Immigration 101:
What Happens After I Graduate?

October 2016
Aaron M. Blumberg
Attorney-at-Law

Fragomen, Del Rey, Bernsen & Loewy, LLP
One Alhambra Plaza
Suite 600
Coral Gables, Florida 33134
E-Mail: ablumberg@fragomen.com
Today’s Presentation

1. Overview of Immigration System
2. Review of Important Documents
3. Nonimmigrant Visas
4. Immigrant Visas
5. Immigration Reform
Overview of the Immigration System
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 and Nationality Act (INA)
- Subsequent legislation
- Regulations – CFR 8 (immigration), 20 (labor), & 22 (Department of State)
- Operating procedures
  - Inconsistent
  - Always changing
- USCIS memoranda
- Foreign Affairs Manual (FAM)
Review of Common Immigration Documents
I-94 (D/S)
I-94

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: LI
- 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: B1

Individuals can visit www.cbp.gov/I94 to retrieve a copy of their electronic Form I-94.
I-20 (F)

I-20, Certificate of Eligibility for Nonimmigrant Student Status

SEVIS ID: N0004705512

<table>
<thead>
<tr>
<th>GIVEN NAME</th>
<th>John Doe-Smith</th>
</tr>
</thead>
<tbody>
<tr>
<td>PASSPORT NAME</td>
<td>John Doe-Smith</td>
</tr>
<tr>
<td>COUNTRY OF CITIZENSHIP</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>ADMISSION NUMBER</td>
<td>1563-6038</td>
</tr>
<tr>
<td>LEGACY NAME</td>
<td>John Doe-Smith</td>
</tr>
<tr>
<td>INITIAL ATTENDANCE</td>
<td></td>
</tr>
</tbody>
</table>

SCHOOL INFORMATION

<table>
<thead>
<tr>
<th>SCHOOL NAME</th>
<th>SBPP School for Advanced SEVIS Studies</th>
</tr>
</thead>
<tbody>
<tr>
<td>SCHOOL ADDRESS</td>
<td>3552 Nancy Lane, Ft. Washington, MD 20744</td>
</tr>
<tr>
<td>SCHOOL OFFICIAL TO CONTACT UPON ARRIVAL</td>
<td>Admissions Office</td>
</tr>
<tr>
<td>SCHOOL CODE AND APPROVAL DATE</td>
<td>03 April 2015</td>
</tr>
</tbody>
</table>

PROGRAM OF STUDY

<table>
<thead>
<tr>
<th>EDUCATION LEVEL</th>
<th>MAJOR 1</th>
<th>MAJOR 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Economics, General 15-000</td>
<td></td>
</tr>
<tr>
<td>NORMAL PROGRAM LENGTH</td>
<td>04-0000</td>
<td></td>
</tr>
<tr>
<td>PROGRAM START DATE</td>
<td>21 September 2013</td>
<td>21 May 2021</td>
</tr>
<tr>
<td>PROGRAM END DATE</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

FINANCIALS

<table>
<thead>
<tr>
<th>ESTIMATED AVERAGE COSTS FOR 9 MONTHS</th>
<th>STUDENT’S FUNDING FOR 9 MONTHS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuition and Fees</td>
<td>$20,000</td>
</tr>
<tr>
<td>Living Expenses</td>
<td>$6,000</td>
</tr>
<tr>
<td>Expenses of Dependants</td>
<td>$3,000</td>
</tr>
<tr>
<td>Other</td>
<td>$0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$32,000</td>
</tr>
</tbody>
</table>

REMARKS

Orientation begins 8/21/2015. Please report to ESSB upon arrival.

SCHOOL ATTESTATION

I certify under penalty of perjury that all information provided above was read before I signed this form and is true and correct. I executed this form in the United States after review and evaluation of the student's application, transcripts, or other records of academic status and proof of financial responsibility, which were received at the school prior to the execution of this form. The school has determined that the above named student's qualifications meet all standards for admission to the school and the student will be required to pass a full program of study as defined by 8 CFR 214.3(C)(5). I am a designated school official of the above named school and am authorized to issue this form.

[Signature]

DATE ISSUED: 03 April 2015
PLACE ISSUED: Ft. Washington, MD

STUDENT ATTESTATION

I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay. I certify that all information provided on this form reflects specifically to me and is true and correct to the best of my knowledge. I certify that if I fail to complete or resume in the United States temporarily, and relay for the purpose of pursuing a full program of study at the school named above, I will notify the designated school official to release any information from my records marked by DHS personnel in 8 CFR 214.3(C)(5) to determine my nonimmigrant status. Parent or guardian, and student, must sign if student is under 18.

