Office of International Services
Indiana University
October 2010

NON- IMMIGRANT VISA OPTIONS
AFTER GRADUATION

SESSION GOALS
• Familiarity with U.S. visa system
• Discussion of non-immigrant employment options
• Long-term career planning

WHO IS HERE?
• Graduate/Undergraduate
• Music majors
• Canada – Mexico – Singapore
• Chile – Australia
• J1 students / F1 students / non-students
• STEM majors
• December graduates

NON- IMMIGRANT
Non-immigrant visas:
• B1/B2 Visitor Business/Travel
• F-1 Practical Training
• J-1 Academic Training
• J-1 Faculty or Researcher
• J-2 Spouse or Child
• H-1 Specialty Occupation
• O-1 Extraordinary
• TN (Treaty NAFTA –Canada/Mexico)
• E-3 Specialty Occupation (Australia)

F-1 OPTIONAL PRACTICAL TRAINING
F1- Students should ATTEND AN OPT SESSION
Register online through iStart

Optional Practical Training is not the same as
Curricular Practical Training

ADVANTAGES
• Easy to process
• Valid up to 12 months if working
• Possible 17 month extension for STEM majors
• No job offer needed
• No salary issue
• Can work for any employer in field of study
• Cap-Gap protection

LIMITATIONS
• Hard to renew visa abroad
• ~90 days to process at USCIS
• Maximum 90 days of unemployment
• Must be employed in field of study
**J-1 Academic Training**

**Advantages**
- Authorized by program sponsor
- No specific employer
- Valid for 18 or 36 months
- Can be part time
- J-2 can continue work authorization from USCIS
- No salary issue

**Limitations**
- Some sponsors don’t authorize
- Must have job offer in field
- Hard to renew visa abroad

---

**TN (Treaty NAFTA) Canada/Mexico**

**Advantages**
- Easy processing
- Unlimited extensions
- No salary issue

**Limitations**
- Canadian/Mexican citizens
- Limited professions
- Spouse cannot work
- Three years at a time
- Travel problems if immigrant intent

---

**J-1 Researcher / Professor**

**Advantages**
- Valid up to 5 years
- Can be part time
- J-2 can apply for work authorization from USCIS
- No salary issue

**Limitations**
- Not for tenure track
- May give 2-year home residence requirement
- Not for J-1 students
- May be subject to 12 or 24 month bars

---

**J-2 Employment**

- No specific employer
- Can be part time/full-time
- Must apply to USCIS
- Typically approved for one year at a time but could be approved for longer

---

**H-1B (Specialty Worker)**

**Advantages**
- Dual intent
- Six years total
- Multiple HiBs for multiple employers
- Premium Processing option
- Portability

**Limitations**
- Numerical cap***
- Employer-specific
- Job must require a bachelor’s degree
- Job should be related to field of study
- H-4 cannot work
- Minimum salary

---

**Labor Condition Application (LCA)**

- Establishes salary conditions with the Department of Labor (NOT USCIS) for H-1B visa.
- Has no relationship to Labor Certification (LC) and permanent residence application.
LABOR CONDITION APPLICATION (LCA) DEPARTMENT OF LABOR
- Worker paid actual wage paid to all other workers, OR prevailing wage, whichever is higher
- No effect on working conditions of those similarly employed
- No strike, lockout, or work stoppage
- Notice provided to other workers at worksite

H-1B VISA PETITION (USCIS)
- Documents that position requires a professional
- Documents that foreign national fulfills position requirements
- Submit application with approved LCA
  May apply 6 months prior to employment start date

H-1B CAP
- Cap of 65,000 set by Congress
- 20,000 additional for those with U.S. masters degrees and higher
- Cap year runs 10/1 to 09/30 each year
- Can file April 1 for start date of October 1
- In the past the cap has often been met well before the 10/1 start date
- Set asides for Chile and Singapore

EXEMPTIONS FROM THE NUMERICAL CAP:
- Institution of higher education or a related or affiliated nonprofit entity; nonprofit research organization; governmental research organizations
- Anyone counted against the cap at some point during the previous six years
- Extensions or amendments of H

PROBLEM: CAP GAP
- OPT expires before October 1, 2010. H-1B starts October 1, 2010
- What do I do?
- Can I stay in the U.S.?

