Life After OPT

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I am graduating in May of 2010. How can I get authorization to work?

- Apply for employment authorization (EAD) from USCIS
- Speak to International Students and Scholars Office about when to do this and how long you can ask for
- Think about longer term plans (EAD usually only for one year maximum)
What are my options when the OPT expires?

- H1B is most popular work visa for students
- J1 if H1B not available (must meet requirements)
- TN, E3 for certain nationalities
- O1 if you are “extraordinary”
- Extend EAD under STEM for 29 months – very limited because of E-verify

- F1 can stay in US 60 days after EAD expires (but cannot work)
H-1B Visa (Basics)

- Allows someone to work for a company in a “specialty occupation” with an entry-level requirement of a Bachelor Degree (or equivalent) which is directly related to the professional position offered
- Must have an employer
- Beneficiary must have Bachelor’s Degree (or equivalent)
- Six-year maximum stay (with exceptions)
Examples of “Specialty Occupations”

- Software Engineer – degree in Computer Science, Engineering discipline
- Financial Analyst – degree in Economics, Business Administration, etc
- Market Research Analyst – degree in Marketing, Business Administration, etc
- Human Resources Manager – degree in business disciplines, Psychology, Sociology
- Graphic Designer – degree in Design, Arts, etc
- Accountant – degree in Accounting, Finance, etc
- Fashion Designer – degree in Arts, Fashion Design, etc
H1B cap

- Only approximately 65,000 H1B visa numbers per immigration fiscal year
- Fiscal year starts October 1 – can apply 6 months in advance
- Recent “last dates” for filing:
  - 2008 – one day! (1 week)
  - 2009 – one day! (1 week)
  - 2010 – December 22, 2009
  - 2011 – as of April 9, 2010, USCIS received 13,500
Some petitions are not counted towards the regular H1B cap:

- Approx 5000 set aside for Chile/Singapore nationals
- Separate 20,000 cap for graduates with US Masters degree [as of 4/9/10, 5,600]
- Only “new” H1B petitions count towards cap
- Beneficiary previously granted H1B status in the past 6 years
- Cap exempt employers
Cap Exempt Employers

- Institutions of higher education as defined in the Higher Education Act of 1965, Section 101(a), 20 USC section 1001(a)
- Nonprofit organization or entity related to or affiliated with an institution of higher education, as such institutions are defined as above
- Nonprofit research organization or a governmental research organization, as defined in 8 CFR 214.2(h)(19)(iii)(C)
When should my employer sponsor me for an H1B visa?

- **Option One:** Start working on EAD after graduation. If H1B numbers are still available when your employer wants to sponsor you, file for H1B this year for 10/1/10 start date.

- **Option Two:** Start working on EAD after graduation. File for H1B on 4/1/2011 and hope there are lots of H1B visa numbers and no need for lottery. If chosen for cap, EAD is automatically extended and H1B starts effective 10/1/2011.
What is the process of applying for an H1B visa status petition?

- Employer (petitioner) must be willing to sponsor you
- First employer must obtain LCA from the Department of Labor (about one week, longer if first time for company)
- Employer then submits detailed petition proving employee (beneficiary) meets minimum qualifications, position qualifies as specialty occupation, employer able to pay prevailing wage, etc.
- Usually takes 3-5 months for USCIS to review
- Can expedite processing (2 week adjudication)
Employer’s Requirements – What is sponsorship?

- Must sign petition submitted to USCIS – all information must be accurate
- Employer must agree to pay “prevailing wage”
- Must maintain “public access file” which supports attestations made on the LCA
- Must agree to pay costs of reasonable return trip home if terminated prior to H1B end date
- Must pay $750/$1500 educational fund fee
- Must notify USCIS of early termination of H1B worker
How much does the H1B visa cost?

- $1500/$750 Educational Fund Fee (paid by employer) (not necessary if cap exempt employer)
- $500 Anti-Fraud Fee
- $320 USCIS Filing Fee
- Additional filing fees if dependent family members
- Legal fee
Once you have the H1B...

- Portability – employee can transfer from one H1B employer to another pretty easily and without having to wait for approval of the petition. NOT counted towards a new cap.

