



# Beyond OPT: Strategies for Successful Career Advancement & Visa Options after Graduation

Presented to UNCC Students

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# About Garfinkel Immigration Law Firm

# Garfinkel Immigration Law Firm

- Based in Charlotte, North Carolina.
- One of the largest immigration law firms in the Southeast.
- Twelve (12) immigration attorneys & forty-five plus (45+) paralegals/support staff.
- Our clients include:
  - Numerous NC colleges & universities
  - Several NC healthcare systems
  - One of the largest electronic medical records companies in the U.S.
  - The second largest public school system in NC
  - Numerous manufacturing and IT clients



# Presented by:

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Partner

- B.S., Meredith College
- J.D., Campbell University
- Practicing Immigration & Visa Law since 2006
- Ms. Barnette practices employment-based immigration law.



# Presented by:

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- B.A., Davidson College
- J.D./M.A. (cum laude), University of Florida
- Practicing Immigration & Visa Law since 2012
- Certified as a Specialist in Immigration & Nationality Law by NC State Bar
- Mr. Hummel practices employment-based and family-based immigration law.

# Overview

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- Introduction
- Temporary Work Visas (including H-1B Visa)
- “Green Card” Options, Process & Availability
- Questions & Answers

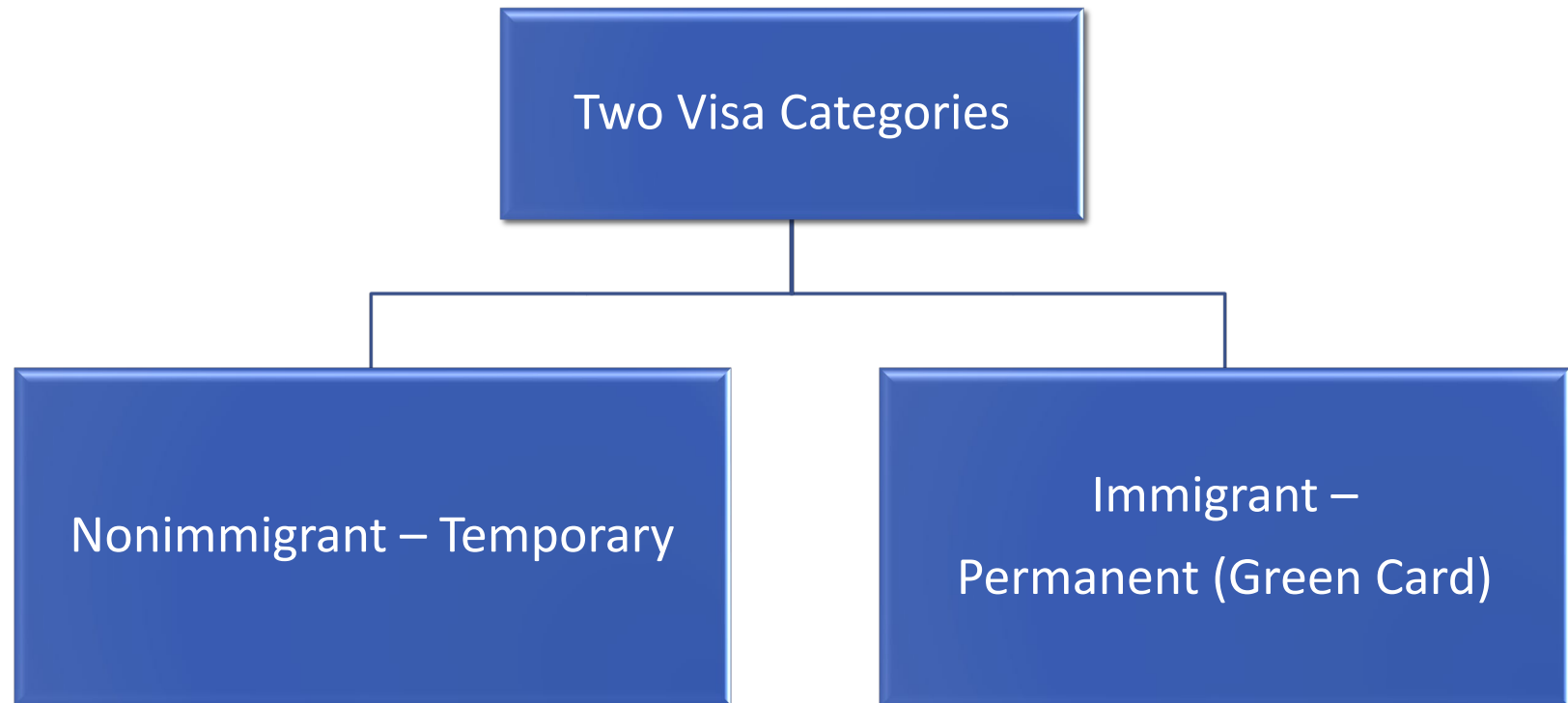


# Federal Agencies Administering U.S. Immigration Law

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- **Department of Homeland Security** comprised of:
  - US Citizenship & Immigration Services (“USCIS”)
  - US Immigration & Customs Enforcement (“ICE”)
  - US Customs & Border Protection (“CBP”)
- **Department of State:**
  - Responsible for visa services at U.S. consulates abroad
- **Department of Labor:**
  - Administers Permanent Employment Certification Application process

# Visa Categories





# Nonimmigrant Overview

Non-immigrant Visa Type	Sponsorship Required	Duration of Visa	Self Petition	Work Permission	Spousal Work Permission
