## NON-IMMIGRANT BUSINESS VISA CHART

**McCandlish Holton PC**

<table>
<thead>
<tr>
<th>VISA CATEGORY</th>
<th>DESCRIPTION</th>
<th>DURATION OF STAY</th>
<th>CRITERIA/SPECIAL RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Visa Waiver Program (VWP).</strong> Visitors; no visa required. Complete Form I-94W on airplane prior to entry.</td>
<td>For short stays as business visitor or tourist. Only for nationals of these countries: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, the Republic of Korea, Latvia, Liechtenstein, Lithuania Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan, United Kingdom.</td>
<td><strong>90 Days.</strong> No extension or change to another temporary visa. Can adjust to green card only if marry a U.S. citizen.</td>
<td>Roundtrip air ticket to country other than Canada or Mexico. Business visitor cannot be paid from U.S. source. Criteria: See B-1 below.</td>
</tr>
<tr>
<td><strong>B-1 Business Visitor.</strong> Apply at U.S. Consulate. Exception: Mexicans with border crossing cards and Canadians. Apply at port-of-entry.</td>
<td>Temporary business or professional activities furthering international trade/commerce.</td>
<td><strong>6 month initial stay with up to 6 month extension</strong> as needed to complete purpose of visit. Must have foreign residence which one has no intent to abandon. Liberal rules for Canadian/Mexican business visitors under NAFTA.</td>
<td>Except in construction industry, can enter to install/service equipment or software under international sales contract. Can consult, negotiate, take orders, participate in training or business meetings. Must not engage in local productive employment or be paid from U.S. source.</td>
</tr>
<tr>
<td><strong>E-1 Treaty Trader.</strong> Can apply at U.S. Consulate or CIS. Available to citizens of many countries under bilateral trade treaties or NAFTA for Canada and Mexico. Major exceptions: Brazil, China, Indonesia, Hong Kong, Russia, South Africa.</td>
<td>Alien coming to U.S. to carry on &quot;substantial trade&quot; between U.S. and alien's country or to be employed in key position in foreign-owned business carrying on &quot;substantial trade.&quot; Trade includes goods, services and technology.</td>
<td>No limit on stay. E-1 visa issued for 5 years with unlimited renewals. Admitted to U.S. for 2 years each time travel to U.S. on E-1 visa. While in U.S. can obtain unlimited number of 2 yr. extensions.</td>
<td>Must be business owner, manager, executive or key employee with essential skills. At least 50% of U.S. company must be owned by nationals of same treaty country as alien. No minimum volume of trade as long as can document regular flow of goods or services. Need not maintain foreign residence or overseas affiliate of U.S. company. Spouse can apply for work authorization in U.S.</td>
</tr>
<tr>
<td><strong>E-2 Treaty Investor.</strong> Can apply at U.S. Consulate or CIS. Available to citizens of many countries. Major exceptions: Brazil, China, Hong Kong, Indonesia, Greece, Israel, Russia, South Africa.</td>
<td>Alien coming to U.S. to make a substantial investment or be employed in key position in foreign-owned business, making substantial investment.</td>
<td>No limit on stay. E-2 visa issued for 1-5 years with unlimited renewals. Admitted to U.S. for 2 years each time travel to U.S. on E-1 visa. While in U.S. can obtain unlimited number of 2 yr. extensions.</td>
<td>Must be business owner or hired as executive, manager or employee with essential skills. U.S. company must be at least 50% owned by nationals of same treaty country as individual E-2 applicant (alien). Investment can be in local business. Enterprise need not maintain foreign office. No minimum investment or minimum number of employees but investment cannot be made solely to support alien &amp; immediate family. Substantial documentation of business plan and investment required. Spouse can apply for work authorization in U.S.</td>
</tr>
<tr>
<td><strong>E-3 For Australians.</strong> Can apply directly at U.S. Consulate or CIS.</td>
<td>Australians possessing university degree or the equivalent working in positions which requires a degree. Similar to H-1B.</td>
<td>No limit on stay. E-3 visa issued for 2 years with unlimited renewals. While in U.S., can obtain unlimited number of 2 year extensions.</td>
<td>E-3 is subject to a quota of 10,500. Very few E-3 visas are used, so the quota is not a concern. Spouse can apply for work authorization in the U.S.</td>
</tr>
</tbody>
</table>

