

After Graduation: Visa and Permanent Residence Options for International Students and Exchange Visitors

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Elise A. Fialkowski
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Elise Fialkowski has been providing immigration assistance and solutions to leading universities, research institutions, multinational corporations, startups, entrepreneurs and individuals for over 25 years.

Elise has long been active in the American Immigration Lawyers Association (AILA) and currently serves on AILA's National Online Course Committee as well as the Philadelphia Customs and Border Protection Liaison Committee. She has served on many other committees and boards at the local and national levels and currently serves on the Women Owned Law Steering Committee and the John F. Peto Studio Museum board of trustees.

Elise has been named in Best Lawyers in America ©, Pennsylvania SuperLawyers, The International Who's Who of Corporate Immigration Lawyers and the International Who's Who of Business Lawyers. A Phi Beta Kappa graduate of the University of North Carolina at Chapel Hill, Elise received her law degree from the Villanova University School of Law (J.D., magna cum laude, 1991).

Myriam Jaidi is a Senior Counsel and assists clients with all types of immigration matters. A dedicated advocate, Myriam is driven by a long-standing love of helping people thrive wherever they dream to do so.

Myriam has represented professionals, companies, non-profits, and individuals on a broad range of cases including permanent residence cases (based on labor certification, extraordinary ability and multinational transfers), nonimmigrant matters (B, E, F, H-1B, J, L, O, TN, etc.), family-based sponsorship, and citizenship matters. She is also experienced with defending individuals facing removal and successfully litigating before the Immigration Court and the Board of Immigration Appeals.

Myriam has helped clients navigate the complexities of consular processing (including National Interest Exceptions and other travel ban issues during the coronavirus pandemic) and has assisted individuals with humanitarian forms of relief, including Deferred Action for Childhood Arrivals (DACA), T visas for trafficking victims, U visas for crime victims, Violence Against Women Act (VAWA) relief for battered spouses, parents and children, as well as asylum, withholding of removal, waivers and requests for prosecutorial discretion.

Myriam previously taught Family-based Immigration Law & Procedure at CUNY School for Professional Studies, and Immigration Law for Paralegals at City College in New York. Myriam speaks English, is proficient in French, and is intermediate in spoken Moroccan Arabic.



Myriam Jaidi
Senior Counsel

Agenda

- Non-Immigrant Status
- H-1B Requirements
- H-1B Alternatives
- Introduction to Permanent Residency
- Current Issues
- Q&As

Post Graduation Employment Options: OPT+STEM and Academic Training

- F-1 students: Post-completion Optional Practical Training (OPT) + STEM extension for certain majors
- J-1 students: Academic Training
- Advice from attorneys:
 - Work closely with your University of Delaware Advisors
 - Pay attention to deadlines and correct processes
 - Use your OPT/AT to the max, but plan ahead for the long term

Post-Graduation and Post-OPT Employment

- The alphabet soup:
 - H-1B
 - L-1A/B
 - O-1
 - E-3
 - E-1/E-2
 - TN (Mexico and Canada)
 - H-1B1 (Singapore and Chile)
 - J-1
 - H-3

H-1B Visas

- In general:
 - Must be sponsored by a US Employer
 - Must be for a specialty occupation (i.e., role must require a bachelor's or higher degree);
 - Degree must be related to the work being done
- Procedure and processing time
 - File Labor Condition Application with DOL
 - File H-1B petition with USCIS
 - Assuming lottery
 - Change of status or consular visa issuance
 - Processing time
 - 4 to 6 months or more
 - Premium processing to expedite

H-1B Visas

(cont'd)

- Length of approval and extensions
 - 3-year initial approval and 3-year extension
 - 6 year maximum – any combination of employers
 - Extensions beyond 6 years
 - Recapture time out of U.S.
 - 1-year extension if file labor certification application or immigrant petition one year before expiration
 - 3-year extension if immigrant petition approved and quota backlog

H-1B Visas

(cont'd)

-
- Allows work for petitioning employer only
 - 60-day* grace period if leave or terminated



H-1B Quota

- What is it, and what does it mean?
 - 65,000 visas
- Separate quota for US-educated advanced degree holders
 - 20,000 visas
- Separate options for Canada, Mexico, Australia, Chile, and Singapore
 - TN-1, E-3, H-1B1
 - October 1 start date
- Process for several years
 - April 1 filing date
 - 201,000 petitions submitted in 2019

