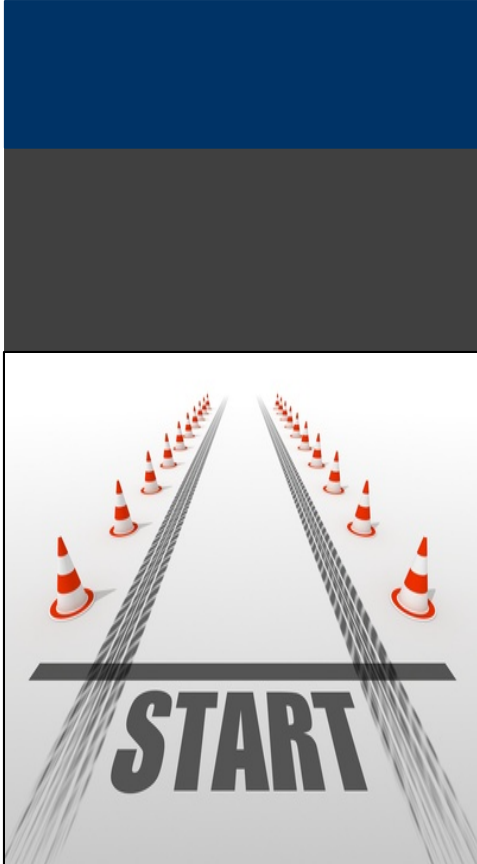


Obtaining H-1B Status and Employment-Based Immigration

March 5, 2021

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Session Highlights



Brief Overview of H-1B Visa Category

H-1B Cap Registration Process for FY 2022

Update on New Wage Based H-1B Cap Selection for FY 2023 and DOL Prevailing Wages on 7/1/2021

Employment-Based Immigration

Questions

H-1B – Requirements and Considerations

- **Job offer required.**
- Position must be a “**specialty occupation**”:
 - Require at least a Bachelor’s degree in a *specific* specialty.
- Labor Condition Application (LCA) required:
 - Employer must pay *higher* of prevailing wage or actual wage.
- Foreign national must qualify for the position, including have the required Bachelor’s degree or equivalent.
- Maximum period of stay: 6 years (with some exceptions).
- H-4 dependents can’t work (with some exceptions).
- Dual intent (nonimmigrant and immigrant).

H-1B Cap

- H-1B Cap – limitations on new H-1B in each fiscal year:
 - 65,000 regular cap
 - 20,000 US advanced degree cap
- Earliest start date is October 1 for H-1B cap-subject petitions



H-1B Cap Registration Process for FY 2022, and Update on H-1B Lottery Wage-Based Allocation System

FY2022 H-1B Cap Process

- Employer registration required. Employers must complete registration process for each H-1B petition it intends to file. Employers cannot substitute beneficiaries/employees.
- Employers must prepare **now** for registration:
 - Registration period is limited: **Noon ET March 9, 2021 through Noon ET March 25, 2021**. Requires payment of a \$10 fee for *each* H-1B petition the employer seeks to file.
 - After Registration Period closes, USCIS will apply a random selection process to the registrations to determine which petitions may proceed with filing.
 - Limited window for filing H-1B petitions once notified of selection.

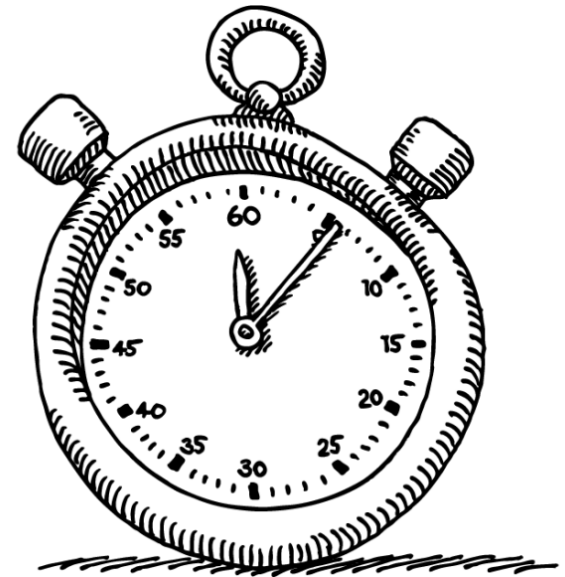
Selection Notifications of Registrations



