

Life after OPT: Road to the Green Card

Presented by:

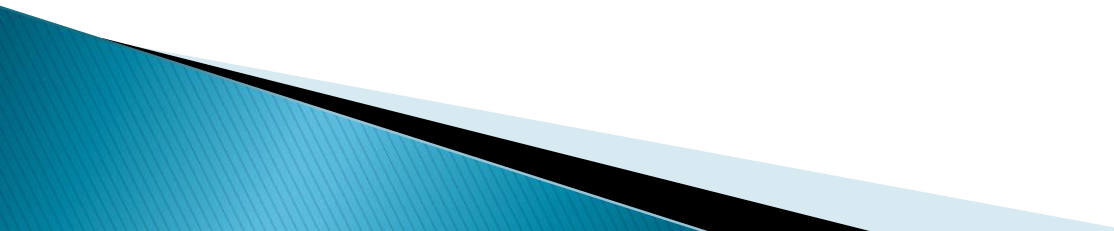
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(VISASERVE)**

Immigrant vs. Nonimmigrant Visas

No Status	Nonimmigrant	Immigrant (Green Card)	Naturalization
DACA	B Visitors	EB-1 Outstanding Research & Professors	After 3 or 5 years
U Visa	E Treaty Trade / Investor	EB-2 Advanced Degree Professionals	
245(i) benefit	F Student	EB-3 Bachelors Degree & Skilled Workers	
Asylum, etc.	H Specialty Workers	EB-4 Religious Workers	
	J Trainees	EB-5 Investors	
	L Intercompany Transferee	Family Based Immigration	
	O Extraordinary Ability		
	P Performing Artists		
	R Religious Workers		
	TN For Canadian & Mexican Nationals (not dual intent)		

A Typical Path to a Green Card

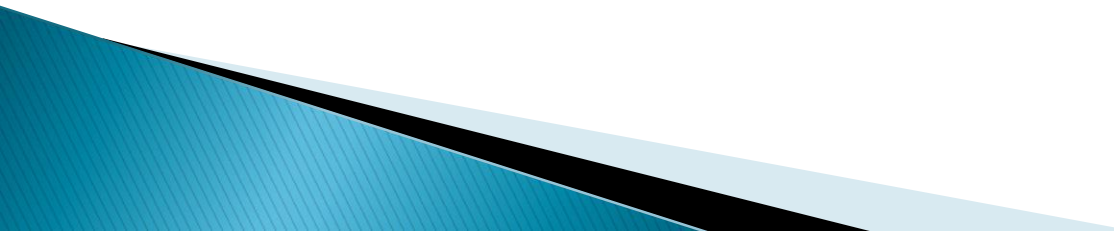
- ▶ Optional Practical Training (OPT)
 - ▶ H-1B Visas (Employees)
 - ▶ Employment Based Permanent Residence (Green Card)
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H-1B Visas

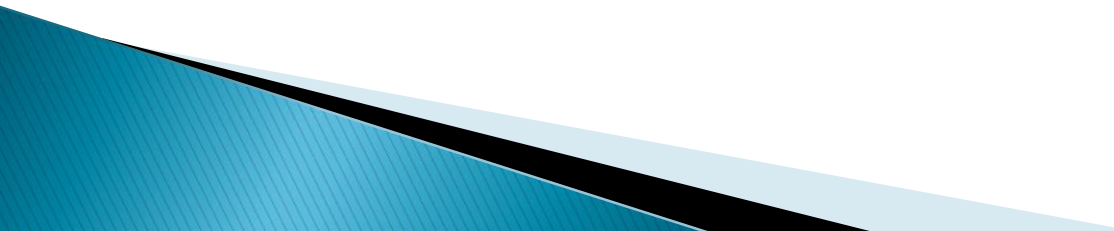
Temporary Professional Visas

- ▶ For Professional-Level workers who are coming to the US to work for a US employer in a specialty occupation
 - Alien must possess at least the equivalent of a US Bachelor's Degree AND
 - Job offer must require at least a Bachelor's Degree
 - “Three for One Rule”- 3 years of work experience can be substituted for 1 year of academic study in order to equate the work experience to a Bachelor's Degree

