

Non-Immigrant / Immigrant Clarification

(This handout goes along with the power point slide supplement A)

Immigration Alphabet Soup – Work Visas/ Clarification: “Immigrant” or “Non-immigrant”

Immigrant = Individual may remain in the U.S. indefinitely

Examples of common related terms/phrases:

- Has a “green card”
- “Permanent Resident” or has “PR”
- Has an “Alien Registration” card
- Has the I-551 stamp in the passport

Explanation: When the United States Citizenship and Immigration Services/Department of Homeland Security approves a permanent resident petition to classify the person as an “immigrant,” the individual will receive an I-551 stamp in the passport. The “green card” (a common term for the card that contains the photo and fingerprint) is usually issued within 6 months of the I-551 stamp approval. Present practice of USCIS has been issuing I-797 notices of the I-485 approval with the actual card being processed within a shorter (1-2 month) period of time. The Alien Registration Receipt Card (as the USCIS official term) was originally green in color, then for several years it was blue, and the current version is pink. **Generally, permanent residents/immigrants have all the rights and privileges of US citizens** except that they cannot vote, hold some offices, or hold some federal government jobs. Permanent residents who work overseas for an extended period of time and fail to maintain a residence in the U.S. might forfeit their status (and be forced to start the immigration procedure all over again).

Non-immigrant = Individual has been granted a non-immigrant/visa classification with a specific purpose and a determined period of stay in the U.S.

Examples of common related terms/phrases for employment:

- F-1 student with Optional Practical Training (OPT)
- J-1 exchange professor (with or without a two year home residence requirement)
- H-1 or H-1B temporary worker

Explanation: There are various nonimmigrant classifications (most often designated with a letter followed by a number) to clarify the purpose of entry to the U.S. Generally, immigration and visa regulations assume that non-immigrants intend to return to their home country [with some exceptions such as allowing H-1B temporary workers to have a “dual” intent (to pursue PR while on a non-immigrant visa)]. There are regulations for each non-immigrant/visa classification that determine the length of stay, the ability to change to another non-immigrant classification/status, the employment restrictions/eligibility, etc.

Typical non-immigrant employment classifications (student) (This handout matches the information in Supplement B of the PowerPoint presentation.)

Employment of a temporary nature is permitted for certain non-immigrant visa classifications. This list describes the typical/common non-immigrant/visa types for paid (salary) employment. This is a very basic overview and does not list associated fees and required forms/documentation necessary for obtaining such Immigration classifications – see DHS/USCIS website for more information:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=db029c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>

F-1 Student with Curricular Practical Training

Purpose: To gain an internship/for-credit type of experience as an integral part of the student's degree program.

Maximum period: Can only be authorized while F-1 student is enrolled (not graduated). Can be part-time or full-time but if 12 months or more of full-time CPT is authorized, F-1 student is ineligible for OPT.

Procedure: (1) Student applies by completing forms and submitting to the International Student Advisor/Designated School Official at the college/university where he/she is obtaining the degree; (2) International Student Advisor/DSO provides the authorization within SEVIS if student has maintained legal status; (3) DSO provides an I-20 with the specific hours/dates/employer.

Anticipated processing time: Within timeline of International Center processing (days)

F-1 Student with Optional Practical Training

Purpose: To gain temporary employment to enhance the student's educational experience in the U.S.

Maximum period: One year (must be obtained prior to completion of the degree)

Procedure: (1) Student applies by completing USCIS forms and submitting to the International Student Advisor/DSO at the college/university where he/she is obtaining the degree; (2) International Student Advisor/DSO provides the recommendation within SEVIS if student has maintained legal status; (3) Student submits copies of immigration documents plus I-765 with \$340 fee to USCIS (4) USCIS authorizes by providing an Employment Authorization Document/Card (EAD) with the specific dates.

Anticipated processing time: Student must apply before graduation. USCIS issues EAD in 30 – 90 days. If job offer available at time of submission to SEVIS, DSO can request expedite to speed up processing (can reduce 30+ days of processing).

J-1 Student with Academic Training

Purpose: To gain temporary employment to enhance the student's educational experience in the U.S.

Maximum period: 18 months (up to 36 months for post-doctoral students). Note: Individual may be subject to a requirement to spend two years in the home country upon completion of the academic training period.

Procedure: (1) Student applies by submitting documentation on the position to International Student Advisor/Alternate or Responsible Officer (ARO/RO) at the college/university where he/she is obtaining the degree; (2) International Student Advisor/ARO/RO provides written work authorization if student has maintained legal status.

Anticipated processing time: Student may apply prior to graduation. Employment authorization granted by the International Student Advisor/ARO/RO within SEVIS and with an accompanying letter describing the terms of employment (specific dates/employer).

Typical non-immigrant employment classifications **(scholar, faculty, employee)**

(This handout goes along with the PowerPoint slide, supplement C)

J-1 Professor or Short-Term Scholar

Purpose: To engage in teaching as a professor or to engage in research as a scholar.

