

"In no other realm of our national life are we so hampered and stultified by the dead hand of the past, as we are in this field of immigration. We do not limit our cities to their 1920 boundaries --- we welcome progress and change to meet changing conditions in every sphere of life, except in the field of immigration."

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“The time to shake off this dead weight of past mistakes is now. The time to develop a decent policy of immigration – a fitting instrument of our foreign policy, and a true reflection of the ideals we stand for, at home and abroad is now.”

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Agenda

- + Employment Visa System
- + Temporary Work Visas
- + STEM College Graduates
- + Green Cards
- + President Obama's Executive Actions
- + Questions



Part Two
OVERVIEW
of Employment Visas

Facts and Figures

- USA population is 320 million;
- Nearly 1 million foreigners obtained U.S. green cards in fiscal 2013;
- Family reunification is top priority;
- 66% of green cards based on family relationships

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Employment Green Cards

- 140,000 visas a year
- 7% limit per country
- Protections for US workers
- 5 categories of employment green card visas
- Backlogs of 6-12 years for nationals of India and China

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Part Three TEMPORARY WORK VISAS

Business Visitor

Visa Waiver

- Nationals of 38 countries do not need visas to visit;
- Exception: Born in Iraq, Syria, Iran, or Sudan -- or traveled there since March 1, 2011;
- Traveled to Libya, Somalia or Yemen since March 1, 2011.

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B-1 Visa Approvals

Purpose: To negotiate contracts, consult with clients, attend conventions, assist foreign business on temp basis.

Ex: Business trainers, trainees, equipment installer pursuant to sales contract, corporate personnel setting up U.S. subsidiary

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B-1 Visa Denials

Not Allowed: To perform skilled or unskilled labor for gainful employment

Ex: Entertainers, construction workers, tech workers under contract

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NEWS
TESLA



B-1 Visa Violation by Subcontractor
Foreign construction workers must be supervisors

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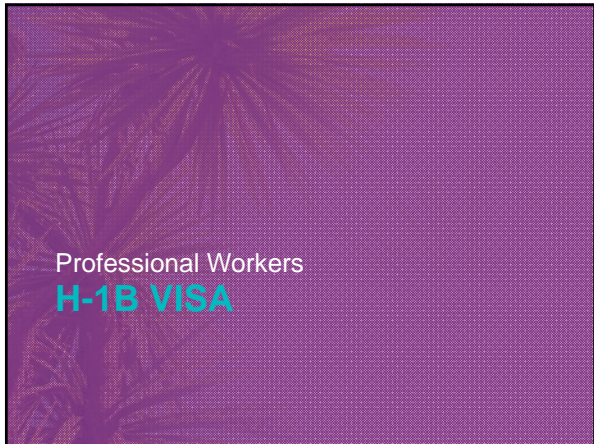
\$34 million fine in 2013 for misuse of B-1 visa
Brought employees to perform work, such as coding and programming, but said visas were for meetings and discussions

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Best Practices for B-1 Visa

- Specify proposed activities and legal basis;
- Apply well in advance
 - Delays in India of up to 100 days for consular interview

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H-1B Visa

- Specialty occupations
- Highly specialized knowledge
- Bachelor's degree or higher in specialty
- Employer must pay "required wage" – actual wage or prevailing wage, whichever is higher

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H-1B Visa

- 65,000 visas per year
- 20,000 additional visas for U.S. advanced degree applicants
- Exemptions for higher education and affiliated non-profit and research organizations

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H-1B Lottery

- Apply April 1 for Oct. 1 start;
- 236,000 applicants in FY 2017;
- Nearly 2/3 rejected;
- 70% of visas in 2014 went to workers from India;
- No limit on number of applications a company can submit; but only one per applicant;
- 13 outsourcing/consultancy companies took nearly 1/3 of visas

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Labor Condition Application

- 1) Pay the same as other workers with similar qualifications OR pay the prevailing wage, whichever is higher;
 - 2) Employment will not adversely affect working conditions of US workers;
 - 3) No strike or lockout;
 - 4) Current employees notified of intent to hire H-1 workers.
- Additional attestations for H-1B dependent employers

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LCA

- Post notice of intent to file LCA for 10 days in 2 conspicuous sites at worksite;
 - Number of H-1B Nonimmigrants, Rate of Pay, Position Title, Period of Employment, Place of Employment, Contact Information
- Within 30 days of posting, file LCA online
- LCA decision within 7 biz days of filing