**NOTICE:** This chart is a summary only and does not contain all of the technical information related to these visas. For further information, please contact The McCandlish Holton Immigration Practice Group Attorneys, Mark B. Rhoads (mrhoads@lawmh.com) 804-775-3824, Helen L. Konrad (hkonrad@lawmh.com) 804-775-3825, Jennifer A. Minear (jminear@lawmh.com) 804-775-3822, David E. Gluckman (dgluckman@lawmh.com) 804-775-3826, Jonathan L. Moore (jmoore@lawmh.com) 804-775-7272, Crystal M. Malik (cmalik@lawmh.com) 804-775-3811. Fax 804-249-9595, 1111 E. Main St, Suite 2100, Richmond, Virginia 23219; P.O. Box 796, Richmond, Virginia. 23218; www.lawmh.com. Copyright McCandlish Holton PC (01/13)
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<tr>
<td>F-1 Student Employees. Apply to Foreign Student Advisor (DSO).</td>
<td>Common Options: on-campus; Curricular Practical Training; economic hardship; Optional Practical Training, pre- and post-graduation.</td>
<td>Optional Practical Training (OPT) during full time study plus up to 12 months of post-graduation. STEM eligible for additional 24 months if work for employer.</td>
<td>No work until completed one year of study. Pre-completion OPT, can work full-time during vacation and summer, but may reduce 12 months post-graduation OPT.</td>
</tr>
<tr>
<td>H-1B Specialty Occupation Workers. Petition CIS in U.S.</td>
<td>Employee has at least a bachelor’s degree or equivalent; working in a job requiring a degree. May work part time or multiple concurrent employers.</td>
<td>3 years with 3 year extension for total of 6 years. Under special circumstances can extend beyond 6 yrs.</td>
<td>Employee must have 4 year college degree or equivalent. Must pay prevailing wage. Must post job notice and file Labor Condition Application. Cap on number of H-1Bs per yr. University jobs exempt from cap. Special quota for Singapore/Chile</td>
</tr>
<tr>
<td>J-1 Exchange Visitor/Trainee or Student. Apply with Department of State (DOS) or J-1 sponsor.</td>
<td>Business trainees, medical graduates, students, researchers, teachers in program approved by DOS</td>
<td>Business/Industrial trainees: 18 months. Students: For duration of studies. Scholars: 5 years with up to 6 months extension for good cause.</td>
<td>(Business Trainees). Can engage in productive employment under bona fide training program; college degree not required for J-1; can adjust to permanent residence/change status to other nonimmigrant category; may have to return abroad for 2 years after training, but can obtain waiver of 2 year foreign residency requirement. (Student). 18 months of academic training after graduation, if related to studies. 36 months if Ph.D. J-2 spouse/children can be employed.</td>
</tr>
<tr>
<td>L-1A Executive/Manager. Intra-Company Transferee. Petition filed with CIS in U.S.</td>
<td>Alien transferring from abroad to work as executive or manager. Can manage essential function without directly supervising others. Need not be college graduate or professional. May work part time in U.S.</td>
<td>New office L-1A: 1 year, three 2 year extensions to maximum of 7 years. Existing office L-1A: 3 years, two 2 year extensions to maximum of 7 years.</td>
<td>1 year of employment with affiliate, branch, subsidiary or parent corporation of U.S. employer within 3 years prior to entry. Salary can be from abroad or U.S. source. Blanket petition rules reduce employment abroad to 6 months. Spouse can apply for work authorization in U.S.</td>
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<tr>
<td>L-1B Specialized Knowledge Intra-Company Transferees.</td>
<td>Alien transferring from company abroad with specialized knowledge of company, products or processes. Need not be college graduate or professional.</td>
<td>New office L-1B: 1 year. Two 2 year extensions up to maximum 5 years. Existing office L-1B: 3 years, one 2 year extension up to maximum 5 years.</td>
<td>Same as L-1A. Spouse can apply for work authorization in U.S.</td>
</tr>
<tr>
<td>TN (Treaty NAFTA Visa). Canadians and Mexicans only.</td>
<td>Management consultants, scientific and medical technologists, computer systems analysts and other professionals.</td>
<td>3 years with unlimited renewals/extensions.</td>
<td>Self employment generally not permitted. Obtain TN at border from CIS. 3 year Canadian degree = U.S. bachelors degree.</td>
</tr>
<tr>
<td>O Visa – Outstanding Ability. Apply to CIS in U.S.</td>
<td>Outstanding ability in arts, athletics, science, business. Available to athletes, researchers, university faculty, renowned artists, outstanding business people.</td>
<td>3 year or duration of event; can extend for additional events.</td>
<td>Must show recognition and renown through at least 3 of following: Prizes/awards; membership in prestigious societies; review of work of others; contributions of significance to field; significant publications; high salary; published material about alien; employment in critical capacity.</td>
</tr>
</tbody>
</table>
EASY GUIDE TO HIRING
FOREIGN GRADUATES

Do not let fear of the simple visa process prevent you from hiring the best and brightest graduates available. U.S. law provides several ways for employers to hire foreign graduates of U.S. universities. For example, USCIS issues tens of thousands of H-1B work visas each year. In addition, graduates of U.S. institutions in F-1 status are eligible for “practical training” and are hired regularly by U.S. employers.

