

# **THERE'S NO TIME LIKE THE PRESENT:**

**Exploring Immigration Options for International Medical Graduates and  
Medical Personnel Presently In the United States**



**Daniel W. Oldenburg**

**CLINE WILLIAMS**

# Immigration Law 101      Who's Who?

- Citizens
- Immigrants (LPRs)
- **Nonimmigrants**
- Undocumented Persons
- DACA/TPS



# Immigration Sponsorship?

What does this mean?





# Non-Immigrant Visa Sponsorship

There are some non-immigrant visa categories that permit employers to employ foreign national workers, but the employer is not the “sponsor” of that particular visa. The most common visa categories that permit employment authorization where the employer is not the direct sponsor of the visa are the F-1/M-1 Student Visas and the J-1 Exchange Visitor Visa.

F-1

**Singular Intent Visas**

J-1

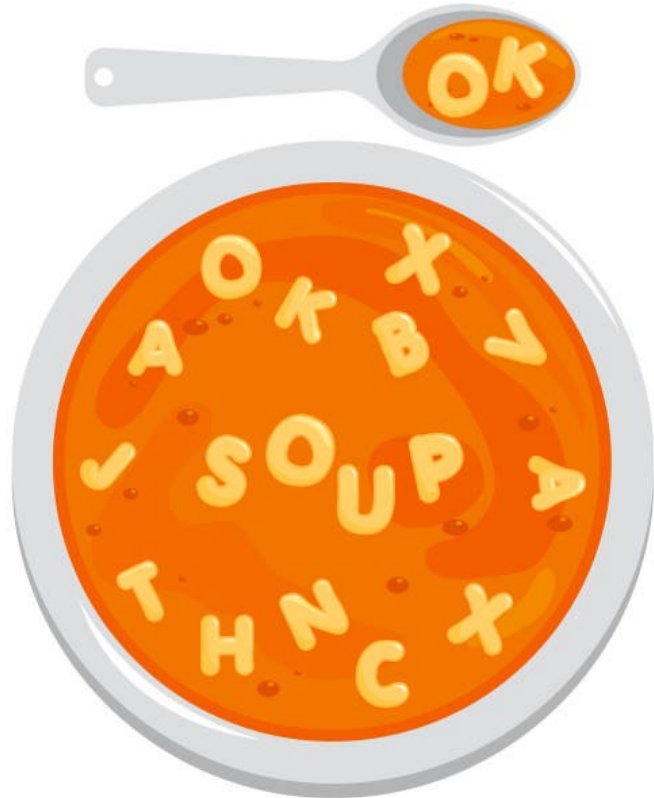


**J-1 VISA**  
EXCHANGE VISITOR PROGRAM

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# Non-Immigrant Employment Visa Sponsorship

Non-Immigrant Visas sponsored by the Employer: E-3, H-2A, H-2B, H-1B, R-1, O-1, L-1A and L-1B



H-2A-	Ag Workers
H-2B-	Seasonal/Temporary Workers
<b>H-1B-</b>	<b>Professional/Specialty Occupations</b>
O-1-	Extraordinary Ability
L-1A	Multinational Manager/Executive
L-1B	Specialized Knowledge/Function Manager
R-1	Religious Worker
E-3	Professional/Specialty Occupations (Australia)
H-1B1	Professional/Specialty Occupations (Chile & Singapore)

# H-1B Overview

- Non-Immigrant Visa for Temporary Workers
- Sponsored by the Employer (a job offer is required)
- Must pay the employee the prevailing wage
- For a job or position that qualifies as a “specialty occupation”
- Employee control and remote work site locations
- Valid for 6 years (issued in two 3 year increments)
- #1 rule for H-1Bs (No job, No visa).
- Portable
- Need actual H-1B visa stamp in your passport for international travel.
- Dual Intent Visa
- J-1s subject to 212(e) will need a waiver prior to COS to H-1B.

# Not all H-1Bs are Created Equal

## Cap Subject



- 65K visas allotted every FY
- 20K additionally if you have a U.S. Master's Degree
- Quota met for FY2025
- Subject to the H-1B Registration Lottery (FY2026)  
3/1-3/22, 2025
- Notified of Selection after April 1, 2025
- File by June 30, 2025 for a start date
- October 1, 2025 (FY2026).

## Cap Exempt

- Not subject to any numerical quota
- Must be for a job with an Institution of Higher Education – No-profit entities which are related to or affiliated with Institutions of Higher Ed.
- Nonprofit research organizations
- Government research organizations
- Can file at anytime, no registration lottery to win, no new FY to wait on.