H-1B	Employer must sponsor and cover all associated fees	Up to 6 years (longer in some cases)	No	Yes	No, unless I-140 approval for H-1B spouse (with EAD)
H-3 Trainee	Employer must sponsor	Up to 2 years, no extension	No	Employment only incidental to training, stipend	No
J-1 Exchange Visitor (Trainee/Intern)	Approved agency must sponsor	18 months (Trainee); 12 months (Intern)	No	With DOS approval	Yes, with EAD
L-1A/L-1B Intracompany Transferee	Employer must sponsor	Up to 7 years (L-1A) or 5 years (L-1B)	No	Yes	Yes
E-1/E-2 Treaty Trader/Investor	Employer must sponsor	Up to 5 years, renewable indefinitely	Yes- If owner of company	Yes	Yes
O-1 Extraordinary Ability	Employer must sponsor	Up to 3 years and extensions possible	No	Yes	No
TN- NAFTA	Employer must sponsor	Up to 3 years and extensions possible	No	Yes	No

# Common Nonimmigrant Visas

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- B-1/B-2 (Visitor Visa/Visa Waiver)
- F-1 (Student Visa)
- H-3 & J-1 (Trainee Visas)
- H-1B (Professional)
- L-1 (Intracompany Transferee)
- E-1/E-2 (Treaty Visas)
- TN-1 (NAFTA Professional)
- O-1 (Extraordinary Ability)

# Employment-Based Nonimmigrant Visas

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- Always employer-specific
- May be position- and location-specific (depending on visa type)
- Processing times for visa petition approval / visa issuance normally 90-240 days
- Premium Processing Program – \$2,500 secures 15 business day review

# H-1B Visa - Overview

- Position offered must require at least a Bachelor's degree
- FN must possess degree (or equivalent) related to position offered
- Visa is location & job specific
- Fees –
  - Government filing fees total \$1,710 (if less than 25 FTEs) or \$2,460 (if more FTEs)
  - Attys fees vary by firm

# H-1B Visa - Overview

- Six (6) year limit (with exceptions) – granted in maximum of 3-year increments.
- Employer must file petition, agree to pay “required wage” & return transportation costs upon termination.
- FN in valid H-1B status may transfer & work for new employer upon filing of H-1B petition (portability).