- The volume of registrations will likely exceed the H-1B cap limitations.
- USCIS will conduct a lottery of the registrations for the FY2022 H-1B numerical allocations after the initial registration period closes.
- USCIS plans to notify registrants selected in the lottery no later than **March 31, 2021.**

Timing and Next Steps

- Following selection, employers will have at least **90 days to file the H-1B petition; April 1st is the earliest date that H-1B cap-subject petition may be filed.**
- May want to file the H-1B petition well before the 90-day window for various reasons, such as for F-1 students needing the H-1B cap gap rule.
- Second lottery/round of selection.



H-1B Cap Process: FY2023 and Beyond

- Wage Based H-1B Selection System: Effective date delayed until 12/31/2021
- Rank and select registrations
 - Rank based on the highest OES (DOL's Occupational Employment Statistics) prevailing wage level that the offered wage equals or exceeds for the relevant SOC (Standard Occupational Classification) code and area(s) of intended employment, beginning with OES wage level IV and proceeding in descending order with OES wage levels III, II & I.
 - Random Selection among all registrations within a particular wage level.
 - Multiple work locations: rank based on the lowest corresponding OES wage level.

H-1B Cap Process: FY2023 and Beyond (cont'd)

Foreign Labor Certification Data Center
Online Wage Library
www.flcdatacenter.com

Wage Library

Quick Search
Search Wizard

Case Disclosure
Data Archive

H1B Data
H2A Data
H2B Data
Perm Data

Also available:

File Archive

FLC Wage Results New Quick Search New Search Wizard

You selected the All Industries database for 7/2020 - 6/2021.

Your search returned the following: [Print Format](#)

Area Code:

26420

Area Title:

Houston-The Woodlands-Sugar Land, TX

OES/SOC Code:

17-2141

OES/SOC Title:

Mechanical Engineers

GeoLevel:

1

Level 1 Wage:

\$33.32 hour - \$69,306 year

Level 2 Wage:

\$42.57 hour - \$88,546 year

Level 3 Wage:

\$51.83 hour - \$107,806 year

Level 4 Wage:

\$61.08 hour - \$127,046 year

Mean Wage (H-2B):

\$51.83 hour - \$107,806 year

- *Proposed changes* to the H-1B electronic registration:
 - Include the highest wage level that the beneficiary's proffered wage equals or exceeds for the relevant SOC code in the area of intended employment.
- USCIS may deny or revoke approval of a subsequent new or amended petition if proffered wage is later decreased to a lower wage level.

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DOL Final Rule on Computation of Prevailing Wage (PW) Level

- Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States:
 - **Significantly higher prevailing wages** for all occupations and all wage levels.
 - The average increase in entry-level/entry-level wage may be 28 to 34 percent for occupations such as Biochemist, Biophysicist, Software Developer, Database Administrator, and Computer Programmer.
- DOL delayed effective date from 03/15/2021 to 05/14/2021.
- May impact second-round H-1B cap selection: File LCAs before selection is confirmed.
- Use of alternative wage surveys for LCAs and PWDs.