- Can obtain extensions beyond 6 years if at a certain stage in the green card process
H-1B Complications

- When employer is a smaller company, can be more difficult to justify the position is a “specialty occupation”. Example – 5 person law firm needs an Accountant? Vs 500 person firm.
- Difficulty with “grey area” specialty occupations – some jobs you don’t necessarily need a degree
- H1B cap
- Stimulus package makes it more difficult for companies receiving government funding under TARP but many have paid back
- LCA is no longer instantaneous – can take more than one week to file and receive approval
Other Nonimmigrant Work Visas

- If H1B cap is reached...
- If position wouldn’t qualify as “specialty occupation”...
- If employer cannot pay “prevailing wage”...
- If costs are an issue...
TN-1/TN-2 Under NAFTA

- TN – nationals of Canada and Mexico for an occupation listed in NAFTA treaty
- Canadians can apply directly at US border
- Mexicans must apply for visa at consulate
- Sample occupations: Accountant, Computer Systems Analyst, Engineer, Management Consultant, Animal Breeder
- Admission and extensions are now for 3-year periods
- Must intend to return to home country
J1 Exchange Visitor Visa – Trainee/Intern Category

- J-1 – “exchange visitors” enrolled in US government approved Exchange-Visitor Programs, for the purpose of gaining experience or research in their respective field
- Maximum of 18 months
- Cannot extend but can change status (if not subject to two year home country physical presence requirement)
- Must have Bachelors degree from non-US institution and one year of experience in the field OR five years of experience in the field gained outside the US
- New J regulations 07/2007 – more stringent requirements
O-1 Extraordinary Ability

- Individuals that have extraordinary ability and have risen to the very top of their field of endeavor. Very high standard.
- Must have major award or price (Nobel, Pulitzer, etc) OR
- Documentation from 3 of 8 categories of documents specified in regulation
- 3 years initially, then one year extensions
- No maximum stay
E Visa

- E1/2 – at least 50% of company must be owned by nationals of a treaty country and applicant must be national of treaty country.
- E1 – must be substantial trade between US and country of nationality
- E2 – company has made or will make a substantial investment in a US business
- E3 – 10,000 available for Australian nationals in a specialty occupation. Hybrid of H1B and E1/2
Other Possibilities:

- H-3 Trainees – classroom type training (not productive employment, except if incidental to training)
- I – Journalists
- L1 intracompany transfer
- Spouse of E, L or J can apply for EAD
- Other nonimmigrant visas
- Directly apply for green card
Applying for Visa Stamp

- When status has been changed through USCIS, need new visa stamp if you plan to travel outside of US and return
- Must be done in person (no longer can send passports by mail) at a US Consulate abroad
- Apply at home country Consulate – check website for processing times: www.travel.state.gov
- Apply at Consulates in Canada
Applying for Green Card

- Family petitions
- Lottery
- Employment sponsorship – PERM (test of US job market)
- EB5 investments
- Other basis
Family-Sponsored Green Cards

- **Immediate Relatives**: spouse of a US citizen and parents of a US citizen
- **First**: Unmarried Sons and Daughters of Citizens
- **Second**: Spouses and Children, and Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents
- **Third**: Married Sons and Daughters of Citizens
- **Fourth**: Brothers and Sisters of Adult Citizens
Diversity Immigrant (DV) Lottery

- Up to 55,000 immigrant visas a year
- For persons from countries other than the principal sources of current immigration to the United States
- www.dvlottery.state.gov
- Check around September/October
Employer-Based Sponsorship

- Most applicants will need an approved labor certification from the Department of Labor. Test of US job market
- Detailed recruitment is done in advance
- Applications can be filed online
- 45-60 days processing time per govt but now taking 9 months or longer
- Possible audits can delay processing significantly
Other Green Card Paths

- EB5 investments
- Exemptions from labor certification – intercompany manager/executive, Outstanding Ability
- National Interest Waivers
Life After OPT…

- Try to plan as far in advance as possible
- The more knowledge you have about US immigration laws, the more you can convince your employer about sponsorship
- Enjoy your time here in the US!