# H-1B Visa - Overview

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- Since 1990, annual cap on number of H-1B petitions which may be approved.
- USCIS may only approve 65,000 visa petitions per fiscal year.
- Additional 20,000 visas authorized for those with U.S. Masters & Ph.D. degrees.

# FY 2024 (10/1/23 – 9/30/24)

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- Electronic Registration
- Registrations submitted during 3 week period in March. (480,000 registrations for FY2023)
- Initial lottery results were announced by March 31. The first round of H-1B cap cases must be filed from April 1-June 30.
- Possible subsequent additional lotteries, with 90 days to file for each.
- Once cap is reached, no “cap subject” H-1B petitions accepted until April 1, 2024.

# H-1B Visa – Does Annual Cap Apply?

- The following are subject to annual cap:
  - FNs seeking H status for 1st time.
  - FNs changing from cap-exempt to cap-subject employer.
- The following are NOT subject to annual cap:
  - FNs currently in H-1B status (i.e., extensions of stay or change of employers) or FNs who have been previously counted against H-1B cap (if total of 6 years were not used up).
  - FNs who work at institutions of higher education or nonprofit related to/affiliated with institutions of higher education or nonprofit/gov't research organizations.



## H-1B Visa – “Cap Gap” Rule

- Applies to F-1 students on OPT where H-1B petition filed and accepted on or after April 1
- Extends employment authorization from OPT end date (if after April 1 and before October 1) to H-1B effective date
- Does not authorize travel

# Common H-1B Myths

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- Large companies have an advantage
- I need to file Premium Processing
- Working for a non-profit will help me avoid the cap
- I can split the fees with my employer



# Other Nonimmigrant work visas

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- E-1/E-2 - Treaty Trader/Treaty Investor
- L-1A/L-1B- Intracompany Transfer
- O-1 - Extraordinary Ability
- TN - Treaty NAFTA
- Miscellaneous Work Visas - R-1, E-3, H-1B1

# Can I be “self-employed?”

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- One does not need a visa status to own all or part of a U.S. company.
- But... one does need a visa to work for a company.
- USCIS wants to see an “employer-employee relationship” in connection with a visa petition/application.

# Immigrant Visa Options

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# Employment-Based Immigrant Visas ("Green Cards")

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Five (5) employment-based categories:

EB-1

- Outstanding Researchers, Extraordinary Ability

EB-2

- Advanced Degree Professionals and FNs of Exceptional Ability

EB-3

- Professionals, Skilled and Unskilled Workers

EB-4

- Special Immigrants

EB-5

- Employment Creation

# EB-1 Priority Workers

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- International Managers & Executives
- Outstanding Professors & Researchers\*
- FNs of Extraordinary Ability \*

*\* USCIS regulations contain list of eligibility criteria*

# EB-2 Advanced Degree Professionals & FNs of Exceptional Ability

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- To qualify as “advanced degree professional,” FN must possess advanced degree & position must require advanced degree (or equivalent).
- USCIS regulations set out criteria for exceptional ability.
- Can bypass labor certification process by proving employment would serve U.S. “National Interest.”



# EB-3 Professional, Skilled and Unskilled Workers

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- For FN who possesses 4-year university degree where job offered requires degree; or
- For FN who possesses minimum of 2 years of experience in position requiring minimum of 2 years of experience.

# EB “Green Card” Estimated Processing Times

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- STEP 1 – Labor Certification (“PERM”)
  - Requires proof of no minimally qualified available U.S. workers
  - Current Processing times: 8-9 months if no DOL audit, add 3-4 months if audited
  - 18-24 months total