Maximum period: Three years (professor/researcher); Four months (short-term scholar). Note: Individual may be subject to a requirement to spend two years in the home country upon completion of teaching or research experience.

Procedure: (1) Department provides information on individual and position to RO/ARO; (2) RO/ARO issues the visa form to individual; (3) Individual applies for visa to enter U.S.

Anticipated processing time: Employment authorization granted as person enters U.S. via visa stamp and Port-of-Entry (POE) inspection. *[Individuals already in U.S. in another visa category may apply to change status to J-1; however, USCIS may take 60 – 90 days to process the request.]*

J-2 (Dependent of a J-1)

Purpose: To provide an employment opportunity for the spouse/children of a J-1 student, professor, or scholar.

Maximum period: Individual may stay in U.S. for the duration of the J-1 visaholder's stay. USCIS grants work authorization in one-year increments. Note: If J-1 visaholder is subject to spend two years in the home country upon completion of program, J-2 visaholder is also subject to the "two year rule."

Procedure: Individual applies to USCIS for an Employment Authorization Document/Card (EAD) on form I-765 with \$340 fee.

Anticipated processing time: Usually, USCIS issues EAD in 30 – 90 days.

H-1B (Temporary Worker in a Specialty Occupation)

Purpose: To perform services (work) in a "specialty occupation" (i.e., a position that requires a bachelor's degree or higher).

Maximum period: Six years (*potential for extension for pending permanent resident cases*)

Procedure: (1) Employer submits/receives prevailing wage; (2) Employer submits/receives approved Labor Condition Application; (3) Employer submits form I-

129 plus other supporting documentation [such as the LCA, premium processing (if needed), details on position offered, individual's degree & credentials, individual's immigration documentation, etc.] to USCIS. Fees include \$320 for I-129, \$500 anti-fraud fee, \$ 750/\$1500 training fee for non-university type employers, and \$1,000 premium processing fee.

Anticipated processing time: (1) Prevailing wage one week to 30 days (depending on area); (2) DOL certifies LCA form either instantly (web) or within a few days; (3) USCIS varies from one month (unusual) to up to six months for normal processing. Premium processing with I-907 and additional \$1,000 fee provides a response within 15 calendar days. *Caution on annual cap/quota that may prevent filing before April 1 with an approved date of October 1 of each year.*

TN (Treaty NAFTA)

Purpose: To provide temporary employment for Canadian or Mexican citizens

Maximum period: Work authorization provided in one year increments (annually renewable)

Procedure: (1) Employer provides letter clearly indicating individual meets one of the "designated professions" listed in the NAFTA agreement [some additional steps for Mexican citizens] (2) Individual applies/enters at border/Port-of-Entry.

Anticipated processing time: Employment authorization granted as person enters U.S. via an inspection. [*Individuals already in U.S. in another visa category may apply to change status to TN; however, USCIS may take 60 – 90 days to process the request.*]

H-1B non-immigrant visa process

(This handout matches the information in Supplement D of the PowerPoint presentation)

Definition of H-1B: H-1B visa classification may be granted to a foreign national who will perform services (work) in a "specialty occupation." A specialty occupation requires theoretical and practical application of a body of highly specialized knowledge to fully perform the required duties, and the attainment of a bachelor's or higher degree in the specific field as a minimum for entry into the occupation. H-1B status is for temporary workers. Although the position may be a permanent one, the individual must be filling it temporarily, meaning for a period of up to a maximum of six years.

H-1B Criteria: The employer petitions for the H-1B visa on behalf of a potential (or continuing) international employee. The employer must show that there is a temporary job available in a specialty occupation, that the position will pay a salary at least at the level of the "prevailing wage" in the field, and that the individual has the credentials and skills for the occupation.

Period of authorization: An individual may not spend more than six years in H-1B status (*with some exception for pending permanent resident cases**). The initial H-1B petition can be authorized for up to a three year period. Extensions of stay may be authorized for subsequent periods of employment not to exceed the total six year limit.

Return transportation: If the employer terminates the employee's position prior to the end date specified on the H-1B visa for any reason, the department is responsible for the reasonable cost of the individual's return transportation to his/her home country or last permanent residence abroad. Employers may take this into consideration when deciding the period of employment. If funding is certain and there is little question that the individual will be in the job for at least three years, it is a good idea to get the maximum initial period. However, if there is any question, a shorter initial period might be better.

Specific terms of employment: H-1B visa status permits an individual to work for a specific employer with specific terms of employment: title, salary, duties, and dates. If the employer or individual intends to change the terms of employment during the period of an H-1B approval, an "amended" H-1B petition may need to be approved by USCIS before the change can occur.

Procedures: All H-1B visa applications, amendments, and extensions require three steps. The preparation of the petition(s) and processing time may take two weeks to six months (from the date the H-1B is initiated by the employer until the petition is approved by USCIS).