Examples of Specialty Occupations

- ▶ Some occupations in the regulations:
Chemists, biologists, engineers, physicists, software developers, system analysts, accountants, economists, teachers, architects, lawyers, graphic designers, among others.
 - ▶ If an occupation is not in the regulations, is a Bachelor's Degree normally required?
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Cap on H-1B Visas

- ▶ Numerical Limitation: 65,000 annually.
 - ▶ Additional 20,000 visas for those with US advanced degrees.
 - ▶ Cap was met during the registration period for FY 2024 receiving over Approximately 780,884 registrations for both advanced and Bachelor's degrees.
 - ▶ Roughly 61% of eligible registrations requested consideration under the advanced degree exemption.
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The H-1B Lottery Process

- ▶ Need to identify people early
- ▶ Master's cap and regular cap numbers
- ▶ Pre-registration process
 - Electronic submission
 - \$10 fee for each beneficiary
 - March 1 – March 18 (2025 H-1B Lottery) – Exact dates TBD
- ▶ Post-registration process
 - Notification of selection through online account
 - File petitions only for selected beneficiaries

Filing and Start Date

- ▶ March 1st – March 18th - H-1B registration (last year's dates)
 - ▶ April 1st - filing for cap cases
 - ▶ October 1st – H-1B start date
 - ▶ **Cap-Gap** work through October 1st for pending or approved H-1B Visas
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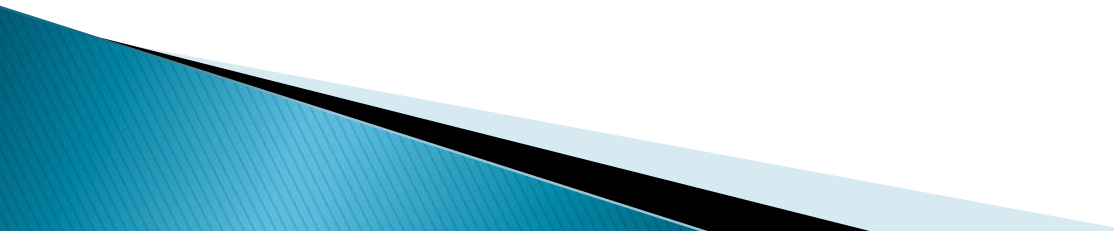
Period of Validity

- ▶ Generally valid for a total of 6 years
- ▶ Time spent outside of the US can be recaptured
- ▶ Some exceptions available where additional time in H-1B status will be granted in 3 years increments beyond the 6 years period (AC-21 - I-140 Approval or GC pending for 365 days+)

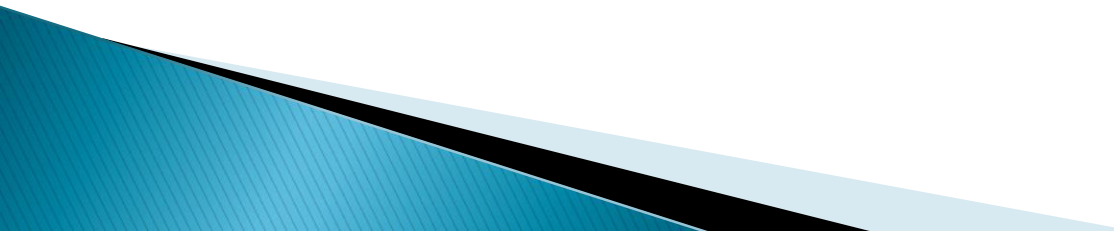
Employer Specific

- ▶ H-1Bs are employer specific, but
 - Concurrent H-1Bs are permitted
 - H-1Bs are portable
 - Part-time employment is permitted
 - If an H-1B employee moves locations outside the MSA, an H-1B Amendment must be filed (Case: Simeo Systems)

Exemptions from the H-1B cap

- ▶ Current H-1Bs seeking extensions or transfers to another employer (the cap limits the number of requests for initial employment that CIS may approve each year)
 - ▶ Statutorily exempt employers such as institutions of higher education and nonprofit research organizations
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The Labor Conditions Application (LCA)

