly visa bulletin (<a href="https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html">https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html</a>)

The final step of the green card (for family or employment cases) is the I-485 or Adjustment of Status (AOS) or Consular Processing (if you are abroad) and you cannot file the I-485 until your PD is current.



# EMPLOYMENT-BASED CATEGORIES

EB-1: Priority Workers

EB-2: Advance-degree professionals & aliens of exceptional ability

EB-3: Professional, skilled & unskilled workers\* (\*labor certification required)

EB-4: Special Immigrants

EB-5: Employment Creation (Investors)









# NOVEMBER 2017 EMPLOYMENT BULLETIN

Employ- ment based	All Charge- ability Areas Except Those Listed	CHINA- mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	С	С	С	С	С	С
2nd	С	15JUN13	С	08OCT08	С	С
3rd	С	01FEB14	С	150CT06	С	15JAN16
Other Workers	С	01APR06	С	150CT06	С	15JAN16
4th	С	С	01NOV15	С	01APR16	С
Certain Religious Workers	С	С	01NOV15	С	01APR16	С
5th Non-Regional Center (C5 and T5)	С	01JUL14	С	С	С	С
5th Regional Center (I5 and R5)	С	01JUL14	С	С	С	С

FRAGOMEN

## EB-1 vs. EB-2 vs. EB-3

- **EB-3**: Jobs that require a Bachelor's degree
  - Employer sponsorship ALWAYS required
- **EB-2**: Jobs that require an advanced degree (or Bach + 5)
  - Employer sponsorship required EXCEPT for National Interest Waiver
- **EB-1**: Priority workers (no labor certification)
  - Persons of extraordinary ability (similar to the O-1 nonimmigrant category)
    - Employer sponsorship NOT required
  - Outstanding professors & researchers
    - Employer sponsorship required
  - Multinational executives/managers
    - Employer sponsorship required





# EB-1 OUTSTANDING PROFESSOR/RESEARCHER

- You must demonstrate international recognition for your outstanding achievements in a particular academic field.
- You must have at least 3 years experience in teaching or research in that academic area.
- You must be entering the United States in order to pursue tenure or tenure track teaching or comparable **permanent** research position at a university or other institution of higher education;
- Post-Doc positions do not qualify!
- Must meet 2 of 6 criteria:
  - 1. Evidence of receipt of major prizes or awards for outstanding achievement
  - 2. Evidence of membership in associations that require their members to demonstrate outstanding achievement
  - 3. Evidence of published material in professional publications written by others about the alien's work in the academic field
  - 4. Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
  - 5. Evidence of original scientific or scholarly research contributions in the field
  - 6. Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field



## EB-1 EXTRAORDINARY ABILITY

- Does not require a job offer or a permanent position (Post-Docs can qualify);
   can self-petition
- Extraordinary Ability = "Level of expertise indicating that the individual is one of those few who have risen to the top of the field of endeavor"
- Higher standard than "exceptional ability" or "outstanding"
- Must meet 3 of 10 criteria:
  - Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
  - 2. Evidence of your membership in associations in the field which demand outstanding achievement of their members
  - 3. Evidence of published material about you in professional or major trade publications or other major media
  - 4. Evidence that you have been asked to judge the work of others, either individually or on a panel
  - 5. Evidence of your original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
  - 6. Evidence of your authorship of scholarly articles in professional or major trade publications or other major media
  - 7. Evidence that your work has been displayed at artistic exhibitions or showcases
  - 8. Evidence of your performance of a leading or critical role in distinguished organizations
  - 9. Evidence that you command a high salary or other significantly high remuneration in relation to others in the field
  - 10. Evidence of your commercial successes in the performing arts



# EB-2/EB-3 EMPLOYMENT-BASED PERMANENT RESIDENCE

- Step 1: Labor Certification (not required for National Interest Waiver)
  - Filed by employer on behalf of foreign national
  - Processed under PERM system by DOL
  - Employer must prove that they were unable to find any minimally qualified US applicants who are ready, willing and able to fill the position
  - Prevailing Wage Required (must be issued by National Prevailing Wage Center)
  - By law, all fees (attorney fee and advertising) for Step 1 must be paid by employer
- Step 2: Immigrant Petition for Alien Worker (Form I-140)
  - Filed by employer
  - Processed by USCIS
  - Can be paid by employer or employee (\$700 government fee per family)
- Step 3: Adjustment of Status (Form I-485) or Consular Processing
  - Filed by the foreign national & family members
  - Can be paid by employer or employee (\$1225 government fee per applicant)





- Aliens seeking a national interest waiver are requesting that the Labor Certification be waived because it is in the interest of the United States.
- Though the jobs that qualify for a national interest waiver are not defined by statute, national interest waivers are usually granted to those who have exceptional ability and whose employment in the United States would greatly benefit the national interest.
- Those seeking a national interest waiver may self-petition (they do not need an employer to sponsor them) and may file their labor certification directly with USCIS along with their Form I-140, Petition for Alien Worker.

#### 3 Criteria:

- 1. The foreign national's proposed endeavor has both substantial merit and national importance.
- 2. The foreign national is well positioned to advance the proposed endeavor.
- 3. On balance, it would be beneficial to the United States to waive the job offer and labor certification requirements of the EB-2 category.
- Good category for STEM Ph.D's



# IMMIGRATION REFORM???

- Travel Ban
- H-1b Changes
- Increased Scrutiny
- Visa Delays at Embassy
- Compliance
- Merit Based Immigration
- Buy American
- Hire American
- Green Card Interviews
- Delays, delays, delays





# MARRY AN IMMIGRATION ATTORNEY!