The two most common mechanisms for hiring foreign graduates are:

I. OPTIONAL PRACTICAL TRAINING: For graduates in F-1 student status, Optional Practical Training allows up to twelve months of employment after graduation (for those holding Science, Technology, Engineering, or Math (“STEM”) degrees, may get 24 additional months). The student must obtain permission from the university, and a work authorization card from USCIS. The university can provide additional information.

   Timing: F-1 Graduates can begin working upon the effective date of the work authorization card.

   Cost: No cost to employer. Student pays a nominal filing fee to USCIS to get card.

   Employer Obligations: Treat employees on practical training just like other U.S. employees in terms of pay, discipline, termination, etc. A brief jointly-developed training plan is required for STEM extensions.

II. H-1B VISAS: This is an extremely popular work visa. It is available to foreign nationals who (a) have at least a U.S. Bachelor’s Degree or foreign equivalent and (b) will be working in a job that requires at least a Bachelor’s Degree. Allows employment for 6 years, or longer. The employer must submit an application to USCIS.

   Employer Obligations:

   • There is no need to advertise the position, and no need to determine if U.S. workers are available to fill the position.

   • All Employers must post a notice for ten days at the worksite stating that the employer is hiring an H-1B worker, providing information about the job. This is NOT an advertisement. It is just a notice.

   • Employers must pay the same wage and benefits provided to U.S. workers in similar jobs. May need to pay return transportation in some circumstances.

   Timing: Normal processing times can take several months. However, USCIS has special “premium processing” which guarantees processing in 15 days, but requires an extra $1,410 filing fee.

   Cost: USCIS’ normal filing fee for private employers is $460, plus a $1,500 “training fee”, plus a “fraud prevention” fee of $500. (NOTE: University employers, primary/secondary schools and certain governmental and non-profit research organizations do not pay the “training fee”. Employers with 25 or fewer employees pay only $750 “training fee”). Employers with 50 or more employees and more than 50% of workforce in H or L status, additional fees apply.

   H-1B Cap: USCIS issues 85,000 new H-1B approvals each year (USCIS year—Oct. 1 through Sept. 30). Graduates with U.S. advanced degrees have special allocation of 20,000 H-1Bs out of the 85,000 quota. USCIS accepts cases beginning April 1 for Oct. 1 H-1Bs. Exceptions to the cap: University jobs; non-profits affiliated with universities; non-profit research organizations; H-1B extension with same employer; H-1B transfer to new employer. Citizens of Chile and Singapore have a special allocation of H-1Bs.

Other visa options may be available (for example TN for Canadians or Mexicans working in certain jobs; E-3 visa for Australians in professional positions, and other possible options)

Questions: Contact McCandlish Holton Immigration Practice Group – Mark Rhoads (mrhoads@lawmh.com) 804-775-3824; Helen L. Konrad (hkonrad@lawmh.com) 804-775-3825; Jennifer A. Minear (jminear@lawmh.com) 804-775-3822; David E. Gluckman (dgluckman@lawmh.com) 804-775-3826; Jonathan L. Moore (jmoore@lawmh.com) 804-775-7227; Crystal Malik (cmalik@lawmh.com) 804-775-3811. 1111 East Main Street, Suite 2100, Richmond, VA 23219.
H-1B FILING STRATEGIES, EXEMPTIONS AND ALTERNATIVES

Each year, U.S. Citizenship and Immigration Services (“CIS”) exhausts the full quota of 65,000 “bachelor’s degree” H-1Bs and the additional 20,000 quota for U.S. advanced degree holders. These quotas are exhausted quickly each year. As a result, many foreign students and employers seek alternatives to the H-1B. In addition, some employers qualify for an exemption from the H-1B quota.

The following is a summary of “exempt” employers, and alternatives to the H-1B, which may allow a foreign graduate to remain and work in the United States after graduation.

