

BUSINESS IMMIGRATION 101

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AGENDA

Non-immigrant vs. immigrant status

Common employment-based non-immigrant statuses

Process to obtain non-immigrant statuses

Employment-based immigrant classifications

Employment-based immigrant filing process

Recent trends and changes in business immigration

IMMIGRATION PATHWAYS TO THE UNITED STATES



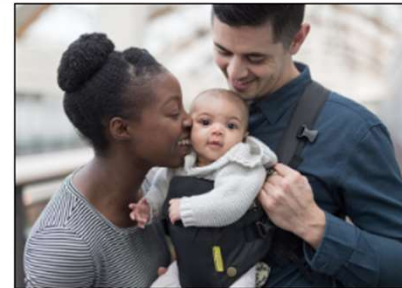
Family Based

For certain family member(s) of U.S. citizens and lawful permanent residents (green card holders)



Employment

For permanent employment or investment by entrepreneurs



Adoption

To adopt orphans currently outside of the U.S.



Special Immigrant

Based on special categories, including former U.S. government employees



Diversity Visa

Annual program making a limited number of visas available to persons who meet strict eligibility requirements from countries with low rates of immigration to the United States



List of All Visas

NON-IMMIGRANT VS. IMMIGRANT STATUS

- Non-immigrant Status - **TEMPORARY**
 - Allows foreign nationals to stay in the U.S. for a specified period of time and for a specified purpose
 - Most have to apply for an obtain a visa (i.e., stamp in your passport) to enter the U.S.
 - Upon entry, issued an I-94 that tells the foreign national how long they can stay
 - Can apply to extend and change non-immigrant statuses once in the U.S.
- Immigrant Status - **PERMANENT** (mostly)
 - For foreign nationals who intend to live permanently in the U.S.
 - No time limitation but can still lose it
 - Also referred to as Lawful Permanent Residents (LPR) or Green Card holders

NON-IMMIGRANT VISAS “ALPHABET SOUP”

Most common work-related non-immigrant visas (must have U.S. employer sponsor):

E-3	Specialty occupation workers from Australia, must possess the necessary academic or other qualifying credentials
H-1B	“Specialty professional occupation” (or fashion models) <ul style="list-style-type: none">• FN must be selected in lottery process• Position requires a college degree/FN must possess college degree• 6-year limit (unless PERM in process)
H-1B1	Similar to H-1B but only for citizens of Singapore & Chile (no lottery)
H-2A/H-2B	FN coming to perform <u>temporary, seasonal</u> work, employer must show no available U.S. workers <ul style="list-style-type: none">• H-2A = agricultural• H-2B = non-agricultural
L-1	Intra-company transfers - must have worked 1 year of the previous 3 years for a US company’s parent, branch, affiliate, or subsidy abroad. <ul style="list-style-type: none">• L-1A = Executives/managers• L-1B = Specialized knowledge workers

NON-IMMIGRANT VISAS “ALPHABET SOUP”

O-1	<p>O-1A = FN with extraordinary ability in the sciences, arts, education, business or athletics</p> <p>O-1B = FN in film or television production with record of extraordinary achievement</p>
P	<p>Athletes, performers and entertainers with international recognition</p>
R	<p>Religious workers – ministers, religious vocation or occupation. Must have minimum 2-year membership in religious denomination that has non-profit religious status in the U.S.</p>
TN	<p>Trade visas for Canadian or Mexican nationals only</p> <ul style="list-style-type: none">• Limited to specific, listed occupations• Canadians can apply at port of entry• Mexicans apply at U.S. consulate

NON-IMMIGRANT VISAS “ALPHABET SOUP”

Most common non-work-related non-immigrant visas:

B-1/B-2	B-1 = Business visitors B-2 = Tourists
F-1	Student visa for full-time study at an approved academic institution. May be eligible for work authorization in connection with academic program.
J-1	Exchange visitors – students, researchers, scholars, medical school residents, professors, international visitors, camp counselors, au pairs. FN often must complete a 2-year home residency requirement after J-period.
K-1	Fiancé of U.S. citizen, must marry within 90-days of entering U.S. Once married, the couple follows the process for family-based filings in the U.S. (filing I-130/I-485) to receive green card. Minor children of fiancé receive K-2 visas.