H-1B Quota

(cont'd)

- NEW Registration Process Began 2020
 - Registration in March (this year March 1 to March 18)
 - USCIS has reserved right to suspend registration and go back to usual process
 - Lottery will be conducted based upon registrations unless USCIS suspends registration
 - Last year USCIS conducted a second and third round of lottery selections
 - Apx. 275,000 registrations submitted in 2020
 - Over 300,000 registrations submitted in 2021

Quota-Exempt Employment

- Who is not subject to the quota?
 - Universities
 - Nonprofit institutions affiliated with universities
 - Employed “at” university
 - Nonprofit or government research organization
 - Concurrent employment
 - Previous H-1B

Strategies to Enhance Chances of Getting H-1B

- Filing multiple years
- Filing properly
- Using previously-obtained degree
- Start your own business
 - Apply as H-1B employee?

H-1B Issues for Start-Up Business

- Must establish company with employer tax I.D. number
- Can company be owned by the H-1B employee?
 - Must be W-2 employee
 - Company separate entity from owner/employee
 - Company right of control over employee
- Company must prove
 - Financial ability to pay salary
 - Profits and/or capitalization
 - Real job to be done by H-1B
 - Place of business
- Importance of business plan/financial projections
- Other employees helpful – not required
- Prevailing Wage
 - CEO vs. function-descriptive position
- “Specialty Occupation”
 - Use of concepts learned in courses

My H-1B Was Not Selected, Now What?

- Going back to school (F-1)
 - Same degree level vs. next degree level
- Working overseas for U.S. employer
 - The L-1A/L-1B path
- Looking at spouse's status
 - Spouse of J, E and L can work
- Country-specific options
 - TN-1, E-3, H-1B1
- Extraordinary Ability O-1
- Investments and Trade: E-1/E-2

J-1 Visas

- Used frequently by universities and research organizations, there are a variety of categories including students, research scholars, etc.
- “Research Scholars”
 - must be a “Research” position, such as postdoctoral researcher or other company research position.
 - Available up to 5 years
 - Universities often sponsor but available for companies if company is approved or approved sponsor utilized
 - Possible two-year return residence-skills list/gov. funding

O-1 Visas

- O-1 Alien of Extraordinary Ability
 - Requires an employer willing to sponsor
 - No prevailing wage requirement
 - Renewable indefinitely
 - Very high standard for “extraordinary ability”
- Factors Considered in Initial Evaluation
 - Original contributions of “major significance”
 - 1st authored articles/impact factors, chapters, conferences
 - Review of the work of others
 - Citations and application of your original contributions by others

Permanent Resident Status

- Family
- Employment
- Investment
- Asylum
- Lottery

Permanent Resident Status Employment

- Employer-sponsored or self-sponsored
- Labor certification – default process
- Categories which don't require labor certification:
 - Extraordinary ability/outstanding professor and researcher
 - National interest/exceptional
- Multiple petitions = OK

Visa Bulletin for April 2022

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	01APR19	C	01SEP14	C	C
3rd	C	01APR18	C	22JAN12	C	C
Other Workers	C	01AUG15	C	22JAN12	C	C
4th	C	C	15JUN17	C	C	C
Certain Religious Workers	C	C	15JUN17	C	C	C
5th Non-Regional Center (C5 and T5)	C	C	C	C	C	C
5th Regional Center (I5 and R5)	C	15DEC15	C	C	C	C

Permanent Resident Status Employment

(cont'd)

- Self-Sponsored
 - Extraordinary ability
 - EB-1
 - Extensive documentation required
 - Reference letters critical
 - Standard is: “One of the small percentage at the top of the field”
 - National or international recognition
 - Same standard as O-1

Permanent Resident Status Employment

(cont'd)

- Employer-Sponsored
 - Outstanding Professor/Researcher
 - EB-1
 - Extensive documentation required
 - Reference letters critical
 - Standard is: “internationally recognized as outstanding”
 - Requires a qualifying job offer
 - Requires 3 years of experience

Permanent Resident Status Employment

(cont'd)

