Navigating Immigration

David Wilks – February 26, 2020
ABOUT HODGSON RUSS

- Two Centuries of Experience
- Offices throughout New York State, as well as in Toronto and Florida
- Seven dedicated immigration attorneys with decades of experience
Navigating Immigration

Agenda

1. Immigration Overview
2. Nonimmigrant (Temporary Options)
3. Permanent Residence
4. Naturalization
TYPICAL IMMIGRATION PATH

Student Visa (F/J) → Professional Visa (H, O, E, L, etc.) → Immigrant Petition

Nonimmigrant

Immigrant

Citizen

Citizenship

Permanent Residence
Everyone has a unique immigration path

Questions to determine your path:
- What is your risk tolerance?
- What are your career goals?
- What are your family needs?

Protect yourself and stay compliant!

Pay attention to changes:
- Travel Ban
- Public Charge
<table>
<thead>
<tr>
<th>Letter</th>
<th>Category</th>
<th>Description</th>
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<tbody>
<tr>
<td>A</td>
<td>Diplomats</td>
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<td>B</td>
<td>Visitors</td>
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<td>Crewman</td>
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<td>E</td>
<td>Treaty Trader/Investor, Australian Specialty Occupation</td>
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<td>F</td>
<td>Student</td>
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<td>G</td>
<td>Foreign Government Representative</td>
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<tr>
<td>H</td>
<td>Temporary Workers (H-1B Specialty Occupation)</td>
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<td>I</td>
<td>Press/Journalist</td>
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<td>J</td>
<td>Exchange Visitor</td>
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<td>K</td>
<td>Fiancé(e)/Spouse/Minor Child</td>
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<td>L</td>
<td>Intracompany Transfer (Executives/Managers/Specialized Knowledge)</td>
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<tr>
<td>M</td>
<td>Vocational Student</td>
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<td>N</td>
<td>Special Immigrant’s Parents or Children</td>
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<td>O</td>
<td>Extraordinary Ability</td>
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<tr>
<td>P</td>
<td>Athletes, Artists, and Entertainers</td>
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<td>Q</td>
<td>Cultural Exchange</td>
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<td>R</td>
<td>Religious Worker</td>
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<td>S</td>
<td>Witnesses</td>
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<td>T</td>
<td>Trafficking Victims</td>
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<td>TN</td>
<td>NAFTA Professional</td>
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<td>U</td>
<td>Crime Victims</td>
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<td>H-1B Requirements</td>
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<tr>
<td>Job Requires Specific Bachelor’s Degree (or higher)</td>
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<tr>
<td>Foreign National has the Required Degree (or equivalent)</td>
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<tr>
<td>Employer Pays “Required Wage”</td>
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<td>For Licensed Occupations – holds the Required License</td>
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- 3 year increments
- Extensions up to 6 years (unless permanent residence started by year 5)
- Spouse cannot work until permanent residence started
<table>
<thead>
<tr>
<th>Annual H-1B Cap</th>
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<tbody>
<tr>
<td><strong>6,800</strong> (H-1B1) for Singapore and Chile Nationals</td>
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<tr>
<td><strong>20,000</strong> for Individuals with U.S. Master’s Degree or Ph.D.</td>
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<tr>
<td><strong>65,000</strong> For Individuals with Bachelor’s Degree</td>
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**Nonimmigrant Visas**

- **FISCAL YEAR RUNS OCTOBER 1 TO SEPTEMBER 30**
- **FILE SIX MONTH IN ADVANCE (APRIL)**
- **IF MORE PETITIONS THAN VISAS → LOTTERY**
1. Employers pre-register their employees in the Spring (March)
   - USCIS charges a $10 fee

2. If oversubscribed, USCIS conducts a lottery based on electronic registrations
   - USCIS (using previous system) received over 200,000 in 2019
   - Registering but not following through is flagged for fraud

3. If selected, employer has 90 days to submit H-1B petition
   - Must have certified LCA
   - Pay required fees: $460 (I-129), $500 (Fraud Detection and Prevention, $750/$1500 (ACWIA)
   - Can pay Premium Processing Fee ($1,440)
## Cap Gap

- H-1B Cap petitions are valid October 1.
- OPT may expire prior to October 1.
- Cap Gap bridges this gap in work authorization.
- **ONLY FOR CHANGE OF STATUS PETITIONS**

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>OPT Starts</td>
<td>8/2020</td>
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<tr>
<td>File H-1B Begins</td>
<td>4/2021</td>
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<tr>
<td>OPT Expires</td>
<td>8/2021</td>
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<tr>
<td>Cap Gap Begins</td>
<td>9/30/2021</td>
</tr>
<tr>
<td>H-1B Begins</td>
<td>10/1/2021</td>
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</tbody>
</table>

- OPT STARTS 8/2020
- FILE H-1B 4/2021
- OPT EXPIRES 8/2021
- CAP GAP BEGINS 9/30/2021
- H-1B BEGINS 10/1/2021
**Cap Exempt H-1B**

**Exempt Employers**
- Universities and Colleges
- Nonprofits affiliated with Universities and Colleges
- Nonprofit or Government Research Organizations

