

# Post Graduation Employment Options for Students

Presented by:

David A.M. Ware, attorney at law

[www.david-ware.com](http://www.david-ware.com). [dware@david-ware.com](mailto:dware@david-ware.com)

800 537 0179

National Practice with main offices in:

**New Orleans, Denver, and Seattle**



WARE | IMMIGRATION

# General Matters

- **WARNING:** This presentation provides general information only and cannot substitute for individualized legal advice about your particular case. In the world of immigration, *very small* factual differences can make a huge difference in your case.
- In order to receive such advice, consult our firm individually or seek a qualified immigration attorney of your choice.



WARE | IMMIGRATION

# General Matters

- **DON'T** get advice from friends or relatives.
- **NEVER** consult a non attorney for immigration advice (including your academic advisor or a *notario*).
- **ONLY** get advice from your international office or a qualified, experienced immigration attorney.
- **ALWAYS** follow the advice of your international office.



WARE | IMMIGRATION

# If You Want to Stay in US...

1. Complete degree, in field **in demand** in US (talk to Career Services early and often!).
2. Don't miss out on OPT (Including STEM).
3. Get good job with good company (use Dunn & Bradstreet). Find out their policies on sponsorship prior to accepting job.
4. Get work visa (usually H1B). Your employer must include you in March registration every year!
5. Convince company you are indispensable; they will sponsor for green card.



# The Work Visa You Want: H1B

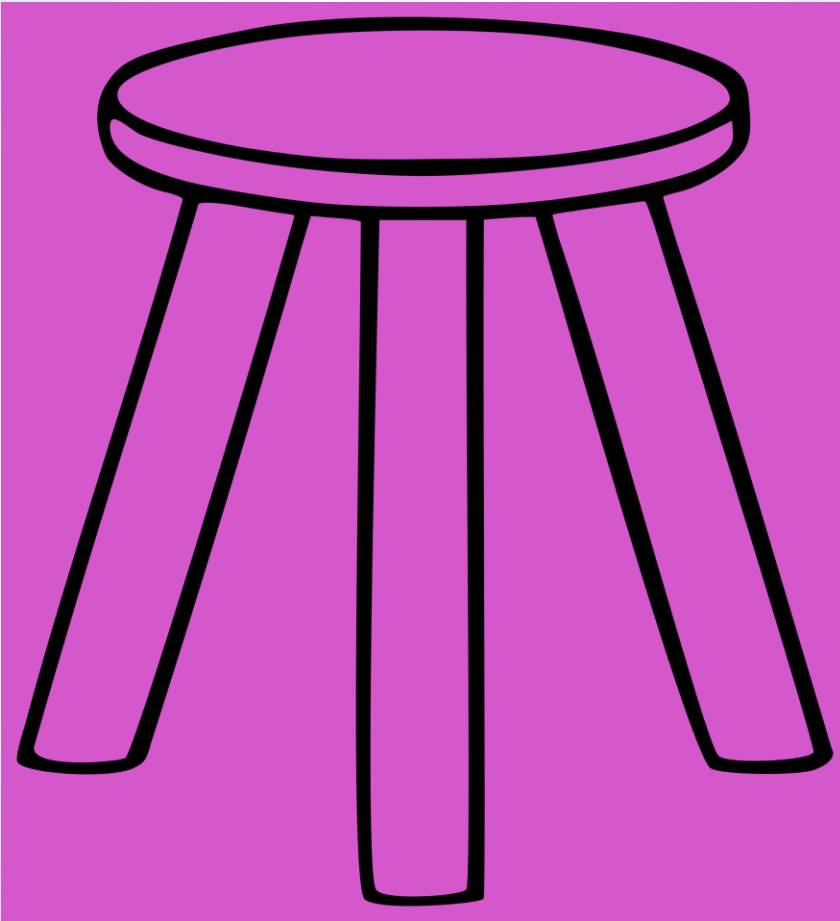
- H1B is the principal immigration status available for persons temporarily working in professional level jobs (“specialty occupations”) in the US.
- Who sponsors?
  - [www.immihelp.com/hib-sponsoring-companies-database/](http://www.immihelp.com/hib-sponsoring-companies-database/)



WARE | IMMIGRATION



# H1B Basics: Three Legged Stool



- You possess degree.
- Job requires same or very similar degree.
- Employer willing to pay required wage, filing and attorney's fees.
- Any of three missing: no H1B!



