I GOT MY F-1/ J-1 VISA: WHAT’S NEXT?

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Who Are We?

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Remember:
• This should not be considered legal advice; it is general information about different immigration options, we are not lawyers.

• Immigration regulations and guidance may change
Today’s Agenda

• Employment options with your current visa status
  • Review of F1 & J1 Employment Options

• Overview of common employment options that involve changing to a different visa status
  • Review changing to a different non-immigrant visa (J-1 employment visas)
  • Review dual-intent visas (H-1, TN)
  • Brief review of immigrant employment visa status

• Questions
  • At the end, as time allows
Before we start, tell us about you…

- Who are F-1 Students?
- Who are J-1 Students?

- Who is a Doctoral student?
- Who is a Master’s student?
- Who is a Bachelor’s student?

- Do we have any citizens of Canada or Mexico?
- Do we have any citizens of Australia?
- Do we have any citizens of Chile or Singapore?

These will help us cover relevant information during the presentation
STAYING ON YOUR CURRENT VISA STATUS

F-1: Optional Practical Training (OPT)
J-1: Academic Training (AT)
Staying on Your Current Status

• F-1: Optional Practical Training (OPT)
  • Post-Completion
  • STEM Extension
  • “Cap Gap”

• J-1: Academic Training (AT)
OPT and AT

- All work during OPT/AT must be in your field of study and at your level of study

- OPT/AT are not new visa statuses; they are “extensions” of your current student status to get work experience in your degree area

- You must be in F1/J-1 status for 2 semesters to receive the OPT/AT Benefit
  - Exception: Single-semester J-1 exchange students can participate in short-term AT after 1 semester.
Post-Completion OPT

- Post-Completion OPT (F-1 Students)
  - Work authorization for 12 months maximum
  - Job offer not required when you apply, but you must find employment within 90 days of OPT period starting
  - Must work for more than 20 hours per week and be unemployed less than 90 days out of 12 months to maintain F-1 status

- Involves:
  - Attending two OPT workshops, sign up in iTerp
  - Requesting an I-20 from ISSS with OPT recommendation
  - Filing an application to the government
  - Paying a filing fee of $410
  - Waiting: Takes from 2-5 months to process application

- You will be issued an EAD card
  - Take to any employer to demonstrate work authorization in your field of study
OPT STEM Extension

- Requires a second application to the government toward end of your initial OPT period (second $410 fee)
- Only available to those who have a STEM eligible CIP Code (Science, Technology, Engineering, Math)
- You must work for an E-Verify Employer (you can work for more than one employer, but they must all be E-Verify)
- 24-month extension of original Post-Completion OPT
- Employers have to provide a training plan (I-983) and agree to periodic reporting requirements.
Why Participate in OPT?

- OPT is a benefit of your F-1 status
  - Not a new status (no change of visa required)
- Offers a way for you to gain practical employment experience in your field of study
- Flexible: You can work for multiple employers or switch employers during OPT.
- Flexible: You don’t need an employer to apply for Post-Completion OPT *

*Not the case in H-1B*
How many times can I participate in OPT?

• Students are granted one period of Post-Completion OPT for each degree completed IF the next degree is at a higher degree level.

• Example: If you work one year on OPT following a Master’s degree:
  • You cannot do OPT again if you do a Bachelor’s degree or a second Master’s degree.
  • You CAN do OPT again if you do a PhD.
    • Work during OPT following the PhD must be based on the PhD academic area; it cannot be based on a previous degree area if these fields are different.
For more information on OPT…

- Attend ISSS Workshops during your final year of study
  - Offered 2x per week-sign up in iTerp

- Detailed overview of process
  - Timing concerns
  - Step by step instructions
  - How to complete forms
  - Application materials
Can I use CPT to work after graduation?

NO

• CPT is for enrolled, degree-seeking students only
  • Limited to part-time during semesters (internships)
  • Once degree requirements are met, any CPT work authorization will end
    • For example, after dissertation/thesis defense if student has thesis or dissertation, OR the end date of a student’s final semester if they don’t have a thesis or dissertation.
Academic Training (For J-1 Students)

• If completing a Bachelors- or Masters degree:
  • Maximum of 18 months of work authorization may be granted (less if your maximum program length was less)
  • Must have a paid job offer

• If completing a Doctoral degree:
  • Maximum of 36 months of work authorization may be granted
    • Initial authorization can be up to 18 months maximum
    • In the 2 months prior to expiration of that work authorization period, you may apply for additional AT extensions for up to another 18 months
    • Must have a paid job offer

• Authorization is granted by ISSS; does NOT require filing an application to the government or paying a fee.

• You receive a new DS-2019 with extension of program based on length of work authorization

• You must continue to keep your medical, repatriation, and medical evacuation insurance updated with ISSS
Why Participate in Academic Training?

