Employment Options for Foreign Nationals with Non-Immigrant Visas

April, 2009
Visas most commonly Used/Seen at UTHSC-H which allow employment with Restrictions.

<table>
<thead>
<tr>
<th>Type of Visa</th>
<th>Description</th>
<th>Employment Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-1B</td>
<td>Temporary Worker in Specialty Occupation</td>
<td>• Employment permitted by USCIS only with sponsoring institution, only for approved time</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Specific to employment conditions</td>
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<td></td>
<td></td>
<td>• Concurrent employment permissible only with USCIS approval</td>
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<td></td>
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<td>• Prohibited from receiving other payments</td>
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<tr>
<td>O-1</td>
<td>Person of Extraordinary Ability</td>
<td>• Employment “incident to status”</td>
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<td></td>
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<td>• Only with sponsoring employer</td>
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<tr>
<td></td>
<td></td>
<td>• Concurrent employment permissible</td>
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<td>• No dual intent (return home)</td>
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Continued –

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<td>J-1</td>
<td>Exchange Visitor: • Professor / Researcher</td>
<td>Employment “”incidental to status” only by designated program sponsor and only for approved time as approved by DOS • Other compensation allowed only with written authorization</td>
</tr>
<tr>
<td></td>
<td>Exchange Visitor: • Physician (Trainee)</td>
<td>Employment “incidental to status” only for purposes of medical training as designated by ECFMG</td>
</tr>
<tr>
<td></td>
<td>Exchange Visitor: • Student</td>
<td>Part time (20 hrs) employment only on campus while school is in session • Full time employment while on school breaks • Academic Training employment for up to 18 months (36 months postdoc training)</td>
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| F-1          | Student     | While maintaining F-1 status:
  - **On-Campus** employment allowed: **part time** (20hrs) while school is in session and **full time** during school breaks when eligible to enroll – No EAD required
  - Due to unforeseen “economic hardship” may apply for **part time** EAD if approved by Designated School Official (DSO)
  - **Practical Training** employment related to field of study:
    - **CPT (Curricular Practical Training)** DSO authorization, no EAD required, reported to SEVIS.
    - **OPT (Optional Practical Training)** DSO authorization, EAD from USCIS required, reported to SEVIS. Limited to 12 months
      - **Pre** completion of studies
      - **Post** completion of studies: – extendible additional 17 months to work for E-verify employer
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| TN           | Professionals under NAFTA — for citizens of Canada and Mexico | • Employment permitted by USCIS only with sponsoring employer, only for approved time  
• Concurrent employment permissible only with USCIS approval  
• Prohibited from receiving other payments |
| B-1          | Visitor for Business                              | • Employment not permitted  
• Allowed to accept reimbursement for expenses  
• Higher Ed: acceptable honorarium payments for academic activities (lasting no longer than 9 days, received from not more than 5 institutions in the prior 6 months period.) |
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| B-2          | Visitor for Tourism          | • Employment not permitted  
• Generally not allowed to receive reimbursement for expenses  
• Higher Ed: acceptable honorarium payments for academic activities (lasting no longer than 9 days, received from not more than 5 institutions in the prior 6 months period. |
| WB and WT    | Visa Waiver for Business and Tourism | • Same as B-1 and B-2 for foreign nationals from countries exempt from visa requirement to enter the U.S.  
• May not extend or change visa status within the U.S. |
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<td>H-4</td>
<td>Dependent of H-1</td>
<td><em>Not permitted to work in the United States</em></td>
</tr>
<tr>
<td>O-3</td>
<td>Dependent of O-1</td>
<td><em>Not permitted to work in the United States</em></td>
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</table>
| J-2          | Dependent of J-1 | *Eligible to apply for work authorization through USCIS: EAD (Employment Authorization Document)*
|              |              | *With EAD may work for any employer* |
| F-2          | Dependent of F-1 | *Not permitted to work in the United States* |
| TD           | Dependent of TN | *Not permitted to work in the United States* |
The H-1B Visa Status
WHAT IS AN H-1B VISA?

An H-1B visa is a visa that is reserved for individuals employed in “specialty occupations.”

A "specialty occupation" for H-1B purposes is defined as an occupation that requires:

- theoretical and practical application of a body of “highly specialized” knowledge
- and
- attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States
H-1B SPECIFICS...

- Employer/ Employment Specific
- Employee must maintain employment in order to maintain valid visa status
- Six Year Maximum Limitation
- H-1B transfers allowed via H-1B Portable Rule
- Concurrent employment allowed
- Occasional speeches and lectures allowed, however employee cannot accept honoraria as fee for service rendered (travel expenses may be reimbursed)
H-1B Specifics- cont’d

• May be processed for maximum duration of 3 year increments at a time, up to 6 year max
• Changes in job title, % time, additional job duties require employer to first file modified petition with USCIS prior to employee assuming new change(s)
• In the event of employee is released before the end date of approved petition, employer is obligated to pay cost of return transportation to home country
• No grace period allowed
PARTIES INVOLVED IN THE H-1B PROCESS

1. **Department of Labor (DOL):**
   - SWA – TWC
   - Employment & Training Administration (ETA) – LCA

