

TRENDS IN IMMIGRATION LAW IN HIGHER EDUCATION

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TODAY'S AGENDA

- Overview of U.S. Immigration Categories
- Pathways to Permanent Residency
- Nonimmigrant Basics and Work Visas
- TPS – Temporary Protected Status for Haitians ending
- DACA – Deferred Action for Childhood Arrivals (Dreamers) ending
- H-1B Cap-exemption: GEIR for colleges
- Executive Order / Travel Ban 3.0
- Registry of MV: Real Ideal Act effects on Mass. licenses

OVERVIEW OF IMMIGRATION CATEGORIES

- **US CITIZENS**
 - By Birth – law of the soil / law of blood
 - By Naturalization
- **FOREIGN NATIONALS**
 - Immigrants: Lawful Permanent Residents – Immigrants or Green Card Holders
 - Nonimmigrants: Persons Permitted in US for Temporary Stay
 - Refugees/Asylees/TPS
 - DACA
 - Persons present without lawful status

PATHWAYS TO LAWFUL PERMANENT RESIDENCE

- Family Based
- Employment Based
- Diversity Lottery
- Investment
- Asylum/Refugee
- Cancellation of Removal
- Registry
- Others: VIOLENCE AGAINST WOMEN ACT (VAWA), etc.

PRINCIPLE EMPLOYMENT BASED PERMANENT CATEGORIES

- EB-1(a) Persons of Extraordinary Ability
- EB-1(b) Outstanding Professors & Researchers
- EB-1(c) International Managers & Executives
- EB-2 Masters Degree/Exceptional Ability (includes NIW (National Interest Waivers))
- EB-3 Bachelors Degree/Skilled Workers
- **Effective 10/2/2017 – in-person interviews ordered for all applicants.**

FAMILY-BASED IMMIGRANT CATEGORIES

- Sponsored by U.S. Citizen:
 - Parent*
 - Spouse*
 - Unmarried minor child*
 - Son or Daughter – married or unmarried
 - Sister or Brother
- Sponsored by Lawful Permanent Resident
 - Spouse
 - Unmarried son or daughter
- Many Family-Based Immigrant Categories are subject to category & country quotas backlogs — See *Visa Bulletin*
- *Immediate Relatives—not subject to a quota & often can adjust status to permanent residence inside the U.S.
- USC Sponsor of parent or sibling must be 21 yrs old or older
- ‘Child’ includes children adopted before 16 yrs of age and step-children where the step-relationship was created before 18 yrs of age.
- ‘Spouse’ includes same-sex married persons & trans persons of both the same and opposite sex

NONIMMIGRANT BASICS

- U.S. Department of State (DOS) issues visas while U.S. Department of Homeland Security (DHS) controls actual admission & stay in U.S.
- Admission to U.S. limited to one appropriate category at a time
- Form I-94 created by Customs & Border Protection (CBP) at admission. Notes date of admission, category, and length of authorized stay
 - **TIP: Print I-94 from CBP website after each entry to confirm proper category and time granted**
- May change categories in U.S. via U.S. Citizenship & Immigration Services (USCIS) if in valid status at time of application—limitations apply
- May extend authorized stay in U.S. via U.S. Citizenship & Immigration Services (USCIS) if in valid status at time of application—limitations apply
- Approval of change or extension request is noted with creation of an updated I-94
- International travel after approval of change or extension may require new DOS issued visa in order to re-enter

Common Nonimmigrant (Temporary) Employment Categories at Colleges

- B-1: Visitors for business (honoraria)
- F-1: Students—OPT & STEM OPT
- E-3: Professionals from Australia
- H-1B: Professional workers
- H-1B1: Professionals from Chile and Singapore
- J-1: Exchange visitors
- TN: Canadian and Mexican Professionals (NAFTA)
- O-1: Persons of extraordinary ability
- R-1: Religious workers
- OPT: Optional Practical Training
- STEM OPT: STEM Optional Practical Training

Temporary Protected Status (TPS)

- Some of the current employment-authorized TPS countries with expiration dates:
 - El Salvador– March 9, 2018
 - **Haiti – January 22, 2018 (ordered terminated)**
 - Honduras– January 5, 2018
 - Nepal – June 24, 2018
 - Nicaragua – January 5, 2018
 - Somalia – September 17, 2018
 - South Sudan – November 2, 2017
 - Sudan – November 2, 2017
 - Syria – March 31, 2018
 - Yemen – September 3, 2018

DACA – CRITERIA FOR Deferred Action For Childhood Arrivals

- Out of status on June 15, 2012
- Came to U.S. when under 16
- Were under the age of 31 on June 15, 2012
- Born after June 15, 1981
- Be over 15 years old now
- In U.S. since June 15, 2007
- In high school or graduated from high school or have G.E.D. or honorable discharge from U.S. military service
- **Enrollment is closed. Program Rescinded effective 03/05/2018.**