[Signature]

DATE: 03 April 2015
# DS-2019 (J)

**U.S. Department of State**

**CERTIFICATE OF ELIGIBILITY FOR EXCHANGE VISITOR (J-I) STATUS**

| Family Name | Given Name | Middle Name | Date of Birth | Place of Birth | Gender | Classification Code | Program Sponsor | Home Country | Legal Permanent Resident Country Code | Employment Verification Code | Position | Employment Verification Certificate Number | J-
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Zucca</td>
<td>Mary</td>
<td></td>
<td>12-13-1990</td>
<td>Berlin, Germany</td>
<td>FEMALE</td>
<td>GERMANY</td>
<td>FIS Painting</td>
<td>GERMANY</td>
<td>134</td>
<td>CIVIL SERVICE EMPLOYEE IN CENTRAL GOVERNMENT</td>
<td>50001304</td>
<td>F-3-10204</td>
<td>42302</td>
</tr>
</tbody>
</table>
I-94 (Expiration Date)
I-797 Approval Notice & I-94 Card
Nonimmigrant Visas
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 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
- V: Spouses & Minor 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
• 4/1/16 – 4/5/16: 236,000 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) Non-profit research entities, 3) Government research
H-1B FAQs

• 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

• How can you change employers?
  • You can change employers if the new employer files a new H-1B
    (remember: 6 year H-1B total)

• 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

• What happens if you lose your job?
  • No grace period; once you stop working must leave, change employers,
    change status (take some action)
  • Reasonable costs of return transportation for dismissed employee
H-1B FAQs

• 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, but can study

• What are the government fees?
  • $325, $500, $750/$1500, $1225

• What are standard 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.
Cap Gap Automatic Extension

• Automatic Extension of your OPT work authorization to September 30th: This happens if your approved OPT end date (on your EAD card) is April 1st 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, 2015. 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, 2015. 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, 2015.

• 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
3. 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)
L-1

• 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
### Treaty Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>E-2</td>
</tr>
<tr>
<td>Argentina</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Armenia</td>
<td>E-2</td>
</tr>
<tr>
<td>Australia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Austria</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>E-2</td>
</tr>
<tr>
<td>Bahrain</td>
<td>E-2</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>E-2</td>
</tr>
<tr>
<td>Belgium</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Bolivia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Brunei</td>
<td>E-1</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>E-2</td>
</tr>
<tr>
<td>Cameroon</td>
<td>E-2</td>
</tr>
<tr>
<td>Canada</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Chile</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>China (Taiwan)</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Colombia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Congo (Brazzaville)</td>
<td>E-2</td>
</tr>
<tr>
<td>Congo (Kinshasa)</td>
<td>E-2</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Croatia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Croatia</td>
<td>E-2</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>E-2</td>
</tr>
<tr>
<td>Denmark</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Ecuador</td>
<td>E-2</td>
</tr>
<tr>
<td>Egypt</td>
<td>E-2</td>
</tr>
<tr>
<td>Estonia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Finland</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>France</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Georgia</td>
<td>E-2</td>
</tr>
<tr>
<td>Germany</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Greece</td>
<td>E-1</td>
</tr>
<tr>
<td>Grenada</td>
<td>E-2</td>
</tr>
<tr>
<td>Honduras</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Iran</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Ireland</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Israel</td>
<td>E-1</td>
</tr>
<tr>
<td>Italy</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Jamaica</td>
<td>E-2</td>
</tr>
<tr>
<td>Japan</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Jordan</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>E-2</td>
</tr>
<tr>
<td>Korea (South)</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Kosovo</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>E-2</td>
</tr>
<tr>
<td>Latvia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Liberia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Lithuania</td>
<td>E-2</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Macedonia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Mexico</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Moldova</td>
<td>E-2</td>
</tr>
<tr>
<td>Mongolia</td>
<td>E-2</td>
</tr>
<tr>
<td>Montenegro</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Morocco</td>
<td>E-2</td>
</tr>
<tr>
<td>Netherlands</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Norway</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Oman</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Pakistan</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Panama</td>
<td>E-2</td>
</tr>
<tr>
<td>Paraguay</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Philippines</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Poland</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Poland</td>
<td>E-2</td>
</tr>
<tr>
<td>Romania</td>
<td>E-2</td>
</tr>
<tr>
<td>Serbia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Serbia</td>
<td>E-2</td>
</tr>
<tr>
<td>Senegal</td>
<td>E-2</td>
</tr>
<tr>
<td>Singapore</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Singapore</td>
<td>E-2</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>E-2</td>
</tr>
<tr>
<td>Slovenia</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Slovenia</td>
<td>E-2</td>
</tr>
<tr>
<td>Spain</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>E-2</td>
</tr>
<tr>
<td>Suriname</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Sweden</td>
<td>E-1 &amp; E-2</td>
</tr>
<tr>
<td>Switzerland</td>
<td>E-1 &amp; E-2</td>
</tr>
</tbody>
</table>
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.
O-1 Visa Criteria

