

Life After Graduation: Employment Based Visas

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University of Memphis

International Student Webinar Series

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First 9 months

- Eligible for on-campus employment

Rest of
Program

- Eligible for off-campus employment (CPT, SEH, Pre-completion OPT, IIO)

Graduation or
Defense Date

- Student eligible to apply for post-completion OPT up to 90 days prior to, but no later than 60 days after, program end date AND within 30 days of DSO's recommendation in SEVIS.

12-month OPT

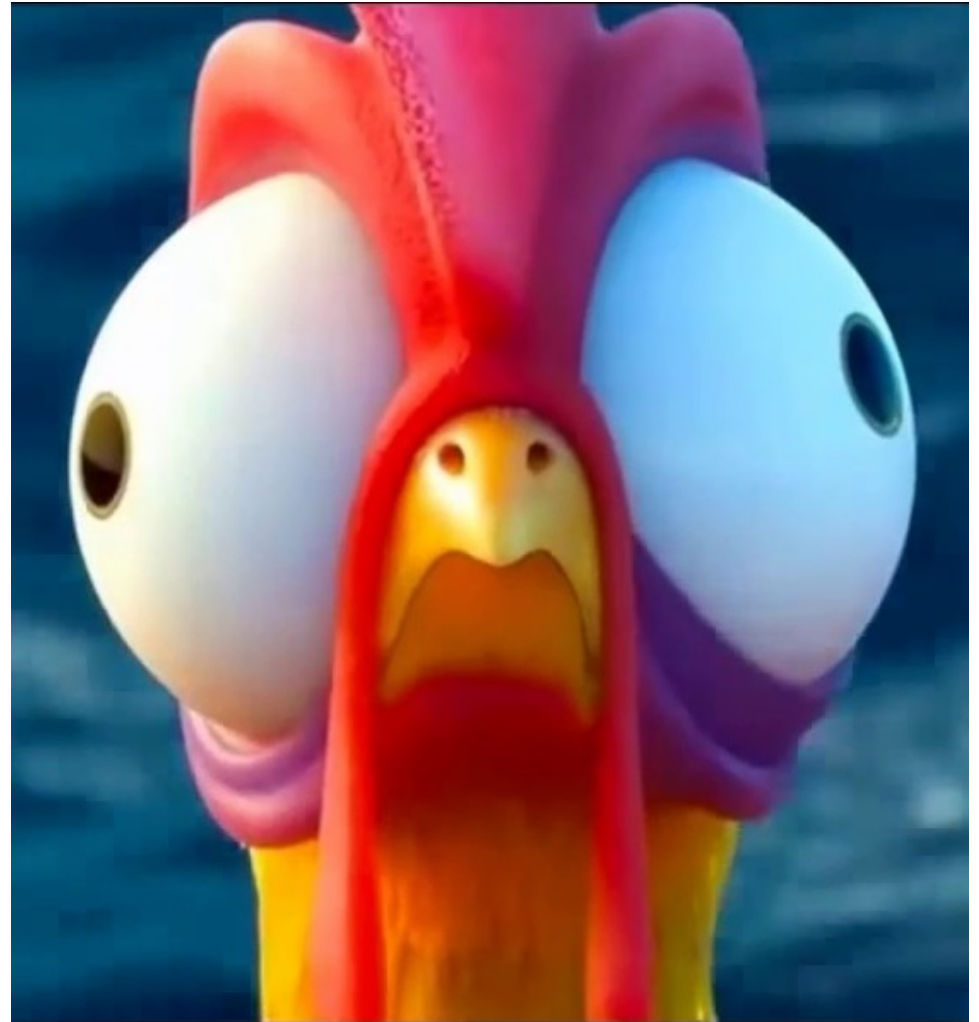
- Standard 12-month Post-completion OPT

Next Steps?

- 24-month STEM Extension?; Change/Adjustment of Status (H-1B/LPR, other?); Return to School as an F-1?; Return to Home Country?