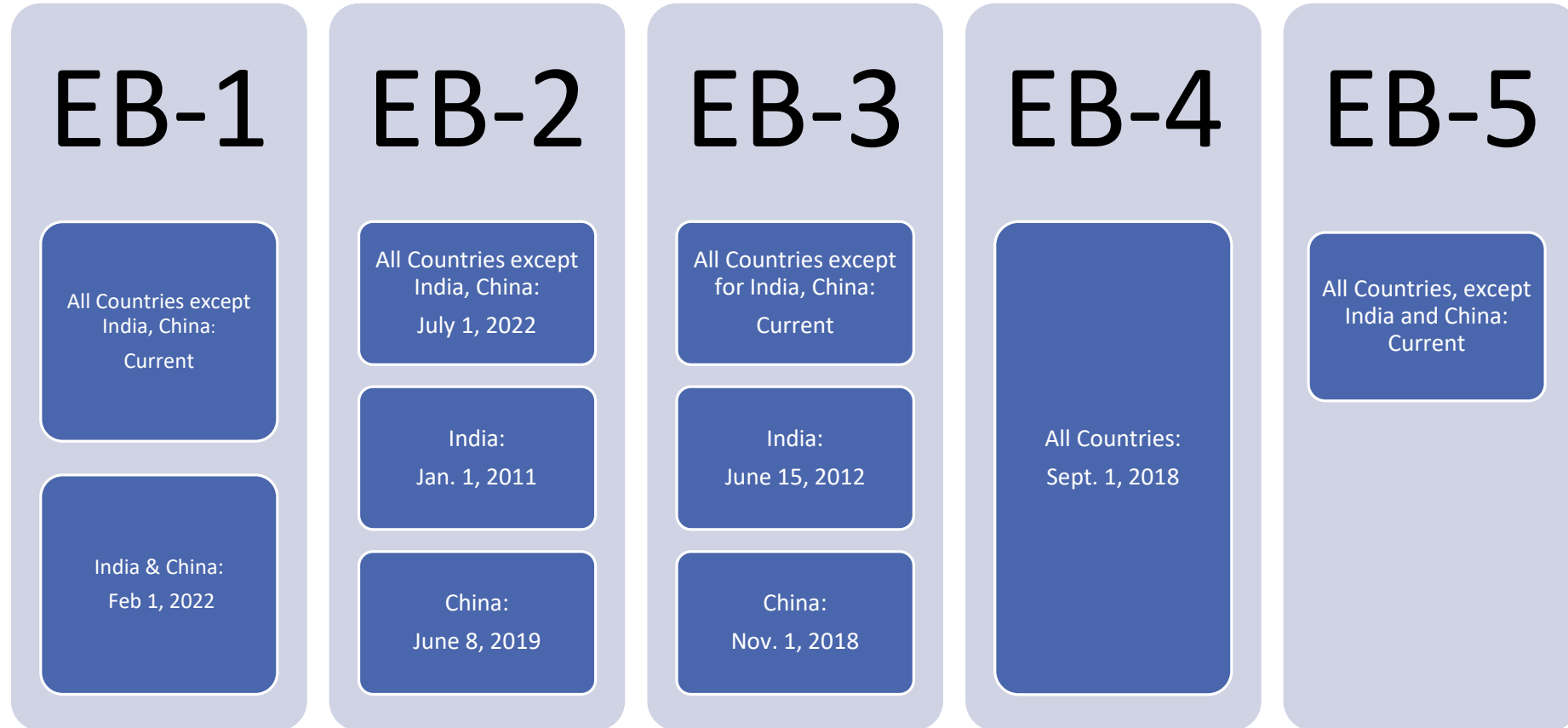
# EB “Green Card” Estimated Processing Times (Cont’d)

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- STEP 2 – Immigrant Petition, Form I-140
  - Current processing times: Seven (7) months +, can request premium processing
- STEP 3 – Application to Adjust Status, Form I-485\*\*
  - Current Processing times: 11+ months

*\*\* APPLICATION CANNOT BE FILED UNLESS PRIORITY DATE IS CURRENT*

# Visa Availability for Employment-Based Immigrant Visas (FA)



## Recent Changes

- Premium Processing – available for all I-140 petitions, to be available for I-539 applications, and I-765 applications
- E and L spouses work authorized incident to status
- In country visa issuance (pilot program)
- What's to come?



## Questions & Answers

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