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Websites

Department of Labor

- FLC: <http://www.flcdatacenter.com>
- LCA: <https://icert.doleta.gov/>
- O*Net: <https://www.onetonline.org/>

US Citizenship and Immigration Services

- Form I-129: <https://www.uscis.gov/i-129>

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Reminders for Staffing Companies

- Pay "benched" employees
- Post LCA at subsequent employers' offices
- Prove that employer (not contractor) controls worker (through salary, benefits, oversight)
- File amended H-1B if subcontracted employee changes geographic location area (MSA)

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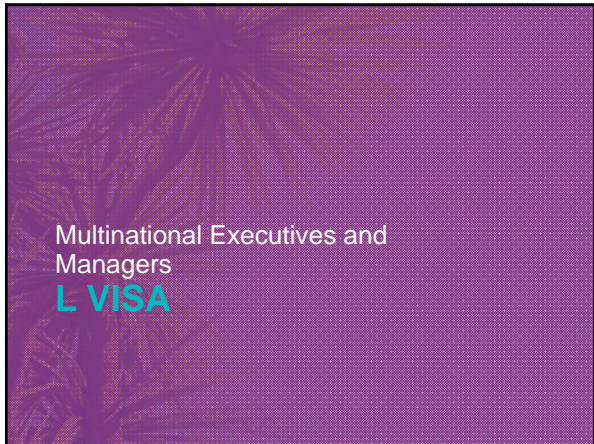
H-1B Entrepreneurs

- Global Entrepreneur in Residence
- Universities are cap-exempt
- STEM graduates

<http://www.globaleir.org/>

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L-1A for Multinational Exec/Manager

- Must have worked 1 of last 3 years in company abroad;
- Executives should direct goals and policies; not admin duties;
- Managers must supervise professionals or manage “essential function”
- Spouse eligible for work permit

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L-1B Specialized Knowledge

- Distinct or uncommon knowledge of company product, or advanced (greatly developed) knowledge

The knowledge:

1. Is not generally found in industry
2. Is particularly beneficial to employer's competitiveness
3. Has resulted in assignments that significantly enhanced employer's productivity, image, competitiveness, or finances
4. Can be gained only through prior experience with employer
5. Cannot be easily transferred or taught to another individual
6. Is significant, complex, or of a highly technical nature

- If meet at least one factor, may satisfy “preponderance of evidence” standard

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L-1B Visa Approvals

- Tech support engineer w/advanced knowledge of mechanical components;
- Senior sales engineer for company that manufactures unique superplastic forming products;
- Marketing specialist for special steels

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L-1B Visa Denials

- Marketing manager for co. with specialized patented herbicide;
- Consultant providing assistance with software system

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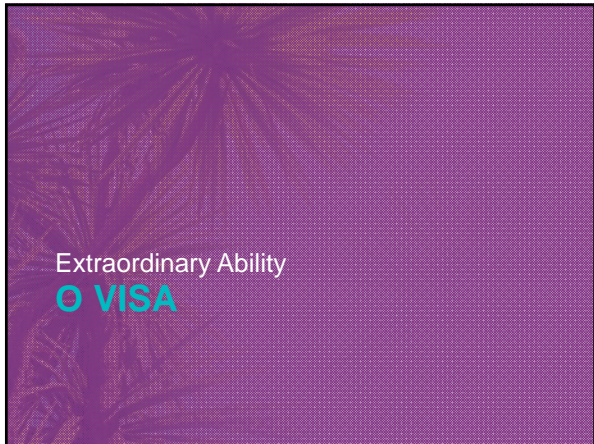
Blanket L petition

Establishes intracompany relationship for future L visa applicants if company:

- Has 3 or more branches in US and abroad;
- Has US office for at least one year;
- Combined US sales of \$25 million, or 1,000 employee workforce, or >9 L visa approvals in last year.

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O-1 Visa

- O1A: Extraordinary ability in science, education, business, athletics;
- O1B: Arts and TV/film;
- Can be extended indefinitely;
- Requires consultation letter from union or peer group;
- Temporary visa vs. green card.

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Criteria for O-1A

1. Awards
2. Member of org. that requires outstanding achievement
3. Published material about employee in professional or trade media
4. Judgment of the employee's work by others
5. Original scientific or scholarly work of major significance
6. Authorship of scholarly work
7. Employed in critical or essential capacity at organization with distinguished reputation
8. Has or will command high salary compared to others in field.