WARE | IMMIGRATION

# What Are Other H1B “Musts”?

- Employment is limited to the employer(s) who petition(s) for you. You may hold more than one H1B at same time. H1B may be part time.
- Employment is generally limited to six years with ALL employers (unless employment-based permanent residence begun by end of 5<sup>th</sup> year).
- Employment must be directly related to degree program—either current program or any prior degree program.
- H1B workers are allowed to have “dual intent”, unlike F or J.
- A one-time 60-day grace period is ***possible*** between jobs.
- A limited number of H1B’s (“quota”) means **lottery each year**.



WARE | IMMIGRATION

# What Are the Employer's Obligations?

- Must agree to employ the H1B as set out in the petition (no fraud).
- There must be a rational relationship between size, nature of business and job offered (no uncles with corner stores).
- Must agree to employ the H1B only in geographic location(s) set out in labor condition application.
- Must agree to pay the H1B “required wage” (next slide).





# Employer's Wage Obligation

- Must agree to pay higher of *actual* or *prevailing* wage (aka “required wage”).
  - *Actual* wage: wage paid to other similarly employed and similarly qualified workers at same worksite.
  - *Prevailing* wage: weighted mean or median wages for similar positions in geographic area of employment.
  - Basically, this means that a *competitive wage* must be offered.
  - There are four levels of wages and separate wage data for higher ed and certain other employers. See:
    - [www.flcdatacenter.com/oeswizardstart.aspx](http://www.flcdatacenter.com/oeswizardstart.aspx)



# FLC Data Center Search

- You selected the **All Industries** database for 7/2021 - 6/2022.
- Your search returned the following: [Print Format](#)
- **Area Code:** [26420](#)  
**Area Title:** Houston-The Woodlands-Sugar Land, TX
- **OES/SOC Code:** 15-1132  
**OES/SOC Title:** Software Developers, Applications  
**GeoLevel:** 1  
**Level 1 Wage:** \$36.44 hour - \$75,795 year  
**Level 2 Wage:** \$44.56 hour - \$92,685 year  
**Level 3 Wage:** \$52.69 hour - \$109,595 year  
**Level 4 Wage:** \$60.81 hour - \$126,485 year  
**Mean Wage (H-2B):** \$52.69 hour - \$109,595 year



WARE | IMMIGRATION

# More Employer Obligations

- Must offer to pay the H1B's return transportation to country of nationality if involuntarily separated before end of approved visa petition.
- Must notify other workers of terms of job including salary (two 10-day postings or letter to union).
- Must pay attorney's fees, if any.
- Must pay USCIS fees.



# What Are the Fees?

- Regular filing fee: \$460
- “Anti fraud” fee: \$500
- ACWIA fee: \$1500 (if 26 or more FT employees) or \$750 (if 25 or fewer)
- Filing fee for dependents: \$370.
- Premium fee: \$2500—15 day processing
- Attorney’s fees: vary widely: no standard amount.



WARE | IMMIGRATION



# Who Pays for What?

- A series of judicial decisions now makes clear that the employer **must pay all costs and fees** required to get the employee on the payroll.
- Employer could incur huge liabilities if they don't pay.
- What to do if they don't want to pay? Have them discuss issue with experienced immigration attorney.
- Note: employer **not responsible** premium fee if desired for personal reasons or **dependents**.



WARE | IMMIGRATION



# How does the Lottery Work?

- Employer registers with USCIS and names employees who it would like to include in the H1B lottery in **March**.
- Then in a few weeks, USCIS will inform employer which employees have “won” the lottery.
- Then, for a 60 day period, the employer can file complete H1B packet with USCIS (next slide), hopefully prior to end of your OPT.
- More lottery winners can be announced later.
- H1B status, if petition approved, **does not take effect until October 1**.



# If Selected in Lottery, What Must be Filed?

- First is Labor Condition Application (LCA). Filed electronically with Department of Labor. Takes about seven business days to be approved. **May take longer if employer has never filed.**
- Next is H1B Petition, together with LCA, evidence of your qualifications, info about employer, job, filed at a USCIS Service Center.
- If you are maintaining lawful status in US, your status is changed to H1B, along with family members. **Current or former J? You may have issues.**
- If outside US, or traveling following change of status, you must obtain H1B visa at US consulate, unless going for 30 days or less to Canada or Mexico.