2. **Department of Homeland Security**
   - **Accepts and processes** H-1B petition - Form I-129 Petition for Nonimmigrant Worker-with approved LCA attached
   - **Determines** if occupation qualifies as a specialty occupation and if the international meets minimum requirements for H-1B classification
   - **Confers** H-1B status through a change of status or consular processing
PARTIES INVOLVED IN THE H-1B PROCESS

3. **US Employer (UTHSC-H)**
   - Submits completed LCA to DOL
   - Submits Form I-129 with attached certified LCA to USCIS
   - Employs H-1B employee pursuant to terms of LCA & I-129
   - Responsible for cost to cover return transportation to home country in the event that employee is released from employment prior to end date of approved petition

4. **International Employee**
   - Must meet minimum requirements of occupation in terms of education (Bachelor's minimum), credentials and experience
   - Must not be subject to any bar to obtaining H-1B status (i.e-212(e))
   - Must intend to work for H-1B sponsor
   - Must maintain status by complying with terms of employment
Types of H-1Bs that we sponsor at UTHSC-H

✓ **Non-Clinical**
  - Researchers
  - Faculty
  - Classified/ Administrative Positions

✓ **Clinical**
  Any and all clinicians with exception of those individuals seeking Graduate Medical Training

✓ **Exceptional Ability**
  Will typically be a clinician who lacks USMLE, but possesses a degree of expertise significantly above the average clinician
OIA H-1B In-House Processing

Upon Visa Request to OIA:

- **Step 1**: Submit Request for Prevailing Wage determination to State Workforce Agency

- **Step 2**: Once PW determination is back from SWA, OIA must determine eligibility to proceed with H-1B sponsorship. Salary offered to the international must be 100% + of PW determined by SWA.

- **Step 3**: Submit Labor Condition Application (Form ETA 9035E) to Department of Labor

- **Step 4**: When LCA is back certified, have Notice posted in conspicuous area for 10 business days.

- **Step 5**: Complete Form I-129 and package H-1B petition with supporting documentation

- **Step 6**: Mail Completed H-1B Petition with all required Fees to USCIS

- **Step 7**: Create and File Public Record File

- **Step 8**: Once I-797 Approval Notice is secured, OIA packages and sends pre-arrival packet to visitor abroad.

- Alien worker applies for visa stamp
The J-1 Visa Status
The Purpose of the J-1 Program

“To increase mutual understanding between the people of the U.S. and the people of other countries by means of educational and cultural exchanges.”
Exchange Visitor Program
Activity Categories

• Alien Physicians*
• College & University Students (including Student Interns)*
• International Visitors
• Research Scholars*
• Short-term Scholars*
• Summer Work Travel Participants

• Trainees and Trainee Interns*
• Au Pairs
• Government Visitors
• Professors*
• Secondary School Students
• Specialists*
• Teachers

*COMMON IN HIGHER EDUCATION
Eligibility Requirements for all Exchange Visitors

- Intent to pursue appropriate activity
- Intent to return to home country (if applicable)
- Sufficient funding
- Appropriate background for program activity
- Adequate English
J-1 Visa - Alien Physician category

- Temporary, non-immigrant visa
- Full time educational / training visa
- Two-year home residency requirement {INA & 212(e)}
- Seven year maximum for progressive training
- The J-1 Alien Physician category can ONLY be sponsored by the J Exchange Visitor program of the Educational Commission for Foreign Medical Graduates (ECFMG).
General Qualifications for J-1 Alien Physician Sponsorship

- Foreign national
- International Medical Graduate
- Have passed the United States Medical Licensing Examination (USMLE) Step 1 and Step 2 Clinical Knowledge (CK).
- Hold a valid ECFMG Certificate without expired examination dates
- Have a contract for a position in an ACGME-accredited program or directly associated fellowship that is affiliated with a medical school
- Provide a statement of need from the Ministry of Health of the country of nationality or most recent legal permanent residence.
- Pays appropriate ECFMG administrative fee. Currently $200 which may be paid on the ECFMG website via OASIS.
Accepted Options

✓ J-1 Alien Physician sponsored by ECFMG
✓ F-1 Student with Optional Practical Training – entry level
✓ EAD holders – pending immigrants
✓ U.S. Permanent Residents

Not-Accepted Options

❖ J-2 Dependents on EAD - continuity of J-2 status and employment authorization depends on circumstances beyond control of trainee
❖ H-1B Specialty Worker – difficulties meeting prevailing wage (2005)
❖ O-1 Extraordinary Ability – residency and Fellowship positions are training level positions, not senior level
❖ TN – *(Treaty NAFTA)* option for Canadians and Mexicans who will engage in teaching and/or research only.
The F-1 Visa Status
# Summary of F-1 Employment Options

While maintaining F-1 status:

- **On-Campus** employment allowed: **part time** (20hrs) while school is in session and **full time** during school breaks when eligible to enroll – No EAD required
- Due to unforeseen “economic hardship” may apply for **part time** EAD if approved by Designated School Official (DSO)
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Questions?

Maria C. Arevalo-Sanchez
Director