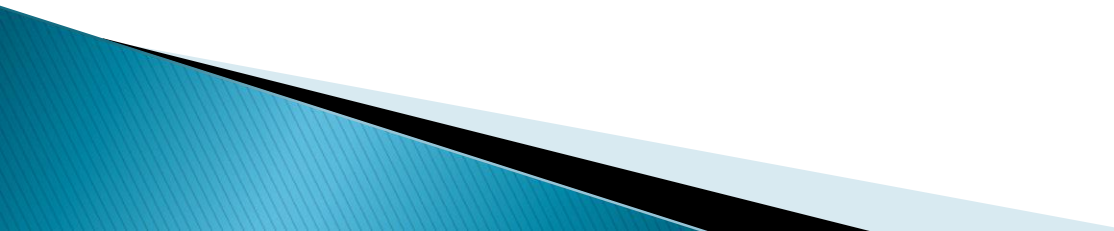
- ▶ Attestations made to the US Department of Labor (DOL) by an employer seeking to hire employee(s) as an H-1B worker(s).
 - ▶ Sets forth the number of workers sought, the occupational classification, the prevailing wage, the method used to determine the prevailing wage, and the actual wage rate paid
 - ▶ LCA must be available for public inspection within one day of filing the LCA with the DOL
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H-1B Alternatives & Strategic Advice

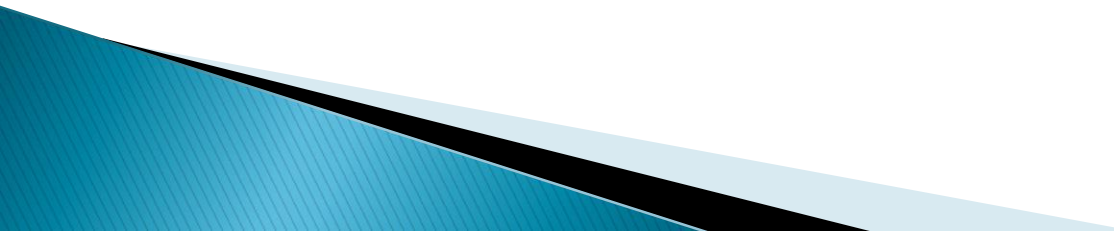
- New Registration process and March filing leads us to Request more information upfront.
- Set expectation with employer earlier in the new year.
- Prepare Plan-B (backup plan), - H-1B Alternatives
 - ▶ E Visa
 - ▶ L Visa
 - ▶ O Visa
 - ▶ P Visa
 - ▶ R Visa
 - ▶ B-1 Visa
 - ▶ TN Visa
 - ▶ E-3 Visa
 - ▶ U Visa
 - ▶ I Visa
 - ▶ J Visa

Employment Based Permanent Residence

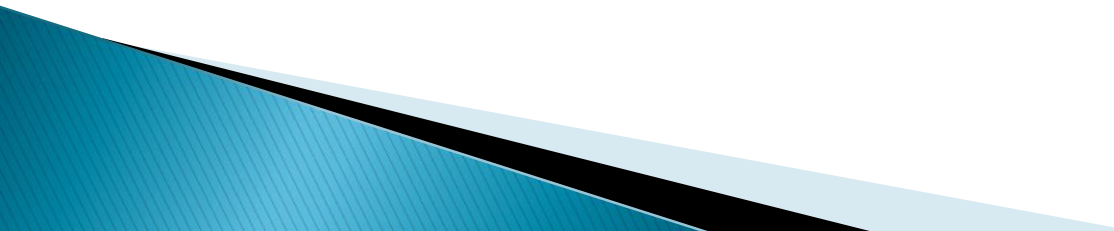
Requirements:

- ▶ Full-time employment
 - ▶ Attainment of DOL Labor Certification
 - ▶ Ability to pay
 - ▶ Availability of Immigrant visa number
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1st Preference (EB-1): No Labor Certification Required