**Attend an OPT Information Session**
H-1B FEES

Paid by employer
- $320 application fee
- $500 anti-fraud detection fee
- $1,500 employer training fee ($750 for employers with 25 or fewer full-time employees). Educational employers exempt.

Paid by employer or employee
- Optional $1000 Premium Processing fee
- Lawyer’s fees

**New fees effective November, 23, 2010**

O-1 EXTRAORDINARY ABILITY

- Extraordinary ability in the sciences, arts, education, business, or athletics
- No degree requirement (musicians)
- Paper intense petition
- Can use even if subject to home residence requirement
- Musicians can use for multiple gigs

OTHER NON-IMMIGRANT VISAS FOR WORK

- E-1: treaty trader or treaty investor
- E-2: treaty trader or treaty investor
- L: intra-company transferee
- P: performing artist or athlete

SUSIE STUDENT, AY 2010-11

Sends out resumes → Applies → Interviews

- Feb 2011: Applies for OPT
- April 2011: Offered job by ABC Co. (related to her studies)
- April 2011: Employer files H-1B petition for her, requesting validity dates of 10/01/11-09/30/14
- May 2011: Graduates
- June 2011: Starts employment on F-1 OPT valid 6/1/11-5/31/2012
- October 2011: Becomes H-1B 10/01/11

SALLY STUDENT, AY 2010-11

Sends out resumes → Applies → Interviews

- Feb 2011: Applies for OPT
- May 2011: Graduates OPT 06/10/2011-06/09/2012
- Sept 1, 2011: Offered job by ABC Co. Starts working on valid OPT authorization
- April 1, 2012: ABC Co. submits H-1B petition with start date of October 1, 2012
- June 10, 2012: ????
Visa Options After Graduation

SALLY STUDENT CONTINUED

- Options if H1B petition approved
  - Remain in the US and work under Cap Gap coverage because employer filed H1B petition while in valid OPT status
- Options if H1B petition not approved
  - H1B opportunity with a cap exempt employer
  - Other visa options: J1, O-1, Australian, etc
  - If in STEM field may be eligible for 17 month extension of OPT. Extension request must be filed prior to expiration of original OPT authorization.

SAM STUDENT AY 2010-11

Sends out resumes ➔ Applies ➔ Interviews
- February 2011: Applies for OPT
- March 2011: Offered job by Enormous State Univ
- March 2011: ESU submits H-1B petition with start date of 08/01/2011
- May 2010: Graduates, OPT approved 07/11-06/12
- August 1, 2011: Becomes H-1B

WHAT TO SAY TO EMPLOYERS

You can work in U.S. without green card!
- Optional Practical Training (12 months with an additional 17 months if STEM major)
- Academic Training (18 months/36 months)
- H-1B (up to 6 years)
- J-1 research/teaching (up 5 years)
- O-1 if can prove exceptional ability

No advertising required!
Does not matter if US Citizens have applied!

RESOURCE LIST

- Sign-up for OPT Sessions if you are an F1 student
- See OIS website for information on Academic Training if you are a J1 student
- Check out the International Services Web Pages
- Network with alumni
- Visit all career offices including SPEA, Career Services Online, and Career Development Center

OFFICE OF INTERNATIONAL SERVICES

855-9086
intlserv@indiana.edu
www.indiana.edu/~intlserv

GOOD LUCK!
SESSION GOALS
Familiarity with U.S. visa system
Discussion of routes to permanent residence
Long-term career planning

WHO IS AN IMMIGRANT?
- Legal Permanent Residents
- Green Card holders
- Whoever has “I-551” stamp in passport
- Resident Aliens
- PR
  *Not the same as CITIZENSHIP*