H-1B filing strategies

Before addressing exempt organizations and alternatives to the H-1B, the following is a summary of common issues regarding the H-1B quota:

- The 20,000 “advanced degree” quota is only available for individuals who possess an advanced degree from a US university at the time of filing. If you are in an advanced degree program, but have not yet completed the program at the time of filing, you do not qualify for the 20,000 quota. However, you still qualify to file in the 65,000 quota, if your undergraduate degree is related to the H-1B job.

- You can file an H-1B petition even if a diploma has not yet been issued for your current degree program, but ONLY if you have confirmation from the university official at your school who is responsible for conferring degrees that you have completed all requirements for the degree. It is not sufficient to get a letter that you “will” complete the degree after the H-1B petition is filed. The individual who confers degrees is typically the provost, or similar official, not a department chair.

- You can file H-1B petitions through multiple employers, but you cannot file multiple H-1B petitions with the same employer.

- Filing the H-1B petition using “premium processing” (15 day processing) does not give you a better chance of being selected in the quota. The only advantage of filing using premium processing is that you will know more quickly if you have been selected in the quota. When CIS is selecting cases in the H-1B lottery process, they gather all cases filed (premium and non-premium), and select the 85,000 cases for processing from the total
pool of applications. Once the cases are selected, CIS will send out receipt notices for the cases selected for processing. Premium processing cases will get the receipt notices by email, while “regular” processing cases will be notified by mail. Once the cases are selected in the lottery, and the receipt notices are sent, then CIS will adjudicate the case to approve the H-1B or deny it.

For individuals who are not selected in the H-1B quota, the following is a summary of employers who are “exempt” from the quota, and alternatives to the H-1B.

**Organizations exempt from the H-1B quota**

Certain organizations are exempt from the H-1B quota. Exempt organizations can file H-1B applications at any time, regardless of the quota. Exempt organizations include:

- Universities
- Non-profit organizations affiliated with universities (such as research facilities or hospitals)
- Non-profit research organizations, engaged primarily in basic or applied research
- Governmental research organizations (federal, state, or local government)

Note that there is no blanket exemption for “non-profits.” To be exempt from the quota, the non-profit either must be affiliated with a university, or must be a non-profit “research organization.”

**Alternatives to the H-1B**

Here are alternative visa categories that may allow work in the US:

1. **Optional Practical Training.** F-1 students can work in the U.S. for up to 12 months using Optional Practical Training (OPT). They can stay in the U.S. for 60 days after expiration of their OPT, but cannot work during that time.

2. **STEM Extension.** F-1 graduates in “STEM” degree programs (Science, Technology, Engineering, Mathematics) can obtain an additional 24 months of OPT (for a total of 36 months) if they are employed by an employer which registers for the federal “E-verify” program. E-verify is an electronic program to verify the employment authorization of employees in the U.S. The employer and the student must also develop a detailed “training” program with measurable training objectives, and mechanisms for monitoring progress towards those objectives.

3. **TN status (Canadians and Mexicans).** Under the NAFTA treaty, citizens of Canada and Mexico can work in the U.S. in TN status in certain designated jobs or professions listed in the treaty. Common TN occupations include engineer, architect, computer systems analyst, management consultant, hotel manager,
registered nurse, social worker, librarian, dentist, statistician, and physical therapist. Individuals who qualify for TN status can work in the U.S. in three year increments, renewable indefinitely.

4. **H-1B (Chileans and Singaporeans).** There is a special quota of 6,800 “H-1B1” visas available to citizens of Chile and Singapore. Like the H-1B, H-1B1 status requires that the applicant possess a bachelor’s degree or the equivalent, and the job must require at least a bachelor’s degree as a minimum entry level requirement. H-1B1 status is granted in one year increments. Unlike H-1B, individuals in H-1B1 status must have an unabandoned foreign residence to which they intend to return.

5. **E-3 for Australians.** Under a treaty of trade with Australia, the United States allows the citizens of Australia to qualify for E-3 status. Like H-1B, the applicant must possess a bachelor’s degree or the equivalent, and must work in a job that requires a bachelor’s degree. E-3 status is issued in two year increments, renewable indefinitely. There is a quota of 10,500 E-3 visas available. It is unlikely this quota will ever be exhausted.

6. **E-1 and E-2 status.** Certain countries have treaties of trade or commerce with the United States. Citizens of countries that have a treaty of trade or commerce with the United States can qualify for E-1 or E-2 status. E-1 allows an individual of a treaty country to start his/her own business in the U.S. to engage in trade with their home country (at least 50% of the trade must be with the individual’s country of citizenship). The individual can also work for a company which is majority owned by citizens of the individual’s country of citizenship, also engaged in substantial trade between the U.S. and the country of citizenship. E-2 status allows an individual from a treaty country to start his/her own business in the United States, provided that the business requires substantial “investment” in the United States. The individual can also work with a company in the U.S. owned at least 50% by nationals of the individual’s country of citizenship, provided that the business represents a substantial investment in the United States. These are very complicated visas but can be excellent options in appropriate circumstances. For example, a citizen of France could open up his/her own financial consulting business, or work for a French-owned financial consulting organization in the U.S. Notable countries which do not have treaties of trade or commerce with the U.S. include China and India. A listing of eligible countries is attached.