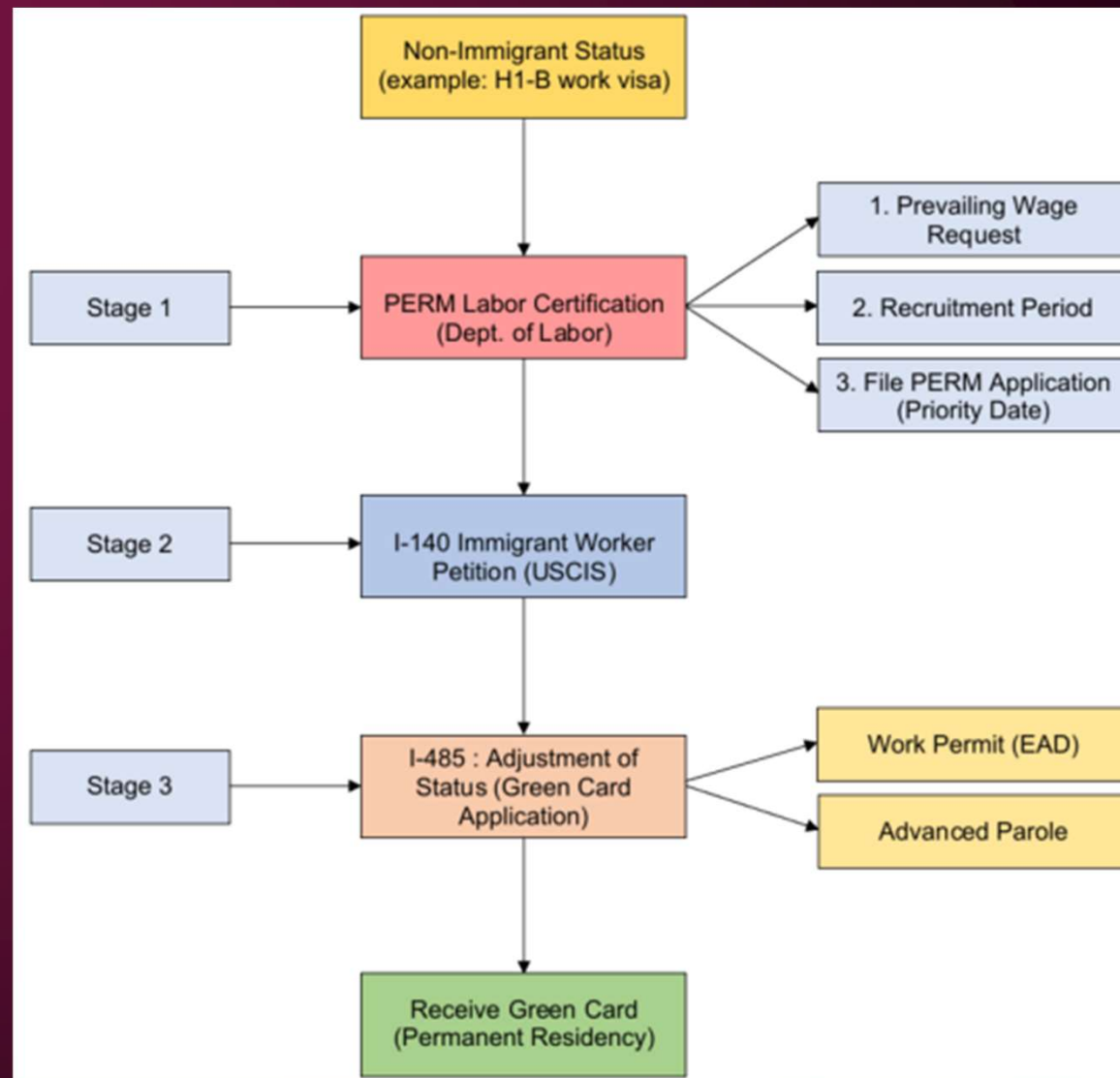
NON-IMMIGRANT VISA PROCESS

- Process is dependent on classification at issue
 - For some classifications (e.g., H-1Bs, most L-1s, O-1s) – must first file a petition with U.S. Citizenship and Immigration Services who confirm that the foreign national meets the requirements for the category → if approved, then apply for the visa at a U.S. Consulate abroad
 - Other classifications (e.g., B-1s, B-2s, F-1s, TNs) – can apply directly at the U.S. consulate abroad without first filing a petition with USCIS
- Extensions of Status
- Change of Status
- Impact of travel abroad