IMMIGRANT VISAS: QUOTA
EMPLOYMENT-BASED CATEGORIES
- EB-1. Extraordinary Ability; Outstanding Researcher/Professor
- EB-2. Labor Certification Advanced Degree; National Interest Waiver
- EB-3. Labor Certification Bachelors or Skilled Worker
- EB-4. Special Immigrants and Religious Workers
- EB-5. Employment Creation

IMMIGRANT VISAS: QUOTA
FAMILY-BASED CATEGORIES
- FB-1. Unmarried child under 21 of USC.
- FB-2. Family of PR
  - a. Spouse/minor child of PR.
  - b. Unmarried child over 21 of PR.
- FB-3. Married child of USC.
- FB-4. Brother/sister of USC.

IMMIGRANT VISAS: NO QUOTA
(UNLIMITED NUMBER AVAILABLE)*
- Spouse of USC.
- Parents of USC age 21 or over
- Unmarried children under 21 of USC
- DV Lottery winners (separate quota)

*Unless 2 year requirement applies

DIVERSITY IMMIGRANT VISA PROGRAM (DV-LOTTERY)
- Application Period: 10/04/10 – 12/03/10
- Electronic submissions ONLY
- Some countries not eligible to participate
- For more information, see: http://www.travel.state.gov
Diversity Lottery 2010
Countries NOT eligible to apply – more than 50,000 immigrants in the past 5 years:

- BRAZIL
- CANADA
- CHINA (mainland-born)
- COLOMBIA
- DOMINICAN REPUBLIC
- ECUADOR
- EL SALVADOR
- GUATEMALA
- HAITI
- INDIA
- JAMAICA
- MEXICO
- PAKISTAN
- PHILIPPINES
- PERU
- POLAND
- SOUTH KOREA
- VIETNAM

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

** country of birth

Routes to Employment-Based Permanent Residence

**Labor Certification**
- A. Labor Certification application
- B. I-140 petition
- C. Form I-485 for Permanent Residence

**I-140 Petition**
- A. I-140 based on Outstanding, Extraordinary, National Interest Waiver
- B. Form I-485 for Permanent Residence

**Labor Certification (Perm)**
- A determination by the Department of Labor that no qualified USC or PR is available and able to accept the position.
  1. Filed with the Department of Labor as first step toward permanent residence
  2. Has no relationship with LCA non-immigrant (H-1B) visa.
  3. Always requires advertising

**Labor Certification (Non-Teaching, Standard)**
- Extensive advertising requirements beyond initial advertisement
- Experience/qualifications gained in the position cannot be used
- Only minimum requirements
- Salary requirements

**Labor Certification (Teaching, Special Handling)**
- No re-advertising
- Requires a print advertisement
- Can hire best qualified, not just minimally qualified
- Must be filed within 18 months of offer
- Salary requirements

**Peter Professor Labor Certification**
Peter has OPT through August 2011
Feb 2011: Applies for faculty position advertised in the Chronicle
April 2011: Offered position, H-1B petition filed with start date 08/01/2011
May 2011: Special Handling Labor Certification filed by institution using original advertisement and recruitment
Sept 2011: Labor Certification approved, I-140 filed
BETTY BRILLIANT LABOR CERTIFICATION

- Betty has job as Financial Analyst with ESU, has H-1B valid through December, 2011
- March 2011: ESU decides to sponsor her for green card, places ads, job order with Dept of Labor, internal posting, etc.
- June 2011: ESU screens applicants, no one meets job requirements but Betty. Documentation collected
- July 2011: Labor Certification filed
- November 2011: Labor Cert approved, I-140 filed

BETTY BRILLIANT CONTINUED

- December 2011: I-140 approved
- January 2012: applicant files for PR along with spouse and children
- Continues working based upon H-1B OR applicant applies for EAD based on PR application
- August 2012: applicant and family granted permanent residence