7. **L-1 Visa.** L-1 visas are for individuals who have worked for a company outside of the U.S. for at least one year, who will now work in the U.S. for a parent, branch, subsidiary or affiliate of the same company. L-1 visas are available to allow individuals to work in managerial or executive positions, or positions which require “specialized knowledge” of the company’s operations, technology, etc.

8. **O Visas.** O visas are available for individuals with extraordinary ability in their particular field of expertise. This can be shown by significant contributions to a particular field of expertise, peer-reviewed publications, presentations at
important conferences, national or international prizes or awards, serving as a judge of the work of others, and other objective evidence of the individual’s reputation as a leader in a particular field of expertise.

9. J-1 visas are for “trainees” or “interns” who have earned degrees outside the U.S. and/or who have certain work experience outside the U.S. Eligibility requirements for these programs are as follows:

**J-1 Intern**

Students and recent graduates may qualify to participate in a J-1 “intern” program, but only if they:

- Are currently enrolled in and pursuing studies at a post-secondary academic institution outside the U.S.; or

- Have graduated from a post-secondary academic institution outside the U.S. no more than 12 months prior to their J-1 program start date.

**J-1 Trainee**

As an alternative, foreign nationals may participate in a J-1 “trainee” program if they:

- Have a degree or professional certificate from a post-secondary academic institution outside the U.S. and at least one year of prior related work experience outside the U.S. in the occupational field in which they are seeking training; or

- Have five years of work experience outside the U.S. in the occupational field in which they are seeking training.

If you satisfy these factors, and you have a company willing to host you for a training program, this may be an option.

10. **Green Card.** Pursuing a permanent resident green card may provide a basis for continued work in the U.S. However, it can take many years to complete the green card process, depending on a variety of factors (nationality of the applicant, degree required for the position, etc.). So, this option is of limited use for most graduates. There may also be family-based options for permanent residence.

11. **Work Outside the U.S.** A foreign graduate can work for an employer outside the U.S. without a U.S. work visa.

12. **Return to School.** Many foreign graduates re-enroll in school in F-1 status if they miss the H-1B quota.
### Eligible Countries for E-2

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<thead>
<tr>
<th>Albania</th>
<th>Czech Republic</th>
<th>Kyrgyzstan</th>
<th>Serbia</th>
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<tr>
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<td>Latvia</td>
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<td>Armenia</td>
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<td>Australia</td>
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<td>Bahrain</td>
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<td>Switzerland</td>
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<td>Bosnia &amp; Herzegovina</td>
<td>Grenada Havana</td>
<td>Morocco</td>
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<td>Trinidad &amp; Tobago</td>
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<td>Congo</td>
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<td>Paraguay</td>
<td>Ukraine</td>
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<tr>
<td>(Brazzaville and Kinshaha)</td>
<td>Kazakhstan</td>
<td>Philippines</td>
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<td>Costa Rica</td>
<td>Korea (South)</td>
<td>Poland</td>
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<td>Denmark</td>
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### Eligible Countries for E-1

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<td>Yugoslavia</td>
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WORK OPTIONS FOR FOREIGN STUDENTS

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Website: www.lawmh.com
VISA CATEGORIES FOR STUDENTS

- F-1 – Foreign students attending academic college or university
- J-1 – “Exchange visitor” or trainee often used for graduate students, medical residents, etc.

Dependent Visas – Students whose parents are in the U.S. on a work visa such as H-1B (H-4), L-1 (L-2), E Visa, etc.
PRE-GRADUATION WORK (F-1)

1. **On-campus employment**
2. **Curricular Practical Training (CPT)** – Integral part of established program (work/study)
3. **Optional Practical Training (OPT)** – 12 months of OPT for F-1; use during degree program or after graduation
4. **Economic Hardship** – Extreme, unforeseen economic hardship such as loss of parents, currency crisis, political unrest
5. **Designated International Organizations** – Certain organizations are permitted to hire F-1 students for work experience (United Nations, IMF, World Bank, etc.)
6. **Volunteer** – Almost never an option
POST-GRADUATION EMPLOYMENT