***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 and 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

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

**Scientist**
- Agriculturist
- Animal Breeder
- Animal Scientist

**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).
Green Card Overview
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 Green Card

1. Family
2. Work
3. Diversity Lottery
4. Asylum
5. Special Legislation
Special Legislation
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 territories, and Vietnam.

• Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.

• 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
Priority Date (PD)

• The priority date for an immigrant (green card) petition is the date the petition was filed.

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

• 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.
October 2016 Family Bulletin

<table>
<thead>
<tr>
<th>Family-Sponsored</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>F1</td>
<td>22SEP09</td>
<td>22SEP09</td>
<td>22SEP09</td>
<td>01APR95</td>
<td>01AUG05</td>
</tr>
<tr>
<td>F2A</td>
<td>22DEC14</td>
<td>22DEC14</td>
<td>22DEC14</td>
<td>01DEC14</td>
<td>22DEC14</td>
</tr>
<tr>
<td>F2B</td>
<td>15MAR10</td>
<td>15MAR10</td>
<td>15MAR10</td>
<td>01OCT95</td>
<td>01JAN06</td>
</tr>
<tr>
<td>F3</td>
<td>22DEC04</td>
<td>22DEC04</td>
<td>22DEC04</td>
<td>22NOV94</td>
<td>08JUL94</td>
</tr>
<tr>
<td>F4</td>
<td>01NOV03</td>
<td>01MAY03</td>
<td>01DEC02</td>
<td>01MAY97</td>
<td>15APR93</td>
</tr>
</tbody>
</table>
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)
## October 2016 Employment Bulletin

<table>
<thead>
<tr>
<th>Employment based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>EL SALVADOR</th>
<th>GUATEMALA</th>
<th>HONDURAS</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>2nd</td>
<td>C</td>
<td>15FEB12</td>
<td>C</td>
<td>15JAN07</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>3rd</td>
<td>01JUN16</td>
<td>22JAN13</td>
<td>01JUN16</td>
<td>01MAR05</td>
<td>01JUN16</td>
<td>01DEC10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Workers</td>
<td>01JUN16</td>
<td>01JAN05</td>
<td>01JUN16</td>
<td>01MAR05</td>
<td>01JUN16</td>
<td>01DEC10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4th</td>
<td>C</td>
<td>C</td>
<td>15JUN15</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Certain Religious Workers</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td></td>
</tr>
<tr>
<td>5th Non-Regional Center (C5 and T5)</td>
<td>C</td>
<td>22FEB14</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5th Regional Center (I5 and R5)</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td>U</td>
<td></td>
</tr>
</tbody>
</table>
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:
  1. 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 ($580 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 ($1070 government fee per applicant)
EB-2 National Interest Waiver

• 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.
• Good category for STEM Ph.D’s
Immigration Reform
Immigration Reform???

Comprehensive Immigration Reform in 2016? 2017? Ever?

- Dream Act?
- STEM Bill?
- EB-2 fix for India/China?
- Help entrepreneurs?
- Dual Intent for F-1s?
- Changing Jobs Easier?

What will be the impact of the Presidential Election?!?!?!?
Consider Immigrating to Canada....
POP QUIZ
What is the easiest way to get a green card?
Marry an immigration attorney!
Thank you!!
Aaron M. Blumberg
Attorney-at-Law

Fragomen, Del Rey, Bernsen & Loewy, LLP
One Alhambra Plaza
Suite 600
Coral Gables, Florida 33134
E-Mail: ablumberg@fragomen.com