- AT is a benefit of your J-1 status
  - Not a new status
- Offers a way for you to gain practical employment experience in your field of study
- You can work for multiple employers or switch employers during AT.*

*Not the case in H-1B*
EMPLOYMENT OPTIONS INVOLVING CHANGE OF VISA STATUS

J-1
H-1B – “Cap-subject” and “Cap-exempt”
TN, E-3
Permanent Residency
J-1 Research/Short Term Scholar & Visiting Professor

- The J-1 visa offers cultural and educational exchange opportunities in the United States through a variety of programs overseen by the U.S. State Department.

- Several J-1 programs are employment-based and facilitate global research collaborations or bringing visiting professors to American campuses:

- The J-1 Research Scholar, J-1 Professor, and J-1 Short-term Scholar visas can be used for temporary employment at universities and other research institutions (ex. NIH, NASA)

Involves:

- Pursuing a specific program/research objective at academic/research institutions in the U.S
- Non-immigrant intent -> positions must be non-tenure, non-permanent
  - Example: at UMD, J-1s often hold Post-doctoral Associate or Lecturer titles
J-1 Category Comparison

**Research Scholar & Visiting Professor**
- Minimum of three weeks
- Maximum of five years
- 24 month bar on repeat participation
- 12 month bar
- Must have at least a Bachelor’s degree
- Must meet funding requirement (personal, grant/ scholarship, employer sponsored)

**Short Term Scholar**
- No minimum stay
- Maximum of six months
- No bar on repeat participation
- Must have at least a Bachelor’s degree
- Must meet funding requirement (personal, grant/ scholarship, employer sponsored)
Potential Disadvantage: The 212(e)

What is the 212 (e)?

- J-1 visa holders may or may not be subject to this “Two year home residency” requirement.
- If you ARE subject to 212(e), you must reside and be physically present for a total of two years in your citizenship country or country of last legal permanent residence before you are eligible for:
  - An H, L, or immigrant visa to the US
  - An in-country change of status from J to any other nonimmigrant classification, except A or G
- Being subject to 212(e) does NOT prevent you from returning to the US as an F-1/J-1 or as a tourist
- Being subject to 212 (e) does NOT prevent you from living or working in other countries
Who is subject to the 212(e)?

- The intent of this requirement is to have the home country benefit from the J-1’s experience in the US
  - *Remember, the J-1 is set up to facilitate exchange of ideas and knowledge between countries*

- You become subject to the requirement if any of the following apply:
  - You receive funding for your J-1 activities from either the US government or your home country’s government
  - You have or are acquiring a skill that is considered in short supply in your home country
  - You are a J-2 dependent of a J-1 who is subject to the requirement
  - You have been subject on a previous J-1 program and have not fulfilled the requirement nor obtained a waiver
Can you come back for a second J-1 program?

**YES, but there are restrictions:**

- **12 month bar** on returning to US in Research Scholar or Professor category if you have spent 6+ months of the past year in any J-1 category

- **24-month bar:** Applies only to J-1 Research Scholars and Professors; you cannot work hold this visa status again for at least 2 years (this is unrelated to 212 (e))

- Short-term scholars can return as a short-term scholar in the future; no limit to # of times, so long as work objectives are always genuinely “short-term” in nature (for example, teaching one class every summer and then returning to your home country)

- Remember, the J-1 is **“non-immigrant”**
  - Should not appear you are using the J-1 as a “work around” for long-term employment (H-1B is more appropriate for this)
H-1B

• “Specialty Occupation” - Requiring a Theoretical & Practical Application of a Body of Highly Specialized Knowledge.
• Position must require at least a Bachelor’s degree.
• Employee must hold at least a Bachelor’s degree in the field, and meet qualifications the position requires
• Maximum of 6 years, issued in increments of 1 – 3 years
• **Employer-specific and job-specific** (unlike OPT/AT)
• **“Dual intent” visa** - will allow one to pursue long-term plans in the US and eventual legal permanent residence
• Employer must guarantee to pay an H-1B worker the prevailing wage and not displace US workers
H-1B Fees & Processing Times

Because the H-1B is employer-sponsored, the employer should pay these fees:

- I-129 Filing fee $460.00 (this is the basic form for any H-1B)
- Fraud Detection fee $500
- American Competitiveness and Workforce Improvement Act fee $750 - $1,500
- Public Law III-320 fee $4,000
- Premium Processing fee (optional) $1,440
- Can take 8 – 10.5 months in some cases – plan ahead!
The H-1B Cap

• The H-1B “cap” is the annual limit or quota of new H-1B visas that are available each federal fiscal year. (The fiscal year runs from October 1 - September 30.)
  • This number is established by Congress

• The current H-1B Cap is 65,000 (meaning, only 65,000 people may receive a new H-1B, regardless of how many apply)

• Additionally, there are an extra 20,000 H-1B visas available for foreign workers who have graduated from a U.S. university with a Master’s or higher degree.