# Finally! Approval!

- Processing of the H generally takes three to seven months, or 15 days with premium processing.
- H1B status does not take effect until October 1.
- Once approved and October 1 has passed, the H employee may “port” to a new employer once that employer *files* a new petition. Approval of new petition is not necessary to “port”.
- BEWARE: “porting” is difficult if you have not been counted against the quota.



# The Cursed Quota

- How many H visas are made available per year?
  - Currently H1B's are limited to about 78,200 per fiscal year.
  - ~58,200 for those with no US earned Master's.
  - 20,000 for those with US earned Master's or higher.
  - ~6,800 reserved for citizens of Chile, Singapore (H1B1—available all year).





# Quota Statistics

- 2012: Masters, June 7; regular June 11.
- 2013: both caps exhausted on April 5; lottery.
- 2014: both caps exhausted on April 7; lottery.
- 2015: both caps exhausted on April 7; lottery.
- 2016: both caps exhausted on April 7; lottery. 236K + petitions received.
- 2017: about 199K petitions received; lottery.
- 2018: about 190K petitions received; lottery.
- 2019: about 201K petitions received; lottery.
- 2020: about 201K petitions received; lottery x 2.
- 2021: about 275K petitions received; lottery x 2.
- So, in other words, it is likely there will be a lottery for H visas every year.
- Extremely important not to miss even one H cycle, even if on STEM extension. Stay on top of this!!





# Who's Exempt from Quota?

- Persons *already counted against it within past six years.*
- persons who work in higher education.
- Employees of non profit **research** and government **research** organizations.
- Persons who work in nonprofit with written affiliation with an institution of higher education (eg, some K-12 schools).
- **Note that most government entities and non profits are NOT exempt from quota.**
- Those who work “at” rather than for a quota exempt employer, that is on physical premises of employer.
- Persons engaged in concurrent quota exempt/quota subject jobs, that is working simultaneously for quota exempt and quota subject employers.



# So Called “cap gap” OPT

- In April, 2008, in order to assist students caught by the H1B quota, USCIS created so called “cap gap” protection which automatically extends OPT and F status through September 30 of any year, if:
  - Your employer properly filed an H1B petition on your behalf prior to the expiration of your OPT (not just registration);
  - The H1B petition is subject to the quota and shows a start date of October 1.
  - Cap gap OPT ends midnight September 30.
  - If the H petition is filed during your grace period, after expiration of OPT, then the “cap gap” extends status only, but not work authorization.
- In order to fully document the “cap gap”, you should seek a “cap gap” I 20 from his/her school.



# Travel While In “Cap Gap”

- You should not travel while in the cap gap as you will have no valid EAD card (despite advice on some websites). Reentry to the US on OPT generally requires:
  - I 20 endorsed for travel
  - Valid passport and F 1 visa (unless visa exempt)
  - ~~Valid EAD card (no EAD during cap-gap!)~~
  - Employment letter



# Can I get an H Through My Own Business?

- To be an H1B employer, an entity usually must have at least one employee other than the H1B.
- Must have independent Board of Directors that can discipline or fire the H1B.
- Company must be able to pay required wage.
- **Despite meeting all these requirements, very difficult to get a “self employed” H petition approved.**
- Bottom line: don't try it.



WARE | IMMIGRATION



# H1B Workarounds

- If not chosen in the H1B lottery, and OPT is ending:
  - Enrollment in new course of study and getting “Day One CPT”. Make sure program reputable! Try Harrisburg University or Ottawa University.
  - **H-3 trainee**. 2 yrs max; training must be for job abroad, unavailable back home. Not primarily On the Job Training (OJT). No dual intent.
  - **J-1 trainee**. 18 mos max; graduate with one year experience or five years experience in occupation. No dual intent.
  - **L-1 transferee**. If employer has international operations, work abroad for one year, then employer can bring you back on an L visa.
  - **E-1, E-2 trader/investor visa**. If investor/trader company has your same “nationality”, and there is a trader/investor treaty with US, may be able to hire you as essential employee.