# Change of Status F-1/J-1 to Cap Subject H-1B

- Cap Subject
- You would want to have your employer or prospective employer complete the registration between March 1 and March 17, 2025.
- Employers can create an USCIS online as early as February, 2025.
- Sometime between March and April 1, 2025, the random computer generated lottery will pick 65K H-1B registrants and 20K H-1B registrants with a U.S. Master's Degree.
- Notified by USCIS if your registration is selected and your employer's attorney can proceed in completing the H-1B petition on your behalf.
- The H-1B can be filed after April 1, 2025 but before June 30, 2025 for an employment start date of October 1, 2025. Government's new FY2026.

# Change of Status F-1/J-1 to Cap Exempt H-1B

- Cap Exempt
- Confirm your prospective employer is indeed Cap-Exempt.
  - Nonprofit entity
  - Affiliated with an Institution of Higher Learning
- Confirm you meet all of the requirements for the specialty occupation job offer, i.e. educational and licensing requirements etc. and that you will meet these requirements prior the employer filing the H-1B petition.
- Confirm the prevailing wage (Labor Condition Application certification) and that your employer is willing to pay the prevailing wage.

# Related or Affiliated nonprofit entity

- “The term ‘related or affiliated nonprofit entity’ is defined, both for ACWIA fee (8 CFR §214.2(h)(19)(iii)(B) and cap exemption purposes, to include nonprofit entities that satisfy any one of the following conditions:
- (1) the non-profit is connected or associated with an institution of higher education through shared ownership or control by the same board or federation;
- (2) the non-profit is operated by an institution of higher education;
- (3) the non-profit is attached to an institution of higher education as a member, branch, cooperative, or subsidiary; or
- (4) the non-profit has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship with the institution of higher education for the purposes of research or education; and a fundamental activity of the non-profit is to directly contribute to the research or education mission of the institution of higher education.” 8 CFR §214.2(h)(8)(ii)(F)(2)

# Other H-1B Considerations

- Do you need first secure a J-1 waiver of section 212(e)?
- Do you have OPT available and seek to exhaust your OPT first?
- What does it cost?
- Who pays for it?
  - Can the H-1B Beneficiary be required cover some of the H-1B costs?
- H-1B as a pathway to permanent residency in the United States.
  - Would I be subject to visa retrogression?



# Employment Based Sponsorship for Permanent Residency

- “I have working here for awhile on the H-1B, can we talk about the green card?”
- “I know I need an H-1B to accept the position and come to work for you, but can we discuss if and when you would be willing to sponsor me for permanent residency?”
- “I hear it takes forever to become a permanent resident of the U.S. and even longer for Chinese and Indian nationals, when can we start this process for me?”



# Employment-Based Immigrant Visa Program

*Source: U.S. Department of State, Bureau of Consular Affairs*

<b>E1</b>	<b>Priority Workers</b>
	<ul style="list-style-type: none"><li>• Persons with extraordinary ability</li><li>• Outstanding professors and researchers</li><li>• Multinational managers or executives</li></ul>
<b>E2</b>	<b>Professionals Holding Advanced Degrees and Persons of Exceptional Ability</b> <b>PERM Labor Certification and National Interest Waiver</b>
<b>E3</b>	<b>Skilled Workers, Professionals and Unskilled Workers</b> that are not temporary or seasonal workers

# U.S. Department of State Monthly Visa Bulletin

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	08NOV22	01FEB22	C	C
2nd <b>PERM and NIW</b>	15MAR23	22MAR20	15JUL12	15MAR23	15MAR23
3rd	15NOV22	01APR20	01NOV12	15NOV22	15NOV22
Other Workers	01DEC20	01JAN17	01NOV12	01DEC20	01DEC20

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# EB-1B Outstanding Researcher/Professor

## Permanent Position-

If a University Employer, a tenured, tenured track or for a term of indefinite or unlimited duration and in which the employee will ordinarily have the expectation of continued employment.

A minimum of 3 years of research or teaching experience in the academic field.

Sponsored by the Employer- Employer is required to sign the I-140 Immigrant Petition for Alien Worker and provide evidence of ability to support employee, etc.

No Labor Certification is required- file directly with USCIS.

Can be concurrently filed if International Employee has a current priority date. (See DOS Visa Bulletin).

Filed at the Service Center with Geographic Jurisdiction.

Currently taking about 10 months for a decision.

Can be Premium Processed.