• There are special quotas within the cap for citizens of Singapore and Chile (H-1B1 visas) due to Free Trade Agreements the US has with these countries
The H-1B Cap

• Employers who wish to file H-1B petitions for their employees MUST first submit registration during a March 1 to March 20, 2020 registration period. USCIS intends to notify selected registrants no later than March 31, 2020. Once selected, petitioners have a 90-day period to file full H-1B petitions beginning April 1, 2020.

• USCIS will conduct a lottery and uses a random selection process and only selected registrants can file the H-1B petition.

• When the economy is strong, the number of requests usually far exceeds the cap.

• Approved H-1Bs will not become effective until October 1.
The H-1B Cap

• Selected petitions will have a 90 day period to file full applications. You must receive a receipt notice of filing before the end of the OPT authorization to be eligible for continued cap-gap work authorization.

• Cap Gap bridges the gap between the end of OPT and the start of the H-1B for anyone who has receipted H-1B petition before the end of the OPT authorization.

• Remember that this is a NEW system in 2020

• Students should be working with the employer’s immigration attorneys to understand all information related to H-1B petitions.

• Pay careful attention to deadlines: if you are selected, work with your H-1B attorney to make sure the application is receipted before the end of your OPT employment.

• No application to the government or fees required
  • No new EAD is issued (may need to avoid international travel)
  • Upon request in iTerp, ISSS can issue an I-20 showing the work authorization was extended (provide receipt/ approval notice) if everything timely filed

• Duration of status may be able to be extended until September 30th if the application is receipted during the 60 day grace period following completion of OPT.
What H-1B’s are “Cap-Exempt”?

- Colleges and universities
- Nonprofit research and governmental employers
- Petitions to extend the H-1B status of an existing employee (who already holds H-1B status)
- Petitions to hire a new employee who currently holds H-1B status with another US employer (H-1B “transfers”)

In these cases, the April 1 deadline does not apply because employers do not have to compete for one of the H-1Bs in the cap.

- No Cap-Gap Extension of OPT for cap-exempt H-1Bs
- If you are in the US, your H-1B must be filed and approved before any other work authorization (such as OPT) expires; otherwise you will have a gap in employment and compensation
OPT and H-1B

• Remember, OPT is FLEXIBLE; with H-1B, your visa status is EMPLOYER-SPECIFIC
  • On H-1B, you MAY have a 60-day grace period.
    • If your employment is terminated or you resign before your H-1B I-797 end date, you can remain in the U.S. up to 60 days but no longer than the H-1B I-797 end date.
    • If your employment is terminated or you resign on the same day of your H-1B I-797 end date, you may have a 10-day grace period. Check your I-94.
  • On OPT unemployed days are possible.

• OPT (F-1 status) is non-immigrant; H-1B is dual intent
  • OPT is GOOD when you want to “try out” an employer and see it’s a good fit
  • H-1B is GOOD when you know you want to stay with an employer and plan to be in the US a long time

• It’s a good idea to apply for OPT, even if you plan to pursue H-1B status after graduating.
  • Then you have the option for employment authorization, even if there is a problem with your H-1B application OR if your application is not selected in the cap.
E-3: Australia

- This visa is similar to the H-1B for citizens of Australia, part of another Free Trade Agreement with the US
  - Specialty occupation

- Separate quota is available (do not compete with H-1Bs)
TN: Mexico and Canada

- Facilitates the entry of Canadian and Mexican citizens to the U.S. to engage in professional activities on a temporary basis.
  - The visitor must be a citizen of Canada or Mexico
  - Employment must be “pre-arranged”
  - The visitor must possess the minimum qualifications for the professional field

- NAFTA professions in Academic Institutions
  - Teacher – lecturer, not for tenure-track faculty positions
  - Research Assistant, Researcher
  - Scientific Technician/Technologist – agricultural sciences, astronomy, biology, chemistry, and engineering or physics
  - Computer Systems Analyst

- NAFTA professions in Industry, Private sector
  - Accountant, Economist, Engineer, Architect, Dentist, etc
Permanent Residency

• Employment based applications –
  See Form I-140 at [www.uscis.gov](http://www.uscis.gov)
  • EB1: Extraordinary Ability  - individual can self-petition
  • EB1: Outstanding Professor or Researcher – individual must have a job offer from an institution of higher education
  • EB2: National Interest Waiver – individual can self-petition
  • EB2: Advanced degree holder – labor certification required.

• Family based applications

• Diversity Visa Lottery
  • 55,000 per year
  • Natives of only certain countries are allowed to participate
TIME FOR QUESTIONS

Please pass your questions to the center aisle and we will collect them and respond.

Thank you for coming!