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# NON-IMMIGRANT VISAS

# VISAS FOR STUDENTS AND TRAINEES

- ACADEMIC STUDENTS (F VISAS)
- VOCATIONAL STUDENTS (M VISAS)
- EXCHANGE VISITORS (J VISAS)
- TRAINEES (H-3 VISAS)

# ACADEMIC STUDENTS

## F VISAS

- Seeks to enter the U.S. temporarily and solely for the purpose of pursuing a course of study at an established institution of learning in the U.S.
- Must maintain a full course of study
  - Post graduate study must be certified by DSO as a full course of study
  - Undergraduate college or university : must take 12 semester/quarter hours

# Duration of Status

- Students may be admitted a maximum of 30 days before the program start date.
- Students are admitted for D/S:
  - Completion of the program
  - Progression to higher levels
  - Plus 60 days
    - These can be used to prepare for departure, change educational levels or to transfer to another school.
    - Also can be used to change status (e.g., H-1B)

# TRANSFERS

- F-1 can transfer if:
  - They are a bona fide student
  - Has been pursuing a full course of study
  - Intends to pursue full course
  - Has financial ability to attend transferred school
  - Begins classes at transferred school within 5 months of transferring out of current school or within 5 months of program completion date, whichever is earlier.
- \*\*If engaged in OPT, student must be able to begin classes within 5 months of transferring out of the school or the date the OPT ends, whichever is earlier.

# WITHDRAWALS

- Once authorized to withdraw you are given 15 days to depart.
- If student fails to obtain permission to withdraw, no 15 day grace period is afforded.

# EMPLOYMENT

- **FIRST YEAR**
  - No employment first academic year (9 months)
    - Exception: On –campus work (can begin as soon as student is admitted).
- **AFTER FIRST YEAR**
  - A student in good standing may get off campus employment if:
    - Severe Economic Hardship Caused by Unforeseen Circumstances Beyond Student's Control
      - May work 20 hrs./wk. in session and full-time during holidays and vacations.
  - Due to Severe Economic Hardship or Political/Environmental/Economic Destabilizations
    - South Korea, Malaysia, Thailand, Philippines, Haiti, Syria

# Practical Training: CPT and OPT

- Training available when:
  - Full time student for at least 1 academic year (unless a graduate student in a special program);
  - It is related to a course of study;
  - It is employment for the purpose of practical training ; and
  - It is not for English language training.



# Curricular Practical Training (CPT)

- Alternate work/study, internship, cooperative education or any other type of REQUIRED internship or practicum by sponsoring employers through an agreement with the school.
- Must be part of established curriculum.
- Must be a student for at least 1 academic year unless you enroll at the graduate level.
- Job offer required
- May be granted on part-time or full-time basis
  - If you have 12 months or more of Full-Time CPT, you are ineligible for OPT
  - Part time CPT is fine and will not stop you from doing OPT.

# Optional Practical Training (OPT)

- Provides practical experience in student's major area of study
- May not exceed one year.
- Must get EAD from USCIS before authorized to work.
- May not begin OPT until date indicated on EAD.
- May work while still in school.

- **PRE-COMPLETION OPT:**

- 40 hours a week during student's annual vacation and when school is not in session
- 20 hours a week while school is in session
- Will count against the 12 months maximum of OPT.
- Can not use employment authorization for pre-completion OPT to continue employment post-completion.
- Can apply 90 days in advance of requested start date of employment.

- **POST-COMPLETION OPT:**

- After completion of all course requirements or the course of study (excluding thesis or equivalent)
- Limited to 12 months and must complete training within 14 months of graduation. – does NOT APPLY to STEM students.
- May apply up to 90 days before program end date and up to 60 days after program end date.
- Can not have a requested start date that is more than 60 days past the program end date. The requested end date can't be more than 12 months after the start date. The end date may be sooner.
- STEM STUDENTS: can get 17 months extension (29 months total)

# OPT AND GRADUATE STUDENTS

Can a student in a graduate-level program who has completed all program requirement, aside from thesis or equivalent, apply for either pre-completion or post-completion OPT?