Differences Between Current and New Prevailing Wage Levels

Skill Level	Current Percentile	New Rule Percentile
I	17th	35th
II	34th	53rd
III	50 th	72nd
IV	67th	90th

Overview of Employment-Based Immigration

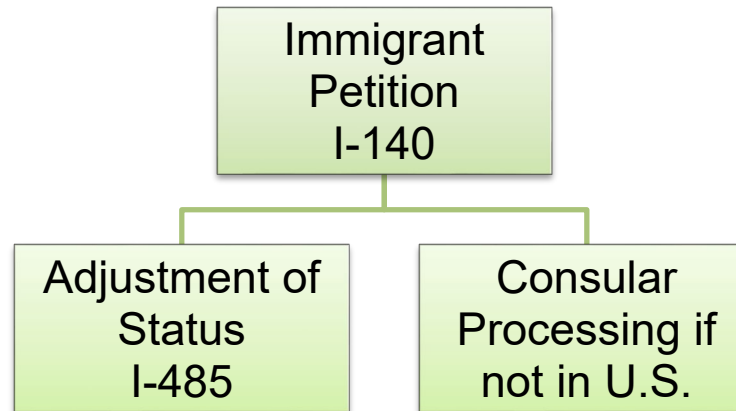
Key Considerations

- Eligibility
- Employer/Self-Petition
- Costs and Who Pays
- Timing – when start
 - Max Out Issues
 - Age Out Issues
 - Work Authorization
- Visa Bulletin
 - Preference Category, Priority Date, Country of Birth, and Cross-chargeability
- Other Considerations
 - Status, J-1 with 212(e) home residence requirement, criminal issues, etc.



PERM Exempt (2-step process) Immigrant Visa Categories

- EB-1(1) – Extraordinary Ability
- EB-1(2) – Outstanding Professor or Researcher
- EB-1(3) – Multinational Manager/Executive
- EB-2 – NIW: National Interest Waiver



EB-11 Extraordinary Ability

“Sustained national or international acclaim; Small percentage at the top of the endeavor; will substantially benefit prospectively the U.S.”, and

- 1 major international award or at least 3 of 10 criteria
- **Fields of Endeavor:** Sciences, Arts, Education, Business or Athletics
- **Petitioner:** Employer or Self
- **Priority Date:** Established on the date the I-140 is filed



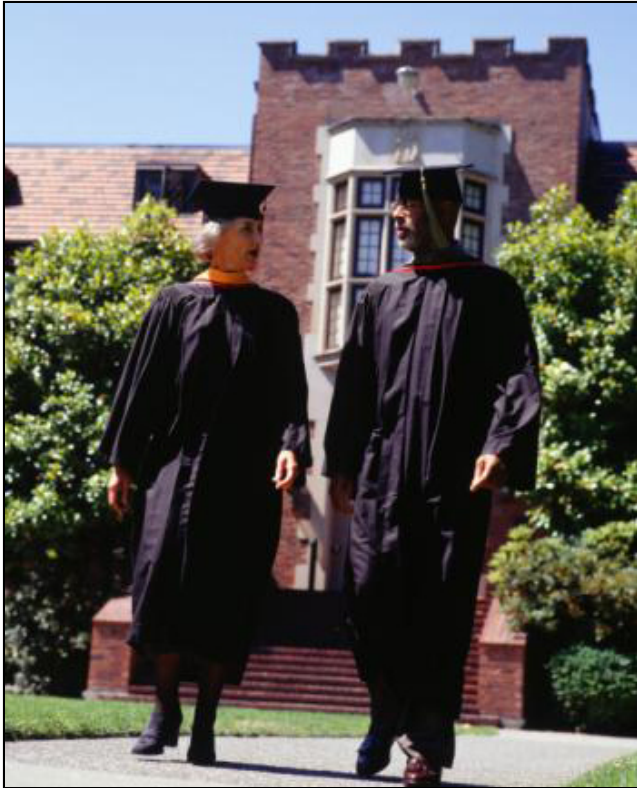
EB-11 Extraordinary Ability Criteria

Documentation of 1 major international honor or at least 3 of the following:

1. Receipt of lesser but major national or internationally recognized **awards**;
2. **Membership** in associations requiring outstanding achievement;
3. **Published** material in professional publications or other major media written about your work;
4. Participation as a **judge** of the work of others;
5. **Original contributions** of major significance;
6. **Authorship** of scholarly articles in the field;
7. Artistic exhibitions;
8. Performance in **leading role** for organizations with distinguished reputations;
9. **High salary** or remuneration;
10. Commercial success in the performing arts.