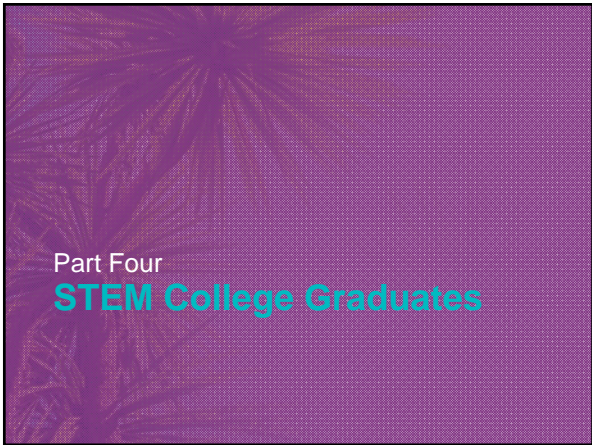
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TN Visa

- Available to professionals from Canada and Mexico;
- Up to 3 years, can be renewed indefinitely;
- Avoids USCIS;
- Must be a listed profession:
<http://www.sice.oas.org/trade/nafta/chap-162.asp>

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Expanded Optional Practical Training for STEM graduates

- Went into effect on May 10, 2016
- 36 month OPT for STEM grads
- Can use additional STEM degree for another 36 months
- Must submit form I-983 to Designated School Officer (DSO) w/in 10 days of start date

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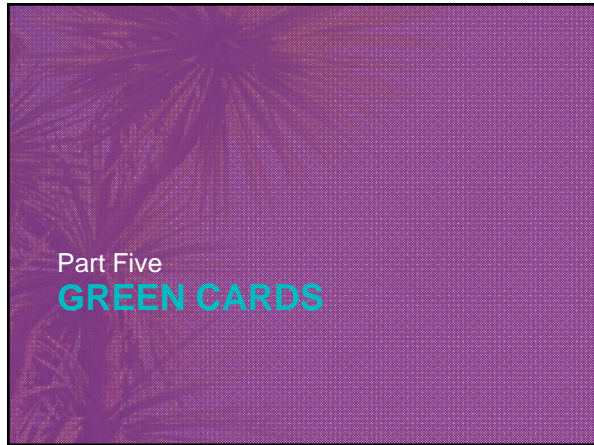
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Form I-983 & Training Plan

- Terms and conditions similar to US worker
- Will not take job of US worker
- Describe tasks, supervision, skills gained, metrics for evaluation
- Annual student evaluations
- Job must relate to STEM degree
- DSO must sign off on training plan
- No staffing companies

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Green Card Preference System

EB-1 Priority Workers

- Extraordinary Ability
- Outstanding Professors/Researchers
- Multinational Executives/Managers

Considerations:

- No labor certification required;
- Shorter or no wait for visa;
- Worker can change employers.

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Second Preference (EB-2)

- i. Advanced degree professional (master's or bachelors + five years' experience)
- ii. Exceptional ability in sciences, arts or business
 - Labor certification required unless obtain National Interest Waiver

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Third Preference (EB-3)

- i. Professionals with bachelor's degree
- ii. Skilled Workers
 - requires at least 2 years' training or experience
- iii. Other Workers
 - less than 2 years' training or experience

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Labor Certification Process

- No U.S. worker is qualified and willing to take job;
- Foreign worker will not displace US worker or harm wages or working conditions of U.S. worker;
- Test labor market by placing ads and interviewing applicants.

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A. APPLICATION FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is earlier than the final action date listed below.)

	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
Employment-Based						
1st	C	01JAN10	C	01JAN10	C	C
2nd	01FEB14	01JAN10	01FEB14	15NOV04	01FEB14	01FEB14
3rd	15MAR16	01JAN10	15MAR16	08NOV04	15MAR16	15MAY09
Other Workers	15MAR16	01JAN04	15MAR16	08NOV04	15MAR16	15MAY09
4th	C	C	01JAN10	01JAN10	01JAN10	C
Certain Religious Workers	C	C	01JAN10	01JAN10	01JAN10	C
5th	C	15FEB14	C	C	C	C

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is earlier than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 5.A.) this month for filing applications for adjustment of status with USCIS.

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01JUN13	01JUL09	C	C
3rd	C	01MAY15	01JUL05	C	01JAN13
Other Workers	C	01AUG09	01JUL05	C	01JAN13
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C



Obama's Executive Actions

- Supreme Court decision in June
- No relief for undocumented parents
- No expansion of Deferred Action for Childhood Arrivals (DACA)
- Original DACA is valid
- What happens next year?

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Part Seven
QUESTIONS

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