- YES
- **IF you apply for pre-completion OPT, you ;**
  - May Work full-time
  - Not subject to the unemployment provisions and may receive program extension.
  - May not apply for the e17-months extension form a period of pre-completion OPT
  - Would not be eligible for the cap gap extension of OPT.
- **IF you apply for a post-completion OPT, you:**
  - May work full time.
  - Would be eligible for the cap gap extension.
  - May apply for the 17-month extension if otherwise eligible.
  - Would be subject to the unemployment provisions.
  - Would be unable to receive an extension of his or her course of study.

If a student does not complete his or her thesis/ dissertation during the 12 months of post-completion OPT, what steps must he or she take?

-- Student should prepare to change status, change education level, transfer, or depart the country prior to the end of the 60-day grace period.

# Opt STEM Extension

- One time 17 months extension of OPT while in a period of post-completion OPT.
- Must work for employer enrolled in E-Verify in good standing.
- May change employers but the new employer must be enrolled in E-verify before student begins work for pay.
- May begin work with expired EAD if STEM extension application is still pending. In this case EAD is good for 180 days.
- New STEM EAD card begins the day after the expiration of the 12 months EAD card and ends 17 months later, no matter the date of adjudication.
- 17 months extension granted in one EAD card period and cannot be split into smaller periods.
- Possible to change employers during the 17 months. New employer must meet the E-verify requirements.
- If extension application is denied student will still have the 60-day grace period after expiration of the 12 month EAD card.
- Earliest you can apply is 120 days before the end of the 12 months OPT. Applications must be received by OIS no less than 30 days before the current 12-months EAD card expires.
- If you have a double major and obtained a regular post-completion OPT on the non-stem CIP you are ineligible for an extension.
- Cannot be based on your minor.

# Cap-Gap Relief

- **Cap –gap:** the period between the time a nonimmigrant F-1 status would end and the H-1B status begins. This eliminates the “gap” between the time the F-1 would have expired and the Oct. 1 H-1B start
  - Only applies to student in post-completion OPT when an H-1B petition with an October 1 start date is filed and received by USCIS. date.
  - If USCIS denies, rejects, or revokes the H-1B petition, F-1 will have the standard 60 day period to depart or change status and 10 days to continue employment.
  - Students whose OPT expired but are within the 60 day grace period may file C/S and receive an automatic extension of D/S if the H-1 is approved BUT may NOT continue in employment.
  - Should not travel during cap-gap period because USCIS may consider C/S abandoned and because their EAD has expired.
  - 90 day limitation on unemployment continues during the cap-gap extension.

# STEM EMPLOYMENT

- EMPLOYMENT REQUIREMENTS:
  - Paid or Unpaid
  - At least 20 hours per week
  - Directly related to field of study and appropriate to degree level obtained.
- EMPLOYER REQUIREMENTS:
  - Must be registered with U.S. government's E-Verify program.
  - Agrees to report any termination of employment within 48 hours to OIS.
- TYPES OF ELIGIBLE EMPLOYMENT
  - *Multiple Employers* – Can work for more than one employer but all employment must be related to degree program.
  - *Short-term multiple employers* – may work for multiple short-term employers but can't work more than one full-time job
  - *Work for hire(1099 employment)* – may provide a service based on a contractual relationship rather than an employment relationship.
  - *Self-employed business owner*- may start a business and be self-employed. Must work full-time. Must be able to prove that you have proper business licenses and is actively engaged in business related to the degree program.
  - Through an agency or consulting firm – agency or firm must be registered with E-verify but the 3<sup>rd</sup> parties contracting with the agency or firm need not be.



# LIMITED PERIOD OF UNEMPLOYMENT TO MAINTAIN STATUS

- 90 days of unemployment allowed during post-completion OPT period.
- Cap-gap extension continue to accrue unemployment time .
- ADDITIONAL 30 DAYS OF unemployment time available during STEM extension..
- Aggregate total allowed is 120 days during possible 29 months.
- For each new period of post-completion OPT, the student will have the full 90-day period.
- Each day (including weekends) during the period when OPT authorization begins and ends that the student doesn't have qualifying employment - counts as a day of unemployment. Authorization begins on the start date showed on the EAD.
- Time spent outside of the US during an approved periods of post-completion OPT counts as unemployment against the 90/120 day limits unless student is either:
  - Employed during a period of leave authorized by an employer or
  - Traveling as part of his or her employment.
- When you period of unemployment has been exceeded you are in violation of your status. At this time you can
  - Apply to continue your education by changing the education level or transferring to another certified school
  - Depart the United States