# Are There H Alternatives?

- **TN (Treaty NAFTA)** for citizens of Canada and Mexico only. Occupations listed at 8 Code of Federal Regulations Sec. 214.6(c) mostly require a minimum of Bachelor's degree, except Scientific Technician/Technologist.
- MBA's beware: "Management Consultant" is carefully scrutinized; generally must be independent contractor.
- TN given in three-year increments; requires residence abroad (no dual intent).



# H Alternatives?

- **H1B1 visa for Chile, Singapore**: very similar to normal H1B, except granted in one-year increments, requires residence abroad (no dual intent).
- **E 3 for Australian citizens**; again very similar to H1B; two-year increments; minimum Bachelor's, no dual intent; spouses may work.
- **J-1** professor/researcher, “specialist”, short term scholar, **K-12 teacher**, camp counselor, summer work-travel, physician, trainee.



# Alternatives?

- **O-1** person of extraordinary ability/achievement; very high evidence requirements.
- **E 1/E 2**: if your country of nationality has an trader/investor treaty with US, investment of as little as 50K in a job-creating business can mean a visa for life, work permit for spouse (or work as an “essential employee” for an investor company). See if your country is covered:
  - <http://travel.state.gov/content/visas/english/fees/treaty.html>
  - Also note E can be H workaround.
- **L 1A/L 1B**: possible if you were employed by a company abroad for at least a year before coming to the US, and they wish to employ you in US; work permit for spouse. Can sometimes work for entrepreneurs.
  - Also note that the L 1 category can be a workaround.



# What If No Job Offer in US?

- Go back to school, retool your skills to fit the market.
- Canada, Australia or other country. Canada has a relatively easy process: Express Entry. See <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/works.html>. For more info contact Ryan Neely, [ryan@mccrealaw.ca](mailto:ryan@mccrealaw.ca).
- Your home country or other country where your language is spoken/your skills are in demand. Many companies, eg, Johnson and Johnson, eagerly hire for home country service, and then often transfer back to the US.





# Permanent Residence



WARE | IMMIGRATION



# What is Permanent Residence?

- The right to live and work permanently in the US for most any employer, with a few exceptions.
- A person becomes a permanent resident through adjustment of status in the US or issuance of an immigrant visa outside the US. A person generally must maintain lawful status in order to adjust in the US.
- What can jeopardize permanent residence?
  - Obtaining PR by fraud
  - Any absence of over six months from the US;
  - Abandonment of residence in the US;
  - Certain types of criminal conduct.
- Permanent residence is usually represented by a plastic card issued by USCIS.
- Permanent residence is not citizenship: that comes usually after a period of 3-5 years' permanent residence.



# Routes to Permanent Residence

- Employment-based
- Family-based
  - U.S. citizen or permanent resident spouse
  - USC or PR parent; USC child over 21; USC sibling
  - Long waits for all but spouse of USC or permanent resident, parent of USC child over 21, child of USC or permanent resident under 21.
- Asylum
- Large Investment
- Domestic Abuse
- Victims of Human Trafficking and Serious Crimes
- Private Bills—very rare
- Removal Proceedings
- Diversity Visa Lottery: **only** apply at [www.travel.state.gov](http://www.travel.state.gov).



Countries of Birth NOT eligible for 2023 DV  
lottery, ***unless spouse born elsewhere:***

**BANGLADESH, BRAZIL, CANADA, CHINA**  
(excluding Taiwan and Macau), **COLOMBIA,**  
**DOMINICAN REPUBLIC, EL SALVADOR,**  
**VENEZUELA, HAITI, HONDURAS, INDIA,**  
**JAMAICA, MEXICO, NIGERIA, PAKISTAN,**  
**PHILIPPINES, SOUTH KOREA, UNITED**  
**KINGDOM** and its dependent territories  
(excluding Northern Ireland), and **VIETNAM.**

***LOTTERY OPEN UNTIL NOV 9***



WARE | IMMIGRATION

# General Steps in EB PR

- Labor Certification + Employer Petition + Adjustment of Status,  
**OR**
- If exempt from Labor Certification  
**=** Employer Petition + Adjustment of Status



WARE | IMMIGRATION



# What is Labor Certification?

- A test of the local labor market where you are working to demonstrate no “US worker” able, willing and qualified to do your job.
- This is achieved through multiple ads and postings.
- Employer must agree to pay prevailing wage at receipt of permanent residence.
- Employer must have solid finances.
- Employer must pay attorney’s fees and ad costs.
- “Labor condition application” is for H1B—totally different.