- ▶ Aliens of Extraordinary Ability
 - self-petition possible
 - ▶ Outstanding Professors & Researchers
 - ▶ Multinational Managers
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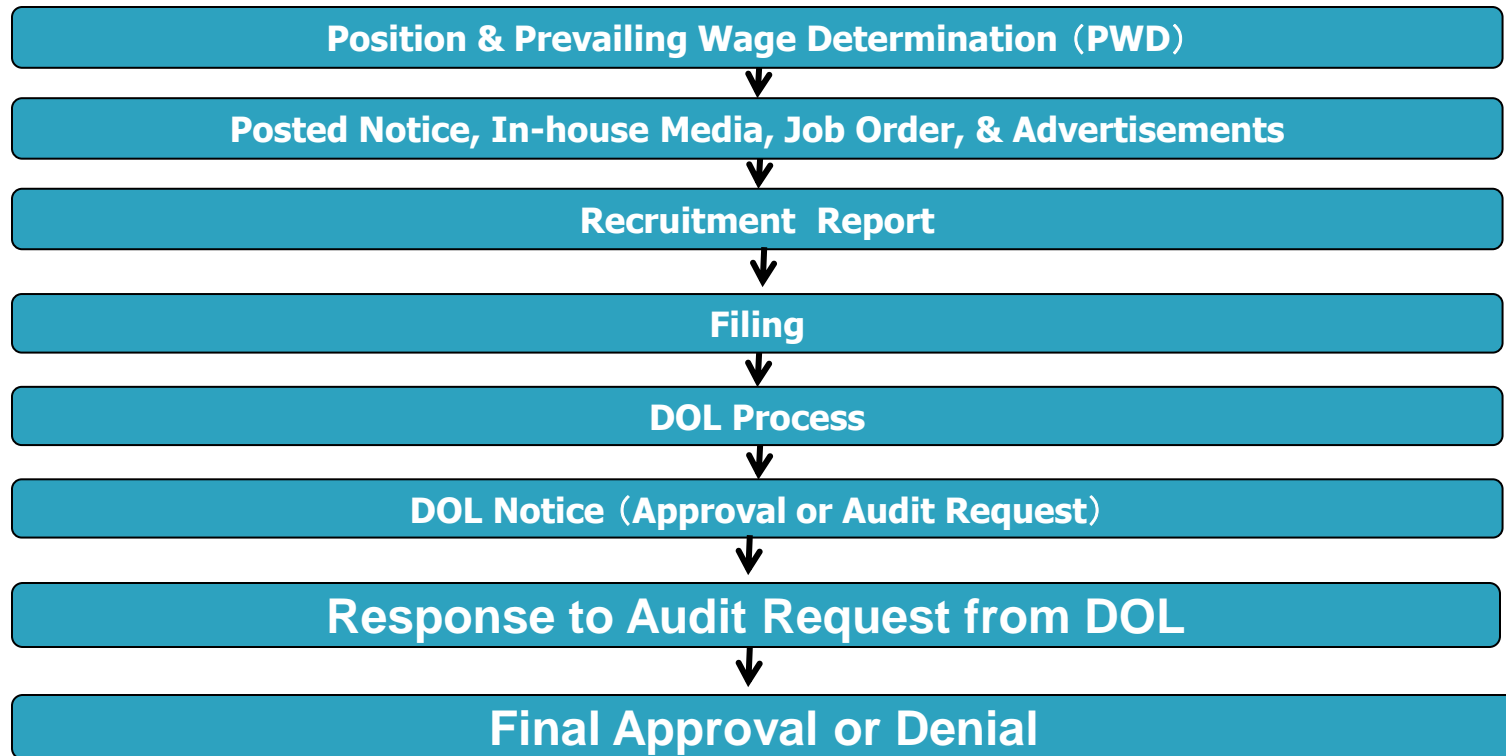
EB-1 Evidence

- ▶ Publications
 - ▶ Presentations at International Symposia
 - ▶ Judging the Work of others
 - ▶ International Prizes
 - ▶ Patents
 - ▶ Contribution of Original Research in the field
 - ▶ Membership in Professional Organizations
 - ▶ Peer review
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2nd Preference (EB-2): Labor Certification Usually Required

- ▶ Advanced Degree Professional
 - Job requires a degree beyond a BA
- ▶ Three types of green card routes:
 - ✓ Labor Certification (PERM)
 - ✓ National Interest Waiver (NIW)
 - ✓ Schedule A Group II

Procedure for PERM



National Interest Waiver: NO Labor Cert Required (Cont.)