EB-12 Outstanding Researcher / Professor



- Recognized internationally as outstanding in the academic field:
 - At least 3 years of experience
 - Must meet at least 2 of 6 criteria
 - Fields of Endeavor: Academic fields
- **Petitioner:** Employer required; no self-petition
 - Need a permanent offer of employment
 - tenure, tenure track or term of indefinite or unlimited duration
 - Employer is a university or institution of higher learning or private employer with 3 full time researchers
- **Priority Date:** Date the I-140 is filed

EB-13 Multinational Manager / Executive

1. Employee has worked at least 1 year continuously for related company abroad in the last 3 years in managerial or executive capacity.
2. U.S. employment is for managerial / executive position.
3. Foreign company and U.S. company must have qualifying relationship – parent, subsidiary, affiliate, branch or joint venture.



EB-2: National Interest Waiver

Requirements for National Interest Waiver Petition:

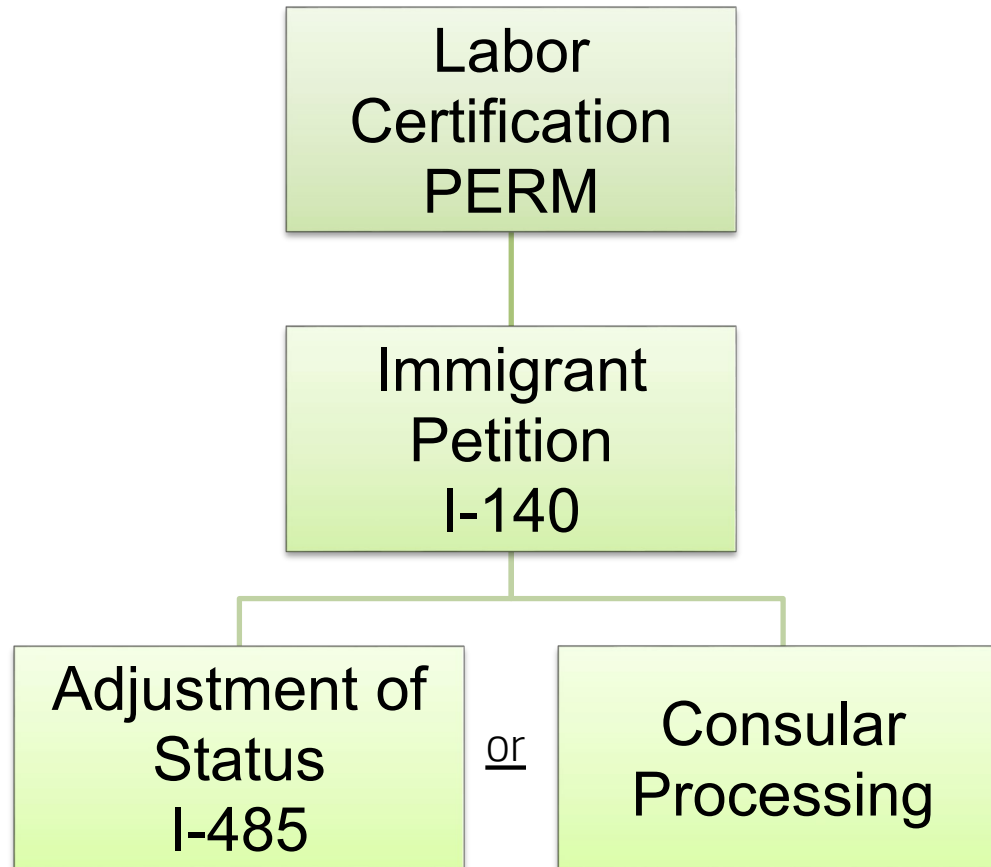
- Requires “Advanced degree” OR “Exceptional ability in science, arts or business.”
- Demonstrate that it is in the **national interest** to waive the labor certification requirement.
 - Proposed endeavor has *substantial merit and national importance*;
 - Foreign national *well-positioned* to advance the proposed endeavor; and
 - on balance it would be *beneficial* to the U.S. to waive requirements of a job offer and labor certification

