



GOSS
ASSOCIATES
IMMIGRATION LAW

IMMIGRATION Employment-Based Options

**Harvard University
Spring 2024**

AGENDA



Non-Immigrant
vs Immigrant
Visa

Temporary Work
Visa Options

Defining Work &
Why It Matters

Immigrant Visa
System

Self-Sponsored
Legal
Permanent
Residence

Questions

The System



Non-Immigrant Visa

Single Purpose, Limited Duration, Requires Sponsorship

Immigrant Visa/Legal Permanent Residence (LPR)/ Green Card

Post-Approval: Right to Live and Work in the US

Caution: Non-Immigrant Intent 214(b)

H-1B The Numbers



Fiscal Year Total: 85,000

Reserved Numbers

20,000 for US Master's degrees & above

CAP-Exempt Status

- 501(C)(3) Non-Profit/Academic Institution
- Affiliated with a non-profit institution of higher education
- Federally Funded Applied or Basic Science Research Institution

*Trade Visas H-1b1 Singapore/Chile/Australian E-3 Trade Visa

H-1B Professional Temporary Worker



- Employer-Employee relationship
 - Entrepreneur hiring and firing conundrum
- Bachelor's degree in a specific field matching JD
 - Business Administration Bachelor's level is not a recognized as a specialized degree
- Wage requirement
 - Prevailing Wage
 - Actual Wage

O-1A Persons of Extraordinary Ability

O-1B Artists of Distinction



- US Agent/Employer Required

W-2, 1099 and all other employment types allowed

Kazarian two-part test:

- 3 criteria at a minimum
- totality of the circumstances

Other Options



L-1A Intra-company Transferees Executives/Managers/

L-1B Specialized Knowledge

US Mexico Canada Trade agreement (USMCA) Treaty Canadians & Mexicans (3 years)

<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>

E-1/2 Temporary Investor Visas

<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html>

Work Defined



Employment: Services in exchange for remuneration (money, equity, stocks) *8 CFR section 274a.1(b)(12)*

Employee: *an individual who provides services or labor for an employer for wages or other remuneration." 8 CFR 274a.1(f)*

Activity: Fair Labor Standards Act states (FLSA): Time spent “in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business

VOLUNTEERING OR WORKING?



Department of Labor Definition:

Service for civic, charitable, or humanitarian reasons where no individual receives anything in return for the service provided (e.g. mosque, church, synagogue, temple, homeless shelter; etc.)

Fair Labor Standards Act: Tasks others are paid to do requires work authorization

Passive vs. Active

Stock Trading/Property
Ownership

- Volume Matters

Registration of Business,
Trademark/Owning a
Business

- No Active Role

Royalties, Internet Activities

- Location at Point of Commercialization

Immigrant System – Legal Permanent Residence



Current System is based on laws passed: the INA (1965) and IMMACT (1990). US grants approximately 1 million Legal Permanent Residence applications per year; 675,000 under a quota system.

The system includes humanitarian, family, and economic immigrants

Employment-Based Immigrant Visas Quota Limits & Priority Date



- Annual Quota Limit of 142,000 *ish* employment-based Green Cards
- Country Quota Limits 7% Based on Country of Birth
- Determining Preference Category
- Determining Priority Date

Did you know:

54% of the quota numbers go to spouses and children under 21 of principle applicants

Employment-Based Categories



EB-1: Extraordinary Ability/Outstanding Professor/Researchers
Certain Executives and Managers

EB-2: NIW/Faculty PERM/PERM, Degree requirements BA/BSc +5 or
MSc +

EB-3: PERM, Requirements 2 years up to BA/BSc +4

Visa Bulletin



Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01AUG22	01JUL19	C	C
2nd	01JAN23	01JAN20	15MAY12	01JAN23	01JAN23
3rd	01FEB23	01SEP20	01AUG12	01FEB23	01JAN23

November 2023

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01SEP22	01MAR21	C	C
2nd	15JAN23	01FEB20	15APR12	15JAN23	15JAN23
3rd	22NOV22	01SEP20	15AUG12	22NOV22	22NOV22

April 2024

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

National Interest Waivers EB-2



- Master's Degree Minimum
 - Matter of Dhanasar: Designates Entrepreneurship as a National Interest
 - STEM Designation as a National Interest
- <https://www.uscis.gov/newsroom/alerts/uscis-updates-guidance-on-national-interest-waivers>
- Other Priorities Outlined by any government agency.

Employment-Based Category 1 Petitions



Outstanding Professor/Researcher: Internationally Recognized as Outstanding

Employer/Petitioner -3 FT
Research Staff

3 years of full-time research
experience required

Kazarian Two-Step Test

Extraordinary Ability: Sustained National or International Acclaim

Self-sponsored

No degree or experience
required

Kazarian Two-Step Test

Common Issues in Adjusting to LPR Status



J-1 -INA 212(e), 2 YR Home Rule & Waivers

F-1 Adjustment of Status – Understand Benefits Post Filing

Travel

Family Members

Processing Times

LPR Portability

Thank You!

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