WARE | IMMIGRATION

# Are you exempt from Labor Certification?

- **National Interest Waiver:** activity must be in national interest, applicant must have some achievements, be “well positioned” to advance field; may self sponsor.
- **Extraordinary ability:** Must have “risen to very top of field of endeavor”; may self sponsor.
- **Outstanding Professor/Researcher:** must have tenure track or permanent job offer; three years experience, be of “international renown”.
- **RN's, PT's, some persons of exceptional ability:**  
*Schedule A* labor certification.



# Who Has to Wait for PR?

- All persons born in India or China (**unless spouse born elsewhere**) are subject to waiting lists and cannot file for *adjustment of status* until at the top of the waiting list.
- **Current citizenship** irrelevant to whether you wait.
- **Place of birth** or that of spouse controls.



WARE | IMMIGRATION

# Who Waits? Visa Bulletin 11/2021

	All Charge- ability Areas Except Those Listed			
		CHINA- mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA
<u>Employment- Based</u>				
1st	C	C	C	C
2nd	C	15NOV18	C	01DEC11
3rd	C	22MAR18	C	15JAN12



WARE | IMMIGRATION



# Finding an Immigration Attorney

- Discuss with your employer
- Ask friends, your school, and others for references
- **Probably a good idea to be wary of those who:**
  - Claim to be experts in immigration and other areas (divorce, injuries, etc.)
  - Have little or no experience with students or exchange visitors (you are subject to complex rules)
  - Offer a guarantee, or charge you only if they are successful (unethical)
  - Will not agree to a “flat fee” (unless your case is unusual or complex)
  - Are not familiar to anyone else, especially your advisor
  - Are unusually cheap
  - Promise results different from other lawyers you consult
  - Who ask you to sign things that are not true, or without reading them first
  - Who don’t call you back or don’t send you copies of their work
  - Are of interest to you **only** because they speak your language or are from your country
  - Are of interest to you **only** because they have an office near you



WARE | IMMIGRATION

# About the Speaker



**David Ware** has over 38 years experience in representing universities and their students, faculty, and staff, as well as companies and individuals. His firm is one of only a handful in the nation with a consistent focus on academia, while also handling business, family, removal, asylum, and nationality cases. He has for many years been selected to the Bar Register of Preeminent Lawyers, and has been selected as one of the Best Lawyers in America since 2000. For ten years, Mr. Ware has been selected as among the top immigration attorneys in Louisiana by New Orleans Magazine, and in 2005 and 2008, City Business Magazine selected him as one of the top 50 “Leaders in Law” in Louisiana, the only immigration attorney so chosen. In 2008, he was elected to Who’s Who International’s Top Corporate Immigration Attorneys – one of only 300 in the US and the only in Louisiana. He is also top rated by AVVO and US News and World Report. Mr. Ware is a national authority in practice areas of interest to universities, and he currently serves as a mentor in these areas for other immigration attorneys through AILA. He has been active in NAFSA since 1985. In addition to holding several AILA and NAFSA leadership positions, he has received numerous awards for outstanding service. He regularly serves as an expert speaker and author for both AILA and NAFSA national and regional conferences, and at the meetings of other academically-oriented organizations such as AIEA, NACE, CUPA, NACUA and the Federal Bar Association. He serves on the Board of the Immigration Law Section of the Federal Bar Association and was chosen the FBA’s Lawyer of the Year in 2017. He was recently Chair for the second year, of an AILA conference in Europe.



**WARE | IMMIGRATION**

# QUESTIONS?

¿Preguntas?

Domande?

Câu hỏi?

Fragen?

Preguntes?

Savāla?

Pytannya?

Sorular?

Yǒu wèntí ma?

Maswali?

Dotazy?

Ερωτήσεις;

الاسئلة

Vragen?

Perguntas?

Shitsumon wa arimasu  
ka?

Kum tum?

Tanong?

Kesyon?

Jilmun?

Kit'Khvebi?

Вопросы?

Kysymyksiä?



WARE | IMMIGRATION