Field Office or Service Center \*

Nebraska Service Center

Get processing time

Processing time for Immigrant Petition for Alien Workers (I-140) at Nebraska Service Center

80% of cases are completed within

**10**  
Months



1. Evidence of International recognition as outstanding in the academic field specified in the petition.
2. Receipt of major prizes or awards for outstanding achievement in the academic field.
3. Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.
4. Published material in professional publications written by others about the alien's work in the academic field (Title, Date, Author, & Translation if applicable).
5. Evidence of the alien's participation either individually or on a panel, as the judge of the work of others in the same or allied academic field.
6. Evidence of the alien's original scientific or scholarly research contributions to the academic field.
7. Evidence of the Alien's authorship of scholarly books or articles (in scholarly journals with international circulation).
8. Employment Verification



# NEW DEVELOPMENTS WITH EB- 1B

- Due to Immigrant Retrogression – many more EB- 1B Applicants.
- USCIS is not clear on their adjudication of these outstanding applicants. Can USCIS make up their own standard for reviewing these petitions? Can they require additional evidence? Increase the burden on the Petitioner? Widen their scope of adjudicatory discretion?
- Kazarian v. USCIS 9<sup>th</sup> Circuit Court of Appeals.
- How should USCIS adjudicate the EB-1 standard?
- Follow the law as it exists?
- 2022 USCIS STEM MEMO

# STEM MEMO

JANUARY 21, 2022

## FACT SHEET: Biden-Harris Administration Actions to Attract STEM Talent and Strengthen our Economy and Competitiveness



▶ [BRIEFING ROOM](#) ▶ [STATEMENTS AND RELEASES](#)

The Biden-Harris Administration believes that one of America's greatest strengths is our ability to attract global talent to strengthen our economy and technological competitiveness, and benefit working people and communities all across the country.

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# National Interest Waiver (NIW)



- A waiver relieving the Petitioner from the labor certification process.
- A waiver relieving the Petitioner from the Job Offer requirement.
- Can be filed by the employer or by the employee.
- Self- Petition (EB-2)
- Matter of Dhanasar
- 1. **“Substantial merit and national importance”**
- 2. **“Well positioned to advance the proposed endeavor.”**
- 3. **“On balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.”**

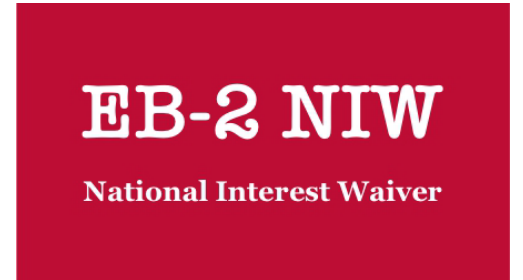
# National Interest Waiver

- **“Substantial merit and national importance”**
- What is substantial merit and national importance?
- Take the occupation and think about what makes it special, important, essential, or noteworthy.
- Why is it special, important, essential, or noteworthy?
- Most scientific research/clinical health care is substantial and of national importance.

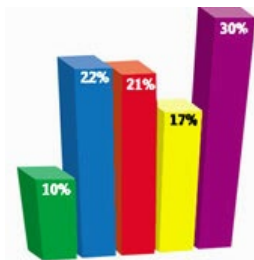
# Substantial merit and national importance

- Under the new NIW first prong, the AAO notes that merit may be demonstrated in a wide range of areas including “business, entrepreneurialism, science, technology, culture, health, or education.” The AAO indicates that showing merit by quantifying economic impact is one way to meet the test, but that it is not required if other evidence of national importance is provided (and providing the examples of research, pure science and the furtherance of human knowledge as potentially enough). Another example offered of merit is where there are national or even global implications in a particular field such as those resulting from improved manufacturing processes or medical advances.

# Well positioned to advance the proposed endeavor



- Who benefits from the work, research or occupation?
- Are there long range or distant reaching consequences to one's research or work?
- Consumer or stream of commerce arguments.
- Statistical data as evidence of national issue, Applicant is well positioned to address.
- Publications, Articles, Citations, Letters Patents, etc.





“On balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification”

PERM has replaced the Traditional Labor Certification process. There still remain the DOL regulations to comply with. Consider Employer’s Policy on PERM Sponsorship.

Can take several months.

Unique Skills not taken into consideration by PERM /DOL

Urgency / Importance of research or occupation.

Demonstrate that the Applicant provides a greater benefit to the national interest than a U.S. Citizen with similar skills and training etc.

“On balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification”

- The AAO is directing USCIS examiners to balance the interests of having a labor certification process to protect domestic workers against other factors deemed to be in the national interest. USCIS should consider factors such as ***“whether, in light of the nature of the foreign national’s qualifications of proposed endeavor, it would be impractical either for the foreign national to secure a job offer of or from the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. We emphasize that, in each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.”***

# PERM LABOR CERTIFICATION



## **3 STEP PROCESS**

**1. U.S DOL**

**2. I-140**

**3. PR**

# PERM Labor Certification EB-2

- First Start with the U.S. DOL
- PWD (8-10) Months
- Job Offer and Recruitment
- Waiting Period
- Recruitment Report
- Filing of the ETA 9089 (PERM Application)
- Potential Audit
- Certification
- I-140
- When priority date is current file Application for Permanent Residency.





QUESTIONS?

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