- ▶ Seeking employment in an area of “substantial intrinsic merit”
- ▶ The benefit will be national in scope
- ▶ The national interest would be adversely affected if a labor cert were required
- ▶ Blog Link: US eases tests for Green Cards - http://visaserve.com/lawyer/National-Interest-Waivers_cp15054.htm#niwupdate

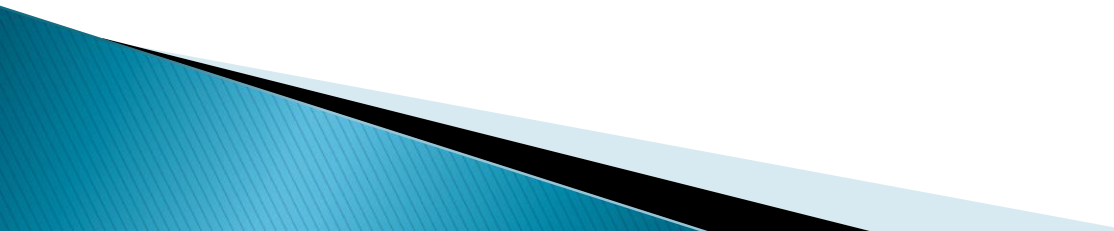
EB-2 National Interest Waiver Green Card

- ▶ Implemented under IMMACT'90.
- ▶ Mississippi Phosphate Case.
- ▶ N.Y. State Department of Transportation.
Prong # 3 – The National Interest would be adversely affected if a labor certification were required.
- ▶ AAO Precedent Decision in Dhanasar liberalizes legal standard.

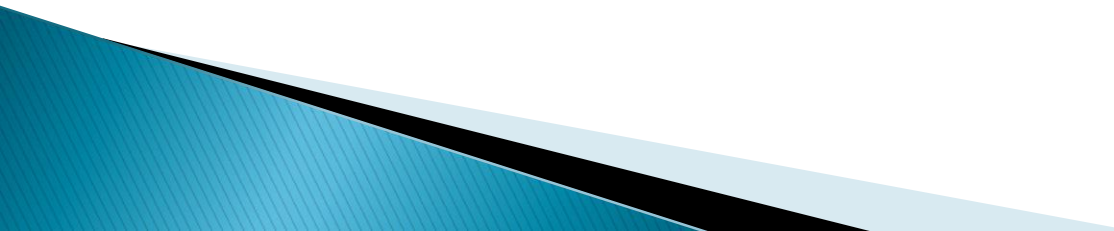
EB-2 National Interest Waiver Green Card OUT WITH THE OLD

Old subjective test (NYSDOT case)	New tests (Dhanasar case)	Impact
The applicant's area of employment is of substantial 'intrinsic' merit	The applicant's proposed endeavor has both substantial merit and national importance	Removal of the term 'intrinsic' will reduce subjectivity
Proposed benefit from the applicant's endeavor (activity) is 'national in scope'	The applicant is well positioned to advance the proposed endeavor	It is a test focused on skills and qualifications of the applicant and offers more clarity
National Interest would be adversely affected if a labor certification was required	On balance, it would be beneficial to the US to waive the requirements of a job offer & Labor Certification	A more balanced approach, which favors entrepreneurs and qualified applicants

3rd Preference (EB-3): Labor Certification Required

- ▶ Aliens who hold Bachelor's degrees and are members of the professions
 - ▶ Aliens capable of performing skilled labor
 - ▶ Aliens capable of performing unskilled labor
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Immigration Reform and Control Act of 1986 (“IRCA”)

- ▶ 11/6/1986
 - ▶ Requires that all employers complete Employment Eligibility Form (I-9) for newly hired employees.
 - ▶ Designed to control the problem of illegal immigration
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Questions?

Please contact our office for further information:

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201-670-0006 (ext 104)

<http://www.visaserve.com>

Thank You