- National Interest Waiver
 - EB-2
 - Standard
 - Exceptional ability or advanced degree
 - National priority
 - Examples: increasing employment; increasing exports; new technology
 - Entrepreneurship recognized as national interest
- Extensive documentation required
- Reference letters critical

Permanent Resident Status Employment

(cont'd)

- Labor Certification Application (PERM)
 - EB-2 or EB-3
 - Employer must:
 - Pay attorney fees and advertising costs
 - Define “minimum requirements”
 - Engage in required recruitment
 - Interview U.S. worker applicants
 - Prove unavailability of qualified, interested, and available U.S. worker
 - Pay prevailing wage
 - Not available to owner of business

Permanent Resident Status Employment

(cont'd)

- Timing
 - Electronic filing
 - Possibility of audit
 - First of three steps



Permanent Resident Status Investment (EB-5)

- Amount of investment
 - \$1,050,000 or
 - \$800,000 in “targeted employment area”
- Two possibilities
 - Individual investment
 - Requires 10 full time US citizen or permanent resident employees
 - Regional center investment
 - Indirect employment creation ok
 - 90-95% of all EB-5 applications
- Lawful source of funds
 - Extensive documentation required
 - Can be gift
 - Must prove giftor's source of funds

International Entrepreneur Parole Program

- Obama -> Trump -> Biden
- Initial Eligibility Requirements
 - Established a U.S. startup business within five years before the application for parole
 - Ownership interest of at least 10%
 - Active role in the operations of the business – not merely an investor
 - Capital investment of at least \$250,000 from qualified U.S. investors
 - Or at least \$100,000 in grants or awards from qualifying U.S. federal, state, or local government entities
 - Investor must have invested at least \$600,000 in startups over last 5 years
 - at least two of the startups must have created at least 5 qualified jobs
 - OR generated at least \$500,000 in revenue with average annualized growth of at least 20%
- If only partially meet the funding requirements can attempt to provide additional compelling evidence of the startup's substantial potential for rapid growth.

Continuing Issues

- Continuing delays and processing times
- Requests for Evidence – minimal improvement
- Consular Delays, Possible Closures
- Travel Issues



Updates

- Deference is back – are they applying it?
- Travel bans and NIE gone
- Visa appointment waivers/drop box
- Work authorization for spouses of Es, Ls
- H-4s work authorization automatic 180-day extension
- International Entrepreneur Rule returned
- EB-5 Regional Center Program reauthorize plus other program changes
- Trump era public charge rule gone
- Expansion of premium processing to E-3 petitioners
- New interfiling guidance
- New PP for backlog relief

Questions?



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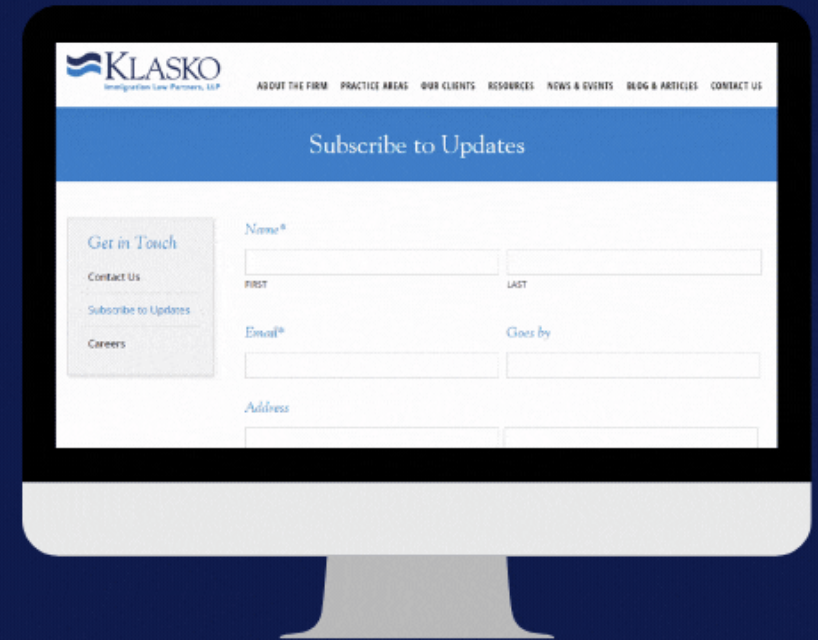
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