- Employers like qualities of international students - smart, independent, motivated
- Employers do not understand visas
- Students must understand the immigration process, and be able to explain
TYPICAL POST- COMPLETION EMPLOYMENT PATH

- F-1 - Optional Practical Training (12 or 36 months)
  - or
- J-1 – Academic Training (18 or 36 months)
  - then
- H-1B – Most common work visa (6 years of work eligibility)
- Then Green Card (if desired)
  - Family-based
  - Employment-based
INTRODUCTION TO U.S. IMMIGRATION LAW

- **Permanent Resident Green Cards:**
  - Live forever in the United States
  - Ease of Employment
  - Ease of Travel
  - Only limited ways to obtain / lengthy processing

- **Temporary Non-Immigrant Visas:**
  - Many categories (A – V)
  - Few allow employment
  - Focus on:
    - F-1 – OPT
    - H-1B
EMPLOYER CONCERNS

- Cost
- Timing
- Obligations and Responsibilities
WORK AFTER GRADUATION

- **Optional Practical Training (F-1)**
  12 months of OPT post-graduation (reduced by OPT used pre-graduation)
  - Allows work for any job related to degree
  - Must get work card (Employment Authorization Document)
  - Can apply for card up to 90 days before completion of program, or up to 60 days post-completion
  - Must apply within 30 days of OPT authorization from Foreign Student Advisor
  - Can make card effective up to 60 days post-completion
  - 90 – 120 day processing time
  - No more than 90 days of unemployment permitted
Recently Updated Rule (effective 05/10/2016):

- **24 months of post-graduation employment AFTER completion of initial 12 months of OPT**
  - F-1 student must have obtained qualifying Science, Technology, Engineering or Math (STEM) degree
  - Must apply **before** initial OPT expires and within 60 days of Foreign Student Advisor’s authorization for STEM extension
  - Employer MUST be enrolled in E-Verify
  - Students/employers must prepare a “Training Plan”
  - No more than 150 total days of unemployment, including any time during initial 12 months of OPT
  - Reporting obligations to DSO for students and employers
E-VERIFY

- **Internet-based system for verifying work authorization**
  - Employer must be enrolled in order for student to apply for 24-month STEM extension
  - Required for companies that have federal contracts or subcontracts and in some states
  - For others, it is generally voluntary (for now)
QUALIFYING “STEM” DEGREES

- Compare CIP Code on Form I-20 with the “STEM Designated Degree Program List”

- U.S. degrees obtained within the last 10 years generally can be used as a basis for the STEM OPT extension, as long as program is on current STEM list
  - But, job must relate to that prior degree
  - Prior degrees cannot be used to obtain two consecutive STEM OPT extensions
TRAVEL ON OPT

- ANY travel by an F-1 student is risky because you MUST show intent to return to home country.
- If you choose to travel, you will need:
  - Endorsed I-20
  - Valid Visa
  - Employment Authorization Document (EAD)
  - Employment letter

- Absence of ANY presents additional risk:
  - Travel after applying for H-1B is not advised.
WORK AFTER GRADUATION

- **H-1B – Most Common Work Visa**
  - Employer must “sponsor” (offer a job that requires a degree)
  - Applicant must have degree
  - Degree must relate to the job
  - Employer must pay “prevailing wage”
    - Level 1 wage concern
  - No need to advertise for U.S. workers
H-1B ISSUES

- **Duration**
  - 3 years initially
  - 3 year extension
  - 6 year maximum

- **Scope of H-1B Authorization**
  - Can only work for this employer, doing what was described on the petition in the location described on the petition

- **Change Employer**
  - New employer must file new petition
  - But can begin working as soon as new petition is filed without waiting for approval
H-1B ISSUES

**Cost - Who Pays?**

- Attorney Fee

**CIS Filing Fees**

- Base fee - $460 (as of 12/23/2016)
- Fraud Prevention Fee - $500
- “Training Fee” - $1500 ($750 for 25 employees or less)
- Optional Premium Processing Fee (15 days) - $1410
- Additional $4000 fee for companies with 50 or more employees, and 50% or more of workforce is H-1B or L.
H-1B QUOTAS

- **CIS FISCAL YEAR**: October 1 – September 30

- **Quotas**:
  - 85,000 H-1Bs available
  - U.S. Advanced Degree Applicants – 20,000
  - All Degrees – 65,000

- **Current availability**: ?
BEAT THE H-1B CAP

<table>
<thead>
<tr>
<th>April 1</th>
<th>May</th>
<th>October 1</th>
<th>January 1</th>
<th>April 1</th>
<th>May</th>
<th>September 30</th>
</tr>
</thead>
</table>