# TRAVEL WHILE ON STEM EXTENSION

- In order to re-enter the U.S. while on extension you must have with you:
  - Stamped I-20 with page 3 endorsed for travel; endorsements can't be more than six months old
  - Valid F-1 visa stamp
  - Valid passport
  - Stem Extension EAD card
  - Job Offer letter of statement of employment from company

# J-1 Visas

# What is J1 visa?

- A nonimmigrant visa which allows foreign nationals to enter the U.S. to participate in exchange programs to promote the sharing of knowledge and skills in education, arts and sciences.
- Two types:
  - J-1 visas that do not have a restriction known as 'Home Residency Requirement' (HRR)
  - J-1 visas that have the HRR restriction

# J-1 Eligibility

- Students at all academic levels
- Trainees obtaining on-the-job training with firms, institutions, and agencies
- Teachers of primary, secondary, and specialized schools
- Professors coming to teach or do research at institutions of higher learning
- Research scholars
- Professional trainees in the medical and allied fields
- International visitors coming for the purpose of travel, observation, consultation, research, training, sharing, or demonstrating specialized knowledge or skills, or participating in organized people-to-people programs
- Au pairs
- Summer camp counselors

# J-1 Privileges

- Enter the U.S. and participate in exchange visitor program approved by the U.S. Department of State
- Travel in and out of the U.S. or remain in the U.S. continuously till the completion of your exchange visitor program
- Apply for dependent visas for your spouse as well as unmarried dependent children under 21
- Work legally in the U.S. if work is part of your approved program or if you receive permission to work from the official program sponsor
- Apply for and receive work permits for accompanying relatives

# J-1 Limitations

On J-1 visa, you must:

- Restrict yourself to studying, working or otherwise participating in the special exchange program for which your visa has been approved
- First be accepted as a participant in the program approved by the DOS before you apply for J-1 visa
- Return to your home country for at least two years before you are permitted to get a Green Card or change to another nonimmigrant visa status. (Applies to those with HRR restrictions)

# Trainee and Internship Programs

- Internship Program Criteria:
  - Foreign national who is currently enrolled in and pursuing a degree at a university/college outside of the U.S. OR has graduated no more than 12 months prior to the start date of the exchange program.
- Trainee Program Criteria:
  - Foreign national who has a degree or professional certificate from a foreign university/college AND at least 1 year of related work experience in their field.



# Duration – Period of Stay

- Post – Secondary Students:
  - Time needed to complete degree plus 18 months practical training.
- Post-Doctoral Degree:
  - Degree plus up to 36 months of academic training
- Professors and Scholars:
  - Limit of 5 years. An extension may be given for additional 5 years when J-1 is engaged in a research project that is at a federally funded national research center or a U.S. lab.
- Short Term Scholars:
  - 6 months

# Can I change status while on J-1 visa?

- Exchange visitors participating in certain types of programs may be required to return to their home countries for at least two years before they are permitted to adjust status from J-1 visa to Green Card or apply for change of status.
- If not subject to the home residency requirement you may change status in the U.S.

# Can I apply for Green Card while on J-1 visa?

- You may apply for an immigrant status in the U.S. through the following options if you are not subject to the HRR:
- Family Based Immigration: If you have close relatives who are U.S. citizens or U.S. permanent residents, the relatives may file an immigration petition for you as the beneficiary.
- Employment Based Immigration(Labor Certification): You may find an employer who is willing to file a Labor Certificate for you with the DOL.
- EB-1:You may also file an immigration petition based on the classification of 'Alien of Extraordinary Ability' - EB-1(A) or 'Outstanding Professor/ Researcher' - EB-1(B)
- National Interest Waiver: You may also file an immigration petition through a 'National Interest Waiver' (NIW). National interest waivers are available to foreign nationals who are seeking work in a profession and who have an advanced degree (or equivalent experience) or can prove themselves as 'aliens of exceptional ability'.
- ***Note: If you are subject to the HRR you must get a waiver before applying for immigrant status.***

## Dependents/Family Members

- You may bring your spouse and unmarried children under the age of 21 on J-2 dependent visa.
- They may work in the U.S. if they receive special permission from the USCIS and the money is not needed to support you.
- They may study and don't have to apply for a separate student visa.