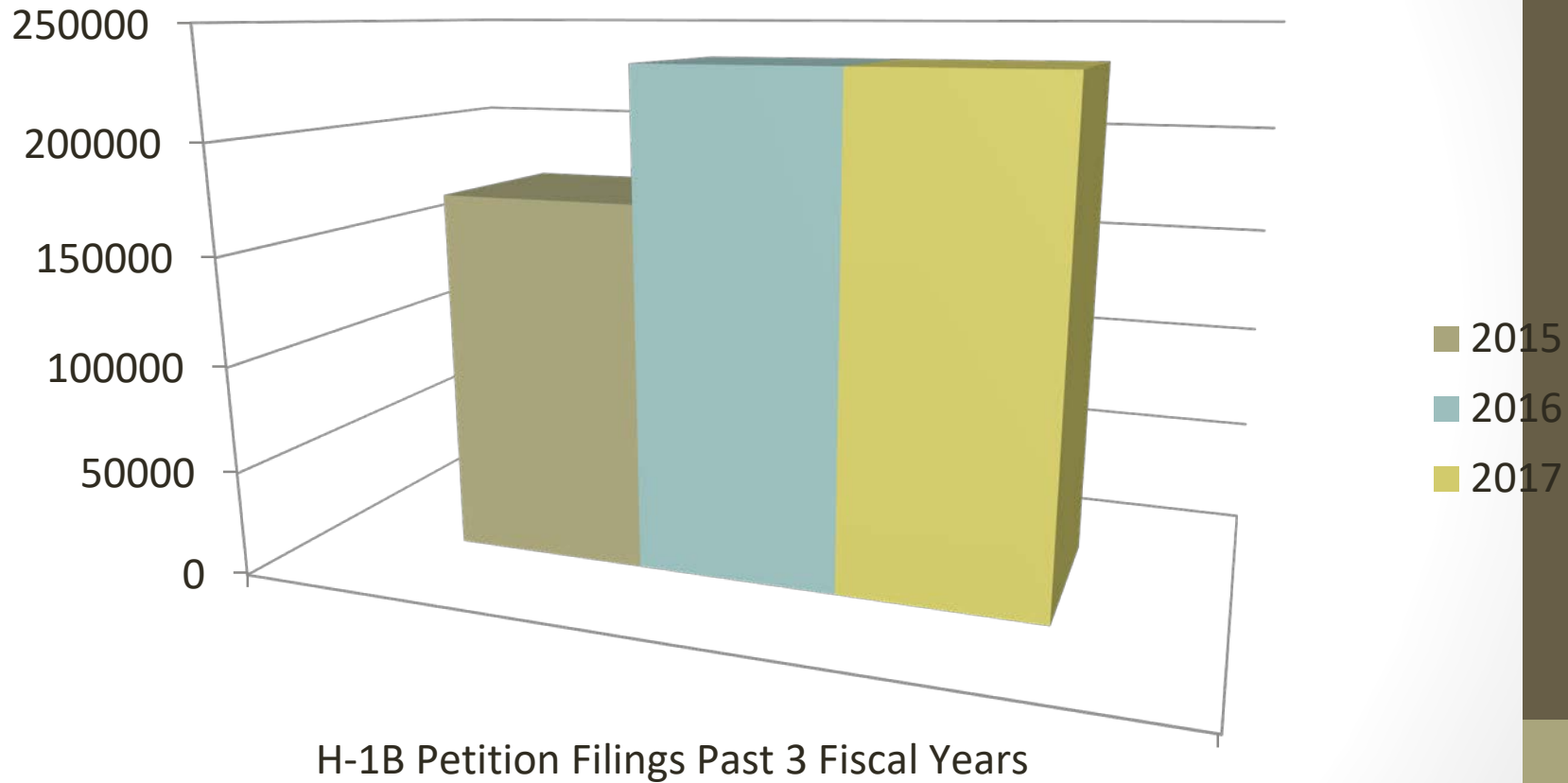
H-1B QUOTA OVERSUBSCRIBED IN DAYS

- H-1Bs are employment visas for professionals in specialty occupations
- Colleges & universities are exempt from the annual, national quota of 85,000 H-1Bs
- Last year's H-1Bs were gone in 5 days
- 200,000 + Petitions filed for the 85,000 H-1Bs
- Schools' recent graduates being forced to leave the U.S.
- PREMIUM PROCESSING SUSPENDED (4/2017) & JUST NOW RESTORED (10/2017)

ANNUAL H-1B QUOTA & TIMING

- Annual, national quota of 65,000 new H-1B visas
- Additional 20,000 H-1Bs for holders of a U.S. master's degree or higher –position itself need not require a masters or higher
- Colleges, universities & affiliated non-profits exempt from quota
- Other cap exemptions
- Visas become available October 1st each year
- Petitions can be filed up to 6 months in advance: earliest filing date is April 1st each year
- Cap gap protection for F-1 students on OPT