- October 1  –  new quota released
- April 1    –  pre-filing for new quota
- May/Dec    –  graduation & OPT
H-1B “CAP GAP” RELIEF

- If you file an H-1B application on or after April 1, AND
- OPT is still valid at the time of filing, THEN
- OPT is extended until September 30
H-1B EXEMPT ORGANIZATIONS

- Universities

- Non-profit organizations affiliated with universities (such as research facilities or hospitals)

- Non-profit research organizations, engaged primarily in basic or applied research

- Governmental research organizations (federal, state, or local government)
H-1B ALTERNATIVES

- Canada, Mexico, Chile, Singapore, Australia
- L-1 Manager / Executive / Specialized Knowledge. Work overseas for one year; now working for affiliate in United States
- E treaty investor/trader (not China, India) working for companies owned by citizens of your country in the United States
- Re-enroll in full-time study (F-1 or J-1)
- Other possible options are very limited (O-1, Q, J-1). Consult qualified immigration specialist
GREEN CARD

- Limited Ways to Obtain
  - Family Relationships
  - Lottery
  - Employment/Special Skills
    - EB-1 – Extraordinary / Outstanding / Multi-national
    - EB-2 - Advance Degree / Exceptional
    - EB-3 - Bachelor’s Degree/ Skilled worker
  - PERM Processing – lengthy
  - Must maintain non-immigrant status
EXTEND H-1B BEYOND 6 YEARS

- Normal length of H-1B – 6 years
- Can Extend for the following:
  - Recapture time outside the U.S.
  - Green card pending at least 1 year – can extend H-1B in 1 year increments
  - Approved I-140, but no quota number to adjust - - 3 year extension
PROPOSED POINT BASED IMMIGRATION

- Reduces total number of green cards that can be issued

- Points awarded for:
  - Age
  - Education level
  - English proficiency
  - Extraordinary achievement
  - Job offer
  - Investment
CHOOSING AN ATTORNEY

- **Location** - Irrelevant
  - Immigration law is federal, not state specific
  - All H-1B filings are done centrally in California or Vermont

- **Knowledge and Experience** – Very Relevant
  - Cheaper is NOT better
  - **One** chance to file
RESOURCES

- www.lawmh.com
  - Practice Areas
  - Immigration

- Mark Rhoads
  mrhoads@lawmh.com
  (804) 775-3824

- Helen Konrad
  hkonrad@lawmh.com
  (804) 775-3825
## BUSINESS & EMPLOYMENT-BASED PERMANENT RESIDENCE ("Green Cards")

### VISA CATEGORY

<table>
<thead>
<tr>
<th>Description</th>
<th>Criteria/Special Rules</th>
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<tbody>
<tr>
<td><strong>First Preference Priority Workers (EB-1).</strong></td>
<td>Sustained national/international acclaim; extensive documentation. Must intend to continue work in area of extraordinary ability. No job offer required. Can be self-employed. Must show receipt of major prize (Nobel) OR 3 of following: lesser prizes; membership in prestigious societies; published material about alien; work judging the work of others; significant contributions to field; authorship of scholarly articles; display of work; employment in leading or critical capacity; high salary; other.</td>
</tr>
<tr>
<td><strong>A. Persons of Extraordinary Ability in business, sciences, arts, education or athletics.</strong></td>
<td>International recognition; 3 years experience as professor and/or researcher in the academic field; requires documentation showing research achievements of alien similar to Extraordinary Ability. Must have a job offer letter stating that teaching position is tenured or tenure-track or that research position is permanent. Available for university positions, and for private employers with at least three (3) full-time research positions and demonstrated research achievements.</td>
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<tr>
<td><strong>B. Outstanding Researcher or Professor.</strong></td>
<td>Transfer from non-U.S. entity to related U.S. entity. Must have worked abroad as manager or executive for a foreign parent, subsidiary or affiliate of U.S. company for at least 1 year within 3 years of entry into U.S. College degree not required. U.S. company must be in business for at least 1 year prior to filing of petition. Foreign entity must also continue to operate.</td>
</tr>
</tbody>
</table>

### NOTICE:
This chart is a summary only and does not contain all of the technical information related to these visas. For further information, please contact The McCandlish Holton Immigration Practice Group Attorneys, Mark B. Rhoads (mrhoads@lawmh.com) 804-775-3824, Helen L. Konrad (hkonrad@lawmh.com) 804-775-3825, Jennifer Minear (jminear@lawmh.com) 804-775-3822, David E. Gluckman (dgluckman@lawmh.com) 804-775-3826, Jonathan L. Moore (jmoore@lawmh.com) 804-775-7227, Crystal M. Malik (cmalik@lawmh.com) 804-775-3811. Fax 804-249-9595, 1111 E. Main St, Suite 2100, Richmond, Virginia 23219; P.O. Box 796, Richmond, Virginia. 23218; www.lawmh.com.
### Second Preference Employees (EB-2).