# Can the 'Two-Year Rule' be waived?

- Yes, you may be able to obtain a J-1 waiver if you are subject to the Two-Year Rule requirement, and thus be eligible to apply for visas normally prohibited for applicants subject to the Two Year Rule.
- Waivers of the Two-Year Rule are adjudicated only by the Department of State's Visa Office. This Visa Office is also the final authority on whether an applicant is actually subject to the Rule, regardless of whether it was annotated in your passport or not.

# J-1 and Academic Training (AT)

- The length of time for practical training upon completion of your program varies depending on the degree awarded.
- If you have received your baccalaureate/ master's degree you may enter a training program for a maximum period of 18 months.
- Post-doctoral individuals can receive practical training for a maximum period of 36 months.

# Can I change my status, from F-1 to J-1, or from J-1 to F-1, after my arrival in the U.S.?

- Probably not. Some changes are prohibited by regulations, and others are possible only in very special circumstances.
- As an alternative to changing inside the U.S., it is sometimes possible to go home, obtain a new visa stamp in the other category, and reenter in the new status.

# Which status, F-1 or J-1, will make it easier for me to get work permission in the U.S.?

The procedures to obtain work permission are quite different, but the employment privileges of F-1 and J-1 students are very similar:

- Both can work on-campus up to 20 hours a week when classes are in session at jobs that are related to study.
- Both can work off-campus, part time, in jobs unrelated to the field of study. In practice, however, that kind of work authorization is severely restricted and very rare.
- Both are eligible for off-campus employment in the field of study. For F-1 students this means up to 12 months of practical training, for J-1s up to 18 months of academic training.
- Both F-1 optional practical training (OPT) and J-1 academic training (AT) are available for up to 20 hours a week when classes are in session, but may be full-time during breaks and during the annual vacation
- An important difference: F-1 students do not become eligible for Practical Training until they have studied full-time for an academic year. J-1 students face no delay, but you may work only as long as you have studied
- **Note:** *After completion of a course of study lasting an academic year or longer, F-1 students are eligible for any unused portion of the 12 months of PT, and J-1 students may use the remainder of their AT, either 18 months or the length of full time study, whichever is shorter.*



# H-3 TRAINEE VISAS

- **What is H3 Visa?**
  - Visas for those who wish to come to the United States for on-the-job training provided by an American company.
  - Basically it is for Foreign nationals to receive training which is not available in their country. For those who are on F1/ OPT/) are also eligible for this visa.
- **Can H-3 visa holder work?**
  - H-3 Temporary Trainee Visa holders are allowed to work only for the company that is providing the training, and employment should only play a minor role in the program.
  - The main objective should be the training, not actual work.
  - H-3 visa holder is allowed to work for 20 hours/week legally.
- **What is the duration of validity?**
  - H-3 Temporary Trainee Visas are usually issued for the duration of the training program (up to 2 years). Extensions may be granted, but within the 2-year limit.

# Eligibility Requirements

- **Who all are eligible for this visa?**

- The following programs qualify for H-3 Temporary Trainee Visas:
  - agriculture, technology, finance, communications, government, and almost any other fields, except for medical training programs.
- No numerical limit and no annual cap on the number of visas issued.

- **What are the eligibility requirements and restrictions?**

- The proposed training is not available in the beneficiary's home country;
- The beneficiary will not be placed in a position which is in the normal operation of the business, and in which citizens and resident alien workers are regularly employed;
- The beneficiary will not be productively employed except as incidental to training; and
- The training will benefit the beneficiary in pursuing a career outside the US.
- The training will benefit the applicant in obtaining employment in the applicant's home country.

# Dependents and Travel

- Spouses and unmarried children under 21 years of age of H-3 visa holder are eligible for H-4 visas. Dependents may remain in the United States, travel in and out of the country, but are not allowed to work on H-4 visa status.
- Dependents may study on H-4 visa. They do not have to apply for separate F-1 student visa.
- No travel restrictions on H-3 visa. You may travel as many number of times as required before the expiry of your H-3 status. The USCIS also does not impose any time limit on your stay abroad.

# Change of Status

- You may apply for change of status while on H-3 visa.
- However, if an H-3 alien trainee has spent 24 months in the United States – they may not seek extension, change status, or be readmitted to the United States under either an H or L visa unless the alien has resided and been physically present outside the United States for the immediate prior 6 months. There could be exceptions.