U.S. Immigration Culture

- Global Pandemic
- Executive Orders
- Policies and Regulations
- Litigation!
- Potential USCIS Furlough
- Election Year



Life after F-1

- H-1B
- TN
- O-1
- E-2
- L-1
- Green Card
- Back to F-1
- J-1



H-1B Status

- What is an H-1B visa?
 - Temporary employment in a specialty occupation (requires bachelor's degree or higher in a specific specialty)
 - Employee must have at least a bachelor's or its equivalent and all required licenses
 - Prevailing Wage
 - Must have sponsoring employer in the US
 - 6 year limit (with exceptions)
- Numerical caps and cap exemption
- H-1B climate under Buy American, Hire American
- H-1B Pre-registration Rule



A few words about “Cap Gap”

- A way to fill the “gap” between end of F-1 and start of cap subject H-1B on October 1st.
- Cap subject H-1B must be filed during F-1, OPT, or grace period, along with a change of status request.
 - No work authorization if filed within grace period.
- If H-1B denied, withdrawn, revoked, student will have the 60-day grace period from the date of this action or their program end date, whichever is later.
- Travel during “cap gap”
 - F-1 student may travel and return in F-1 if H-1B and COS approved, student re-enters prior to 10/1, and is otherwise admissible.
- Work authorization only until September 30th!



What if you are not selected?

- Back to school --- and CPT?
 - “Integral part of an established curriculum”?
 - Training versus employment
 - Potential Landmines, especially for “immediate CPT”
- J-1 Trainees (18 months)
 - Requires relevant degree abroad + 1 yr. exp. abroad OR 5 yrs. exp. abroad
 - Training (work-based learning, DS-7002, American techniques/culture)
 - Change of status not recommended (F-1 to J-1 for additional practical training, J-1 to H-1)
- Other categories as described below

TN Status

- What is a TN visa?
 - Temporary employment for Canadians or Mexicans in a qualifying NAFTA (now USMCA) position
 - Must possess the credentials required for the position
 - Must have employer in the U.S.; No self-employment
- Differs from H-1B in key respects
 - No prevailing wage requirements
 - No cap
 - No limit on length of time you can spend in TN
 - No petition required
- Remains intact in USMCA

O-1 Status

- Work authorization for individuals who have extraordinary ability in their field.
 - Must meet 3 out of 8 categories of evidence
- Often used for scientists, researchers, artists, athletes, performers, entrepreneurs – but really no limit if you qualify
- Must have US employer or agent
- Differs from H-1B in key respects
 - No prevailing wage requirements
 - No cap
 - No limit on length of time you can spend in O-1 Status



E-2 Status

- What is an E-2 visa?
 - Work authorization for someone who invests in and establishes a business in the US
 - Limited to countries with which the US has a treaty
 - Must make a substantial investment in the business
 - Must show that the business will support more people than just the investor
 - Must have a business plan to show how the business will be established and how it will grow
 - Applying at US Embassy/Consulate vs. with USCIS. Procedures vary at consular posts.

L-1 Status

- What is an L-1 visa?
 - Intracompany transfer visa for a **manager, executive**, or an employee with “**specialized knowledge**”
 - Applicant must have been working abroad for at least one continuous year within the last three years
 - The company abroad must have a “qualifying relationship” with the company in the US (subsidiary, affiliate, or parent relationship)
- Strategy for U.S. companies that have a “qualifying relationship” with entities abroad.
- L-1 climate under Buy American, Hire American

Direct Transition to a Green Card

- Labor certification – 3 step process to prove that a US worker is not qualified and available for the position.
 - Good faith recruitment process to show DOL there are no "available and qualified" US workers to fill the position
 - Takes a while, but could make sense if student receives STEM OPT or has extended CPT options.
- Marriage to US Citizen
- EB-1 – Extraordinary Ability
- National Interest Waiver

Resources

Siskind Susser Travel Ban Advisor:

www.travelbanapp.com

Siskind Susser Alert about STEM OPT Site Visits:

<https://www.visalaw.com/alert-ice-begun-site-visit-stem-opt-employers/>

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Questions?