**Exempt Employees**
- Employed at but not by a Cap-Exempt Employer
- Concurrent Employment by Cap-Exempt Employer
- J-1 Waiver Doctor
L-1 INTRACOMPANY TRANSFER

- Transfer manager, executive or specialized knowledge employee from affiliated foreign company.
- 1 year in last 3 years
- L-1A: 3+2+2
- L-1B: 3+2
- Similar Green Card Path
- Spouse Can Work
E-1 Treaty Trader / E-2 Investor / E-3 Specialty Occupation

- Nationals of Treaty Countries can do trade with or invest in the U.S. (E-1/E-2)
- Certain employees of E-1/E-2 beneficiaries can also get E status
- Australians working in specialty occupations can get E-3 status (similar to H-1B)
- 2 year entries
- No maximum extensions
- Spouse can work
TN NAFTA PROFESSIONALS

- Canadians and Mexicans ONLY
- 3 years of status in particular occupations: FULL LIST
- Cannot be self employed
- No spouse work authorization
- No specific maximum
O-1 EXTRAORDINARY ABILITY

- Foreign nationals with extraordinary ability
  - Major Award OR
  - Meet at least 3 criteria (published articles, awards, major impact, important position, high salary, work as judge, etc.)
- 3 + 1 + 1...
- No maximum extensions
- Spouse cannot work
PATH TO A GREEN CARD

- Considerations:
  - Live or work anywhere in the U.S.
  - Cannot vote
  - Worldwide taxation
  - Family considerations

- Primary Options:
  - Diversity Lottery
  - Family-based
  - Employment-based
DIVERSITY LOTTERY

- Nationals of nations that send fewer immigrants to U.S.
- 50,000 each year
- High School diploma or 2 years of professional work experience
- Available in the Fall
FAMILY-BASED

- Immediate relatives (minor children, spouses, parents of adults) of U.S. citizens
- (F1) Unmarried sons and daughters of U.S. Citizens
- (F2A) Spouses and minor children of permanent residents
- (F2B) Unmarried sons and daughters (over 21) of permanent residents
- (F3) Married sons and daughters of U.S. citizens
- (F4) Brothers and sisters of adult U.S. citizens
<table>
<thead>
<tr>
<th>Family-Sponsored</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
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<tr>
<td>F1</td>
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<td>F2A</td>
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<td>F2B</td>
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<td>08DEC04</td>
<td>15FEB98</td>
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EMPLOYMENT BASED

- (EB-1) Extraordinary Ability, Outstanding Researcher, Multinational Manager
- (EB-2) National Interest Waiver, Labor Certification (advanced degree or exceptional ability)
- (EB-3) Labor Certification (all others)
- (EB-4) Special Immigrants
- (EB-5) Investors
Labor Certification

- Department of Labor sets wage
- Employer recruits for position
- If no U.S. worker available → file with Department of Labor
- If certified → file with USCIS
- Adjustment/Consular processing when priority date “current”
### Employment-Based Visa Bulletin

<table>
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<tr>
<th>Employment-based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>EL SALVADOR GUATEMALA HONDURAS</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
<th>VIETNAM</th>
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<td>01JUN17</td>
<td>01MAR19</td>
<td>01MAR15</td>
<td>01MAR19</td>
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<td>C</td>
<td>22MAY09</td>
<td>C</td>
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<td>3rd</td>
<td>01JAN17</td>
<td>22MAR16</td>
<td>01JAN17</td>
<td>15JAN09</td>
<td>01JAN17</td>
<td>01JAN17</td>
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<td>Other Workers</td>
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<td>01JUN08</td>
<td>01JAN17</td>
<td>15JAN09</td>
<td>01JAN17</td>
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<td>4th</td>
<td>C</td>
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<td>15JUL16</td>
<td>C</td>
<td>15NOV17</td>
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<td>Certain Religious Workers</td>
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<td>15JUL16</td>
<td>C</td>
<td>15NOV17</td>
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<td>5th Non-Regional Center (C5 and T5)</td>
<td>C</td>
<td>15MAY15</td>
<td>C</td>
<td>22OCT18</td>
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<td>C</td>
<td>15JAN17</td>
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<tr>
<td>5th Regional Center (I5 and R5)</td>
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<td>15MAY15</td>
<td>C</td>
<td>22OCT18</td>
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<td>C</td>
<td>15JAN17</td>
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EB-1 AND NIW

- **EB-1A – Extraordinary Ability**
  - Similar to O-1
  - Does not require employer

- **EB-1B – Outstanding Researcher**
  - Similar to O-1 (only meet 2 criteria)
  - Tenure Track or permanent position

- **EB-1C – Multinational Manager**
  - Similar to L-1A
  - Managers and Executives Only

- **National Interest Waiver**
  - **Standard:**
    - Substantial merit / National importance
    - Well positioned to advance endeavor
    - Beneficial to U.S. to waive labor certification requirement
    - Does not require employer

  - **Physician – work in underserved area**
BECOMING A CITIZEN

- 3 or 5 years of permanent residence
- Physical presence
- Continuous residence
- Good moral character
- Benefits:
  - Can vote
  - U.S. Passport
  - No risk of deportation
  - Can run for office/serve on jury
TAKE AWAYS

1. Plan ahead
2. Set your priorities
3. Protect yourself