Can I transfer from J1 visa (J1 intern or J1 trainee) to H3 visa while in United States?

- Yes- you may transfer from a J1 visa to H3 visa if your host company or some other employer is willing to sponsor you for the training at their location.

# H1B VISA

# H-1 B Visa

- Designed to allow U.S. employers to recruit & employ foreign professionals in specialty occupations within the USA for a specified period of time.
- The H-1B program provides the opportunity for foreign workers in specialty occupations to legally live and work in the US for a total of 6 consecutive years, and entitles their spouse and children (under the age of 21) to accompany them and legally live in the USA on an H-4 visa



- Foreign workers must possess at least a bachelor's degree or its equivalent (this requirement can usually be met by having a 3-year degree and 3 years of relevant post-graduate experience).
- Occupations that qualify for H-1B visas typically require highly specialized knowledge in a field of human endeavor including, but not limited to:
  - IT, Architecture, Engineering, Mathematics, Physical Scientific Research, Social Science, Biotechnology, HealthCare/Medicine, Education, Law, Accounting, Business, Theology, Arts, Computing, Finance, Accounting, Banking, Marketing, Sales, Recruiting, and Telecommunication.

# Duration of H-1B Visa

- The initial H-1B visa may be issued for up to three years. It may then be extended in the first instance for up to two years, and later on for one year, for a maximum of 6 consecutive years.
- In some cases, the H-1B visa can be extended beyond the 6 year limit.

# Benefits of an H-1b visa

- **Permission to work in the U.S.**
  - The H-1B visa allows specialty occupation workers to enter the United States and work in a professional capacity.
- **Multiple year duration**
  - The H-1B status is initially issued for a maximum period of three years and may be renewed for an additional period of three years.
- **Extension of Stay:**
  - H-1B status holders can extend their stay beyond the six-year limit in the following 2 situations:
    - If the H-1B holder has filed either a Labor Certification application or an I-140 petition 365 days before the expiration of the six-year limitation and the LC or I-140 process is still pending. There is no upper limit on total years of H-1B extensions under such circumstance as long as the immigration process is still ongoing.
    - If an H-1B visa holder has an approved I-140 petition AND an immigrant visa number is not available to him/her due to visa retrogression (not eligible to file I-485 due to visa number issues), the H-1B visa holder may extend his/her H-1B in three-year intervals beyond the 6-year limitation. There is no 365-day requirement in this circumstance.

- **Ability to take extended leave/vacation without losing status**
  - H-1B employees may take long unpaid leave without having their status affected
- **Ability to have multiple employers**
  - It is possible to be the beneficiary of multiple H-1B petitions because you are allowed to work for more than one U.S. employer.
- **Part-time H-1B status**
  - One can apply for part-time H-1B status as long as your work hours are at least 50% of the normal full time hours in your industry and you satisfy all other requirements for an H-1B.
  - If you have H-1B status already, you can be the beneficiary of a concurrent H-1B for another part time job. In this situation, there is no set number of hours that the beneficiary must work for each employer.
- **Ability to change employers during H-1B status**
  - Under the “portability rule” of the “AC 21” Act, an H-1B worker who has been in H-1B status in the past 6 years can start to work for his/her new employer as soon as the new employer files a new H-1B petition on behalf of the alien.
- **Ability to change employers during the Green Card application process**
  - An alien may change employers and it will not affect his/her adjustment of status, provided that he/she has filed an I-485 that has been pending for at least 180 days and he/she continues to work in the same or related field for the new employer.

- **Possibility to create one's own business and hire self as an employee**
  - You do not need to be a U.S. citizen or legal permanent resident to start a business in the U.S. However, whether an alien may work for his own company is another matter. You need authorization from the USCIS to work for any company, including yours.
  
  - In some limited situations, an alien's own company may apply for an H-1B for the alien. The USCIS will want to see that the new company will be able to pay the H-1B worker at least the prevailing wage, as well as business plans, a business lease, and other documents proving that it is in fact a real company. There must be an authority inside the company apart from the alien which will be the bona fide employer. The alien cannot be both an employer and an employee in his/her own company for H-1B purposes. Since an employer-employee relationship must be established for H-1B status, it is necessary that the alien's company have independent authority to hire/pay/supervise/fire the alien.
  