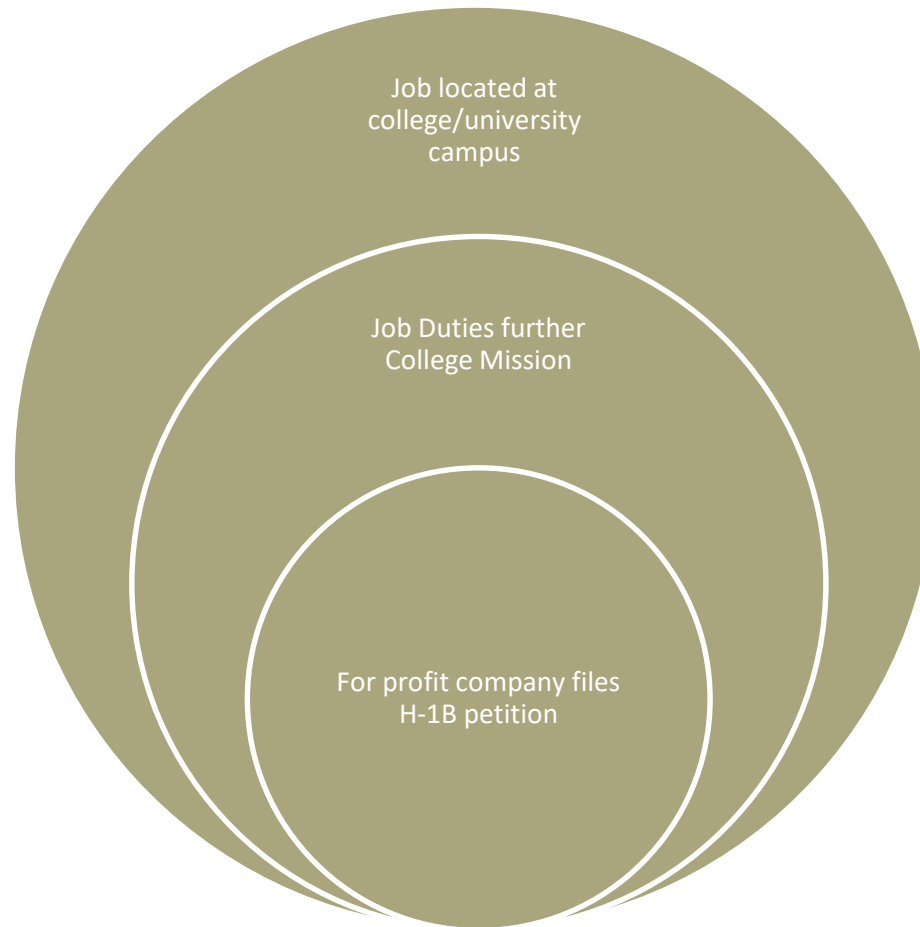
H-1B PETITIONS – by the numbers



H-1B CAP EXEMPTIONS: not subject to annual quota

- Employment by college or university.
Employment by non-profit organization
'affiliated' with college or university (USCIS
challenging)
- Employment by non-profit research organization
or a governmental research organization
- GEIR – Global Entrepreneurs In Residence:
 - Employment by the normally cap-subject employer
 - “at” the university/college
 - Part-time or full-time concurrent employment by both the
university/college and the normally cap-subject employer

“At” Exemption



'Concurrent' Exemption

H-1B Worker works part-time or full-time at University

University files part-time or full-time H-1B petition for worker

For-profit concurrent H-1B

For-profit company files concurrent petition for same H-1B worker

- This petition is also cap exempt
- Job can be located off campus
- Job can be unrelated to college employment

TRAVEL BAN 3.0

- Chad – suspends entry of immigrants and temporary visitors on B-1/B-2 visas;
- Iran – suspends entry of immigrants and all non-immigrants, except F, M, and J visas, though they will be subject to enhanced screening;
- Libya – suspends entry of all immigrants and temporary visitors on B-1/B-2 visas;
- North Korea – suspends entry of all immigrants and nonimmigrants;
- Somalia – suspends the entry of immigrants, and requires enhanced screening of all nonimmigrants;
- Syria – suspends the entry of all immigrants and non-immigrants
- Venezuela – suspends the entry of certain government officials and their family members on B-1/B-2 visas;
- Yemen – suspends the entry of immigrants and temporary visitors on B-1/B-2 visas.

RMV – Real Id Act

- Real ID act goes into effect fully in March 2018
- Failure to make progress invalidates state licenses for airplane travel and admission to Federal facilities
- Legislature passed MGL c90, Section 8
- In order to gain a new driver's license, individual must prove lawful immigration presence for at least 12 months from the date of the license application
- Many Foreign National students and professionals are being refused licenses even though their presence will be lawful for 12 months or longer, e.g.: medical residents on J-1 visas
- Taskforce from NAFSA working with RMV to create 'fixes' short of a Legislative fix.