Petitioner: Employer or Self

Priority Date: Date I-140 filed



3-Step Permanent Residence Process



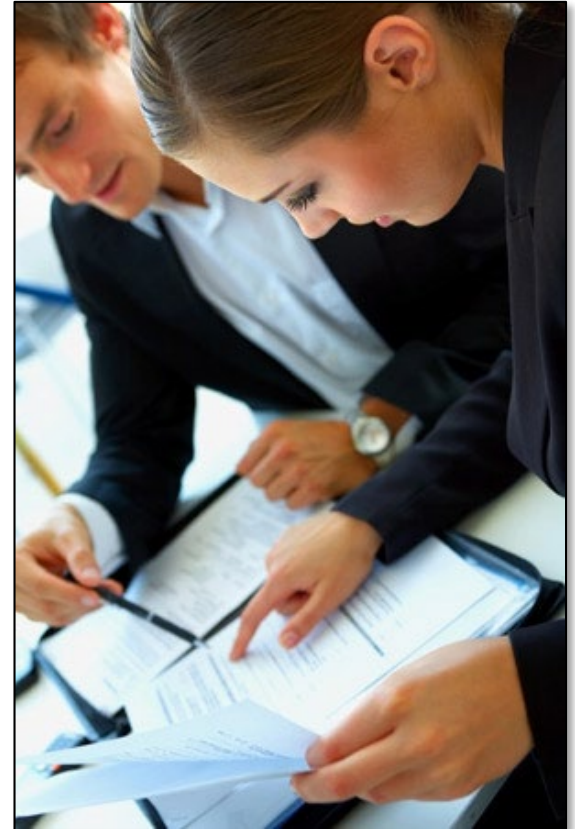
Introduction on PERM

- **Goal** – Protect U.S. workers.
- Job position must be bona fide, full-time and “permanent.”
- Employer must pay all PERM fees and costs.
- Specific to the employer, location and position (If these change, a new PERM may be required).
- Prevailing wage determination from DOL required.
- Employer must recruit and evaluate U.S. worker applicants using the employer’s actual minimum requirements (and special requirements if any) for the position.
- Beneficiary must provide proof that qualifies for the position.



Step 2 : USCIS Immigrant Visa Petition (Form I-140)

- Establish that employee meets requirements for position as stated in certified PERM:
 - Degree and transcripts
 - Experience verification letters
 - Certification, license, etc.
- Prove employer can pay offered salary since date that PERM filed
- I-140 must be filed within 180 days of PERM certification or PERM expires
- Premium processing of I-140 is available
- Priority date “attaches” to the foreign national upon I-140 approval
- Concurrent filing with I-485 may be possible



Step 3 – USCIS Adjustment of Status (Form I-485)

Priority date must be current to file; Must be in U.S. to file I-485

Purpose: Show employee and dependent family members are admissible to U.S.

- Not out of status
- No past U.S. immigration violations fraud/misrepresentation/deportation
- No criminal activity (Biometrics required)
- No membership in terrorist or communist organization
- No communicable disease, such as tuberculosis or drug addiction (Medical exam required)
- No harmful, dangerous mental impairment
- Not a public charge
- No false claim to being a U.S. citizen

In-person interview with USCIS Officer has been required.

Travel Document and Work Permit while I-485 is pending

- I-765 Application for Employment Authorization Document (EAD)
 - For all who want to work
 - For child to obtain SSN
 - Issued for 1-yr. period or for 2-years if priority date not current
- I-131 Application for Advanced Parole Travel Document
 - For international travel permission
 - Each family member needs it to travel unless using valid H or L visa
 - Issued for 1-year period



Questions



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