  - Two key factors the USCIS will scrutinize are 1) the ability to pay and 2) the real business needs. Forming your own company does not automatically mean you can be employed by it. In order to work at your own company as an employee, you still need valid work authorization to work in the US.

- **Spouses & children welcome**
  - Spouses and children under twenty-one years of age may be entitled to enter and remain in the United States for the duration of the H-1B status holder's authorized duration of stay.
- **Dependents permitted to attend school/college**
  - An H-1B visa holder's spouse and/or children under twenty-one years of age are permitted to attend school based on their H-4 status either on a part-time or full-time basis.
- **H-1B visa holders permitted to attend school/college**
  - An H-1B holder is allowed to go to school part time or full time without an F-1 visa as long as he/she maintains a valid H-1B status.

# Limitations of H1B Visas

- **Temporary duration**
  - H-1B status is temporary in nature. After six years of presence in the United States in H-1B status, the individual must depart the U.S. for at least one year before qualifying again for H-1B status.
- **H-1B quota**
  - Currently there is an annual numerical limit/“cap” of 65,000 H-1B visas issued.
- **Ineligible to work prior to approval**
  - Unless otherwise authorized to work, employment may not begin until the USCIS has approved the petition. If the alien already holds an H-1B, the alien may begin work for a new employer as soon as the new employer files an H-1B petition on behalf of the employee with the USCIS.

- **No automatic conversion to permanent residence status**
  - The H-1B visa does not automatically convert to a lawful permanent residence status. H-1B status is independent of the Green Card application.
- **H-1B visa holders can be laid off at will**
  - Either the employer or the alien may terminate employment at any time for any or no reason at all. As soon as employment is terminated, the H-1B visa is technically not valid. However, the USCIS might allow a short grace period of ten days from the date that the alien is fired or laid off. In other words, the alien will generally be able to remain in the U.S. for ten days and must file a change of status during this time. This “10-day grace period” is not an official policy and it is up to the USCIS whether such gap between statuses will be disregarded.
- **Discharge of an H-1B worker if the employer wishes to hire a U.S. worker**
  - The U.S. employer can replace H-1B workers with qualified U.S. workers. The H-1B employee has no claim to discrimination since a U.S. employer has the statutory right, but not the obligation, to give job preference to U.S. workers over H-1B workers. However, when an H-1B employee is hired, s/he cannot be treated differently from other similarly situated U.S. workers.



# The H1B Visa Cap-Exempt Program

- **Certain Petitions Not Subject to Cap**
- Under AC21 and other legislation passed by Congress, there are certain types of employers and alien workers that are “exempt” from the H-1B cap.
- H-1B beneficiaries, who had already been counted against the H-1B quota within the past 6 years, will not be subject to the current H1B cap unless the H-1B beneficiary would be eligible for a new 6 years of H-1B status at the time the petition is filed;
- **H-1B beneficiaries sponsored by institutions of higher education or a related or affiliated nonprofit entities, or at nonprofit research organizations or governmental research organizations are exempt from H-1B Cap;**
- H-1B physicians who have received a J-1 Conrad 20 waiver of the 2-year home residency requirement based on work in a health professional shortage area are also exempt from H-1B cap.

# H4 VISA EAD FOR SPOUSE

- Your spouse is eligible to work if :
  - You are on valid H-1 status AND
  - You have an approved Form I-140, Immigrant Petition for Alien Worker;
    - OR
  - Your H1B status has been extended beyond the initial 6 years under the AC21 rule in one year increments.
    - This happens when a Labor Certification or I-140 has been filed for at least 365 days prior to the end of the sixth year of H1B status.

# Advantages of H4 Visa EAD

- Spouse can work full time or part time for any employer in any position in any field.
- Spouse can start their own business.
- Does not need a job offer to be eligible.
- No quota for EAD and no deadline to apply.

# **Employment-Based Immigration**

# First Preference EB-1

- You may be eligible for an employment-based, first-preference visa if you have an extraordinary ability, are an outstanding professor or researcher, or are a multinational executive or manager. Each occupational category has certain requirements that must be met.