PERM Labor Certification, Job Notice and Advertisement required, unless candidate qualifies for National Interest Waiver.

Three types:
- A. Exceptional Ability/ National Interest Waiver
- B. Advanced degree professionals
- C. “Optional Special Recruitment” for university teaching faculty

A. Exceptional Ability in Sciences, Arts or Business. Can obtain National Interest Waiver (“NIW”) of Labor Certification and Job Offer requirements by showing how alien's activities will substantially benefit national interest (work will substantially improve: U.S. economy, wages and working conditions of U.S. workers, education and training programs for U.S. children, health care, environment, use of natural resources, scientific pursuits, etc.).

USCIS Regulations require proof of 3 of the following 6 factors: college degree in field; 10 years experience; recognition of achievements; high salary; licenses; or membership in professional associations. Must show that work is in the national interest, and that advertising to find a qualified U.S. worker would harm national interest.

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<tr>
<td>B. Professionals holding advanced degrees (M.S. M.A., J.D., M.D. Ph.D., etc.) must obtain PERM Labor Certification with job offer, unless you qualify for a National Interest Waiver.</td>
<td>Can qualify with M.S. degree or foreign equivalent; or B.A. or B.S. or foreign equivalent and 5 years of post-baccalaureate progressive experience in the specialty.</td>
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<tr>
<td>C. University “Optional Special Recruitment”.</td>
<td>Streamlined advertising requirements for tenured or tenure track teaching faculty if labor certification filed within 18 months of university decision to hire. If outside 18 months, more extensive advertising is required.</td>
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</table>

### Third Preference Skilled Workers, Professionals and Others (EB-3).

Labor Certification required. Job notice and advertising required. PERM processing can reduce processing times.

A. Skilled workers and managers. No college degree required.

Position must require 2 years training or experience.

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<tr>
<td>B. Professionals.</td>
<td>Professionals must have B.A. or B.S. degree or its foreign equivalent in the field.</td>
<td></td>
</tr>
<tr>
<td>C. Unskilled workers.</td>
<td>Full-time employees in jobs not requiring 2 years experience or training.</td>
<td></td>
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# FAMILY BASED PERMANENT RESIDENCE

McCandlish Holton PC

US law allows individuals who are U.S. citizens or permanent residents to sponsor certain family members for permanent residence. Below is a listing of the eligible individuals:

## I. U.S. Citizens can sponsor

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<tbody>
<tr>
<td>a.</td>
<td>Husband or wife (no quota)</td>
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<tr>
<td>b.</td>
<td>Unmarried child under 21 years of age (no quota)</td>
</tr>
<tr>
<td>c.</td>
<td>Unmarried son or daughter over 21</td>
</tr>
<tr>
<td>d.</td>
<td>Married son or daughter of any age</td>
</tr>
<tr>
<td>e.</td>
<td>Brother or sister, <strong>if the sponsor is at least 21 years old</strong>, or</td>
</tr>
<tr>
<td>f.</td>
<td>Parent, <strong>if the sponsor is at least 21 years old. (no quota)</strong></td>
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## II. U.S. Permanent Residents can sponsor

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<td>Husband or wife, or</td>
</tr>
<tr>
<td>b.</td>
<td>Unmarried son or daughter of any age.</td>
</tr>
</tbody>
</table>

## III. Preference Categories

There are strict quotas for all family-based permanent resident applications except “immediate relatives” of U.S. citizens, which includes parents, spouses and unmarried children under the age of 21. The quotas for all other eligible family members are allocated by “preference” categories. Because the number of applications far exceeds the quotas, most preference categories are backlogged many years. To determine wait times for quotas, visit [www.state.gov](http://www.state.gov), and review the monthly “Visa Bulletin” for the appropriate preference category.

| First preference: | Unmarried, adult sons and daughters of U.S. citizens. Adult means 21 years of age or older. |
| Second Preference: | Spouses of lawful permanent residents, their unmarried children (under twenty-one), and the unmarried sons and daughters of lawful permanent residents. |
| Fourth Preference: | Brothers and sisters of adult (over 21) U.S. Citizens. |