TIMELINE FOR LABOR CERTIFICATION

- File Labor Certification with Labor
  - 2-6 months to prepare
  - Currently 2-8 months for DOL to approve
- File form I-140 with USCIS (2-4 months)
- File form I-485–PR application if visa number available or file together if visa number is available

“AVOIDING” LABOR CERTIFICATION

I-140 PETITION

Bypassing Dept of Labor, file I-140 immigrant petition directly with the USCIS (No Labor Certification necessary):

1. Extraordinary
2. Outstanding Professor / Researcher
3. National Interest Waiver

I-140: OUTSTANDING PROFESSOR OR RESEARCHER

- 3 years experience
- Publications
- Original contributions
- Employer-specific
- Tenure-track or “permanent position”
- Teaching or research
- No salary requirements
- No advertisement

I-140: NATIONAL INTEREST WAIVER

- Advanced degree +2 years
- National interest
- Publications, established in field
- Key role in research
- Can be self-filed
- Non-permanent position
- No salary issue
- No advertisement
- Why in national interest not to advertise
**TIMELINE FOR I-140 PETITION OUTSTANDING OR NIW**

1. File Form I-140 with the USCIS (2-8 months)
2. File I-485 PR application if visa number available
   OR:
   File both I-140 AND I-485 for PR at same time—only if sure I-140 will be approved and visa number available

**SUSIE SUMMIT**

H-1B status: Sept 2009 – August 2012

I-140 Outstanding petition filed: December 2010

I-140 approved: May 2011

Files for PR: August 2011

Gets EAD or extends H-1 as needed while PR petition is pending

**BASIC CONCEPT OF ADJUSTING STATUS TO PERMANENT RESIDENCY**

Qualifying alien for Permanent Residence (I-140 stage)

Applying for ‘Green Card’ (I-485 petition)

An immigrant visa number must be available for your country in the appropriate employment-based category at the time the I-485 is filed

**QUOTAS, PREFERENCE, PER-COUNTRY LIMITS WHEN FILING THE I-485**

- 140,000 annual quota
- 40,000 annual limit for relevant employment preference (EB3, EB2, etc.)
- 7% limit (25,620) from any single country

**THE PRIORITY DATE**

- Date that a Labor Certification application was filed:
  OR
- Date the I-140 was filed if a Labor Certification is not required

Priority date = your “place in line” for an immigrant visa number.

**VISA BULLETIN**

- Visa Bulletin is issued monthly by the Department of State. Controls the total number of employment-based visas each year
- Summarizes which priority dates have an immigrant visa number available to them in the current month
- These workers can file Form I-485 and/or receive an immigrant visa

http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html
OIS

Visa Options After Graduation

10

PRIORITY DATES AND PREFERENCE CATEGORIES
All countries given an equal number of immigrant visa numbers Employment-based PR petitions are subject to an annual quota for each employment category (40,000/year for EB1, EB2, EB3)
Priority date is the date that a Labor Certification application was first filed OR the date the I-140 was filed if no Labor Certification is required

PRIORITY DATES AND PREFERENCE CATEGORIES FAMILY BASED

ELIGIBLE TO FILE FOR PR BUT PRIORITY DATE NOT CURRENT
Must maintain nonimmigrant status and employment authorization while waiting for the priority date to become current

SUSIE SUMMIT
H-1B status: Oct 2008 - Sept 2011
I-140 filed as Outstanding Researcher: December 2009
I-140 approved: June 2010
Susie’s priority date not current.
Extended H-1 as needed until priority date is current and I-485 can be filed

SPECIAL NOTES AFFECTING PR QUOTA AND PROCESSING
- Can extend H-1B beyond 6 years under certain circumstances
- Individuals with I-485 pending over 180 days may change jobs or employers, as long as new job is in same or similar occupational classification.

REMEMBER...
- Labor Certification or I-140 applications or approvals do NOT automatically give employment eligibility or permission to stay in the U.S.
- Non-immigrant status allows you to remain in the US

Source: TravelState.gov/visa/frvi/bulletin/bulletin_1360.html