# EB-1 Eligibility and Criteria

- **Extraordinary Ability**

- You must be able to demonstrate extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim.
- Your achievements must be recognized in your field through extensive documentation.
- No offer of employment is required.
- You may petition for yourself by filing a Form I-140, Petition for Alien Worker.
- You must meet 3 of 10 criteria\* below, or provide evidence of a one-time achievement (i.e., Pulitzer, Oscar, Olympic Medal)

# Criteria for Demonstrating Extraordinary Ability

- You must meet 3 out of the 10 listed criteria below to prove extraordinary ability in your field:
  - Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
  - Evidence of your membership in associations in the field which demand outstanding achievement of their members
  - Evidence of published material about you in professional or major trade publications or other major media
  - Evidence that you have been asked to judge the work of others, either individually or on a panel
  - Evidence of your original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
  - Evidence of your authorship of scholarly articles in professional or major trade publications or other major media
  - Evidence that your work has been displayed at artistic exhibitions or showcases
  - Evidence of your performance of a leading or critical role in distinguished organizations
  - Evidence that you command a high salary or other significantly high remuneration in relation to others in the field
  - Evidence of your commercial successes in the performing arts



## EB-1 Eligibility and Criteria

- **Outstanding professors and researchers**
  - You must demonstrate international recognition for your outstanding achievements in a particular academic field.
  - You must have at least 3 years experience in teaching or research in that academic area.
  - You must be entering the United States in order to pursue tenure or tenure track teaching or comparable research position at a university or other institution of higher education.
  - Your employer must file a Form I-140, Petition for Alien Worker.
  - You must include documentation of at least two listed below\*\* and an offer of employment from the prospective U.S. employer.

# Examples of Documentary Evidence That A Person is an Outstanding Professor Or Researcher

- Evidence of receipt of major prizes or awards for outstanding achievement
- Evidence of membership in associations that require their members to demonstrate outstanding achievement
- Evidence of published material in professional publications written by others about the alien's work in the academic field
- Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
- Evidence of original scientific or scholarly research contributions in the field
- Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

# EB-1 Eligibility and Criteria

- **Multinational manager or executive**
  - You must have been employed outside the United States in the 3 years preceding the petition for at least 1 year by a firm or corporation and you must be seeking to enter the United States to continue service to that firm or organization.
  - Your employment must have been outside the United States in a managerial or executive capacity and with the same employer, an affiliate, or a subsidiary of the employer.
  - Your petitioning employer must be a U.S. employer.
  - Your employer must have been doing business for at least 1 year, as an affiliate, a subsidiary, or as the same corporation or other legal entity that employed you abroad.
  - Your employer must file USCIS Form I-140, Petition for Alien Worker.

# Second Preference EB-2

- You may be eligible for an employment-based, second preference visa if you are a member of the professions holding an advanced degree or its equivalent, or a foreign national who has exceptional ability.

# EB-2 Eligibility and Criteria

- Advanced Degree
  - The job you apply for must require an advanced degree and you must possess such a degree or its equivalent (a baccalaureate degree plus 5 years progressive work experience in the field).
- Exceptional Ability
  - You must be able to show exceptional ability in the sciences, arts, or business. Exceptional ability means “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.”

# EB-2 Eligibility and Criteria

- National Interest Waiver
  - Aliens seeking a national interest waiver are requesting that the Labor Certification be waived because it is in the interest of the United States.
  - Though the jobs that qualify for a national interest waiver are not defined by statute, national interest waivers are usually granted to those who have exceptional ability (see above) and whose employment in the United States would greatly benefit the nation.
  - Those seeking a national interest waiver may self-petition (they do not need an employer to sponsor them) and may file their labor certification directly with USCIS along with their Form I-140, Petition for Alien Worker.
  - You must meet at least three of the criteria discussed below and demonstrate that it is in the national interest that you work permanently in the United States.

## EB-2 Eligibility and Criteria

- **Criteria for Proving Exceptional Ability**
  - Official academic record showing that you have a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to your area of exceptional ability
  - Letters documenting at least 10 years of full-time experience in your occupation
  - A license to practice your profession or certification for your profession or occupation
  - Evidence that you have commanded a salary or other remuneration for services that demonstrates your exceptional ability
  - Membership in a professional association(s)
  - Recognition for your achievements and significant contributions to your industry or field by your peers, government entities, professional or business organizations
  - Other comparable evidence of eligibility is also acceptable.
- **Must meet at Least 3 of these criteria**

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