EMPLOYMENT-BASED IMMIGRANT CATEGORIES

Preference Category	Eligibility
EB-1 Priority Workers	“Persons of extraordinary ability” in the arts, science, education, business or athletics; Outstanding professors or researchers; Multinational managers and executives.
EB-2 Professionals with Advanced Degrees of Exceptional Ability	Members of the professions holding advanced degrees, or persons of exceptional abilities in the arts, science or business; National Interest Waivers (NIW).
EB-3 Skilled Workers, Professionals, and Unskilled Workers	Skilled workers with at least 2 years of training or experience, professionals with college degrees, or “other” workers for unskilled labor that is not temporary or seasonal.
EB-4 Certain Special Immigrants	Certain “special immigrants” including religious workers, employees of U.S. foreign service posts, translators, former U.S. gov’t employees, and other classes of noncitizens.
EB-5 Immigrant Investors	Persons who will invest \$800,000 to \$1,050,000 in a job-creating enterprise that employs at least 10 full-time U.S. workers.

EMPLOYMENT BASED FILING PROCESS



MAY VISA BULLETIN FILING CHART FOR EMPLOYMENT-BASED IMMIGRATION

FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01APR23	01APR23	C	C
2nd	C	01SEP21	15JUL14	C	C
3rd	01JUN24	15JUN21	15NOV13	01JUN24	01AUG23
Other Workers	01FEB22	01FEB19	15NOV13	01FEB22	01NOV21
4th	15JUL22	15JUL22	15JUL22	15JUL22	15JUL22
Certain Religious Workers	15JUL22	15JUL22	15JUL22	15JUL22	15JUL22
5th Unreserved (including C5, T5, I5, R5, NU, RU)	C	22SEP16	01MAY22	C	C
5th Set Aside: Rural (20%, including NR, RR)	C	C	C	C	C
5th Set Aside: High Unemployment (10%, including NH, RH)	C	C	C	C	C
5th Set Aside: Infrastructure (2%, including RI)	C	C	C	C	C

NEW DEVELOPMENTS IN BUSINESS IMMIGRATION

- Travel Bans and related adjudication holds and policies
- Visa revocations
- Enhanced vetting
- Increased enforcement efforts
- Termination/elimination of certain humanitarian benefits
- Uptick in requests for evidence and denials
- Longer processing times
- Elimination of automatic extensions of work authorization
- H-1B changes

H-1B CHANGES

New Weighted Lottery Rule

- Changes current system of distribution of the 85,000 **cap-subject** H-1B visas available each year as to both the regular and master's cap
- Higher Wage Level registrations receive a higher preference
- Practical implications – more senior roles, paired with a higher wage, may see higher odds of selection AND requires more advanced planning

\$100,000 H-1B fee

Anticipated increase in wage rates

INCREASED ENFORCEMENT EFFORTS

Department of Labor's Project Firewall

- H-1B enforcement initiative announced September 13, 2025
- Secretary-certified investigations (different from typical complaint-driven investigations)
- Collaboration with the Department of Justice's Civil Rights Division, EEOC, DHS, and USCIS
- Focus on protecting U.S. workers
- Potential violations
 - Back wages
 - Reimbursement of fringe benefits
 - Civil money penalties
 - Debarment from H-1B program

INCREASED ENFORCEMENT EFFORTS

USCIS/FDNS Site Visits – Verify compliance with immigration petition filings

- Designate knowledgeable representative
- Ensure personnel files, including PAF/I-9 records, are up to date
- During an inspection, verify inspector's credentials, provide only the information requested, and keep detailed records of the visit
- After an inspection, alert counsel to discuss details/address issues

I-9 Audits – Verify employment eligibility verification/documentation

- Ensure all I-9 forms are completed accurately and on time
- Complete regular internal audits/update forms as needed
- Review process – Notice of Inspection, records presented, fines/criminal charts for violations, possibility of follow-up audits

ICE investigations of F-1 STEM extensions and training plans

OTHER REMINDERS AND BEST PRACTICES

- **Foreign national employees should keep proof of status with them at all times:**
 - LPR Card (green card)
 - Valid passport/visa
 - I-797 approval notice
 - I-94 record – always check for accuracy
 - EAD – file renewals early (6 months before expiration)
- **DS-160/Social Media:**
 - Limit online presence – can be reviewed during visa vetting process
 - Ensure online profiles match petition filings/details submitted with DS-160 visa application
- **Remind employees of their obligations to notify USCIS of any change in address through filing an AR-11**

QUESTIONS?

THANK YOU!



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