- **STEP 1:** The employer must document that the position meets the "prevailing wage" in the field for the type of position. The employee must be paid at or above the wage level of similarly qualified employees within the department.

http://www.deed.state.mn.us/flc/pre_wag2.htm

- **STEP 2:** The Department of Labor (DOL) must certify a "Labor Condition Application" (LCA) submitted by employer. On the LCA, the employer attests to the terms of employment and agrees to abide by the labor conditions listed on the LCA. Labor Condition Application" (LCA): <http://www.foreignlaborcert.doleta.gov/h-1b.cfm>
- **STEP 3:** The USCIS Regional Service Center must approve the H-1B visa petition. The employer files Form I-129, fees, and supporting documents to sponsor the employee for H-1B visa status. The employer must show that the position is in a "specialty occupation," and that the individual possesses the necessary degree(s) and other credentials. *Fees include \$320 for I-129, \$500 anti-fraud fee, \$ 750/\$1500 training fee for non-university type employers, and \$1,000 premium processing fee. See "Forms" at www.uscis.gov*

The individual may not begin legal employment until the petition has been approved by USCIS. Note H-1B cap limitations prior to filing cases.

Permanent Resident (PR)

(This handout matches the information in Supplement E of the PowerPoint presentation)

Background: “Permanent residence” is a status granted by the U.S. government to citizens of other countries. It allows an individual to remain in the U.S. Permanent residence is not the same as U.S. citizenship, although permanent residents may become eligible to become “naturalized” U.S. citizens after a certain number of years as a permanent resident.

The **most common ways to obtain permanent resident status** are through:

1. Family –based petitions: A U.S. citizen or permanent resident must petition for the individual, documenting an immediate family relationship limited to spouse, child, parent, sister or brother.
2. Refugee or asylee status: An individual must document fear of persecution based on membership in a certain class.
3. Certain special situations: The U.S. Government can determine that a particular category of people should be granted U.S. permanent residence (e.g., investors of \$500,000+, diversity visa “green card” lottery). Some are on going programs; others are available one time only.
4. Employment-based petitions: A U.S. employer must document the need for a person’s occupational skills, or the individual must prove he or she has achieved international recognition in his or her field.

Process: The Department of Homeland Security/USCIS is the primary federal agency responsible for administering immigration law. The U.S. Departments of State (DOS) and Labor (DOL) also play a role in many aspects of immigration processing. Each agency’s regulations are extremely complicated and have undergone frequent revisions. An application for a permanent residence involves filing numerous forms and extensive documentation in several steps. The process for employment-based petitions from beginning to the final USCIS approval may take at least one to three years.

More information can be found at various sources:

USCIS under “Permanent Resident/Green

Cards”:<http://uscis.gov/graphics/services/residency/index.htm>

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnexto id=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD>

Department of State under “Visa Types for Permanent

Immigrants:http://www.travel.state.gov/visa/immigrants/types/types_1326.html

http://www.travel.state.gov/visa/immigrants/types/types_1326.html

Department of Labor for employment-based labor certification procedures:

<http://workforcesecurity.doleta.gov/foreign/>

Green card lottery – Do not be “scammed” by false claims, the official government resource:

<http://www.dvlottery.state.gov/> or

http://www.travel.state.gov/visa/immigrants/types/types_1322.html

Diversity “green card” lottery: This is general information on the Diversity Immigrant Visa (“Green Card”) Lottery program. In reviewing this information, please note that the International Student Office is not advising on this program. You will need to research and make the decision to apply or not to apply on your own. Our intention is to provide you with the accurate website since the application process is free and you should be wary of any private websites/law firms that offer a charge for applying for the lottery. According to accurate sources:

The U.S. Department of State (DOS) announced that applications for the 2008 Diversity Visa (DV) Lottery will be accepted between 12 p.m. (E.D.T.) Wednesday, October 3, 2007 and 12 p.m. (E.S.T.) Sunday, December 2, 2007. Applicants must submit their DV entry form online.

In general, Immigration and Naturalization Act makes available 50,000 permanent resident visas annually to persons from countries with low rates of immigration to the United States. The Department of State has indicated that for this year’s Diversity Lottery [DV-2006], the following countries are NOT eligible to apply because they have had more than 50,000 immigrants to the U.S. in the previous five years:

- Brazil
- Canada
- China (mainland born)
- Colombia
- Dominican Republic
- Ecuador
- El Salvador
- Guatemala
- Haiti
- India
- Jamaica
- Mexico
- Pakistan
- Peru
- Philippines
- Poland
- Russia
- South Korea
- United Kingdom (except Northern Ireland)
- Vietnam

Again, please do not pay a fee for submitting such a request – there are “scams” that guarantee a “green card” which are untrue – we don’t wish you to pay for something that is free to apply (if your home country is not listed above, you can apply – see the U.S. State Department website for application info):

<http://www.dvlottery.state.gov/>