

Miller Mayer LLP
March 27, 2017



MILLER MAYER^{LLP}
ATTORNEYS AT LAW

Visas after Graduation

OUR TEAM



12 Immigration Attorneys - Decades of Combined Experience - Leaders in Immigration

MILLER MAYER



MILLER MAYER^{LLP}



215 East State Street, Suite 200
P.O. Box 6435
Ithaca, New York 14851

Level 29, Tower 1, Jing An Kerry Center
No. 1515 Nanjing West Road
Shanghai 200040, China

Ithaca Office: 607-273-4200
China Mobile: 86.185.1211.8168

info@millermayer.com

www.millermayer.com

MILLER MAYER^{LLP}

RESOURCES

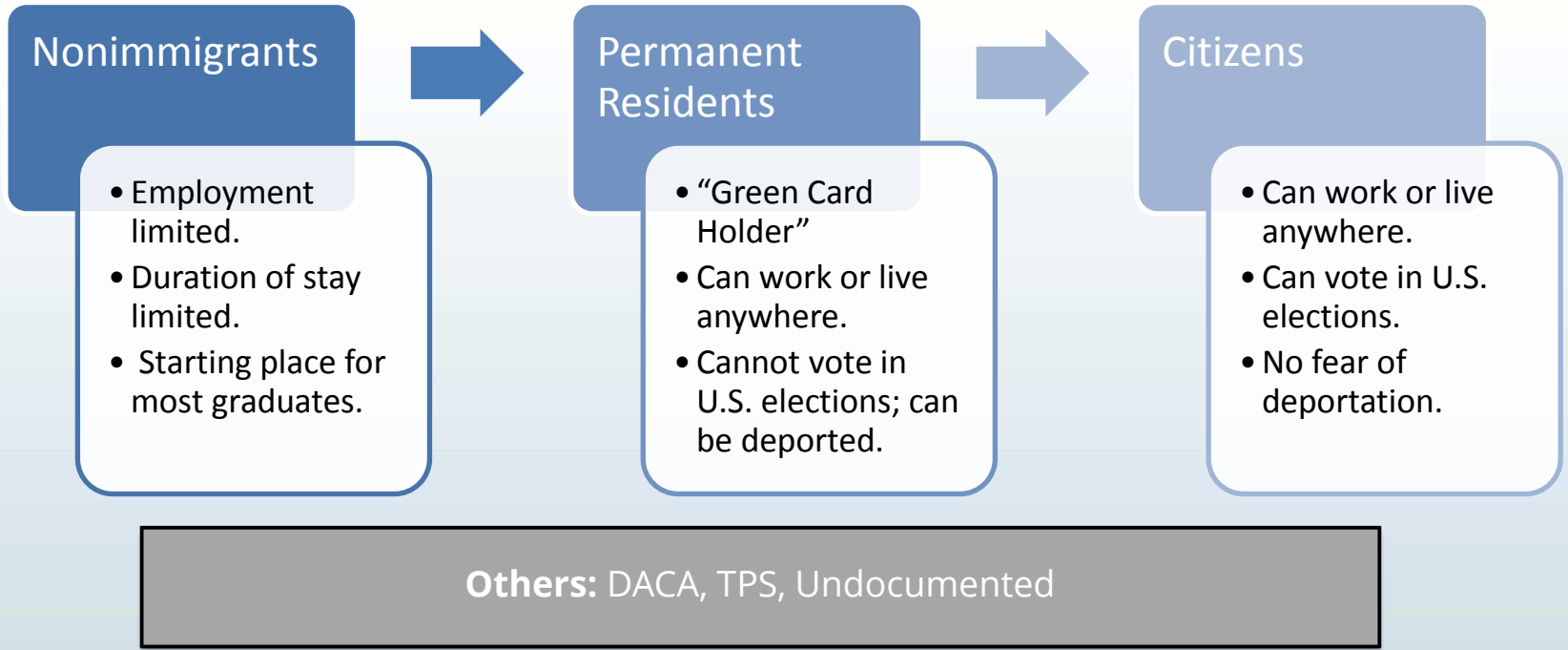
Article regarding visa options for international entrepreneurs:

<http://millermayer.com/visa-options-immigrant-entrepreneurs>

Updates on ongoing immigration changes:

<http://millermayer.com/2017immigrationchanges>

Overview of U.S. Immigration: People in the U.S.



Typical Immigration Timeline

Student Employee Pathway

U.S. Graduated F-1/J-1 Students
work permit (OPT)

Employer Sponsored Work Visa
(H-1B or other)

Green Card, LPR

U.S. Citizenship (Naturalization)

International Employee Pathway

Employer Sponsored Work Visa
(H-1B or other)

Green Card, LPR

U.S. Citizenship (Naturalization)

Family or Asylee Pathway

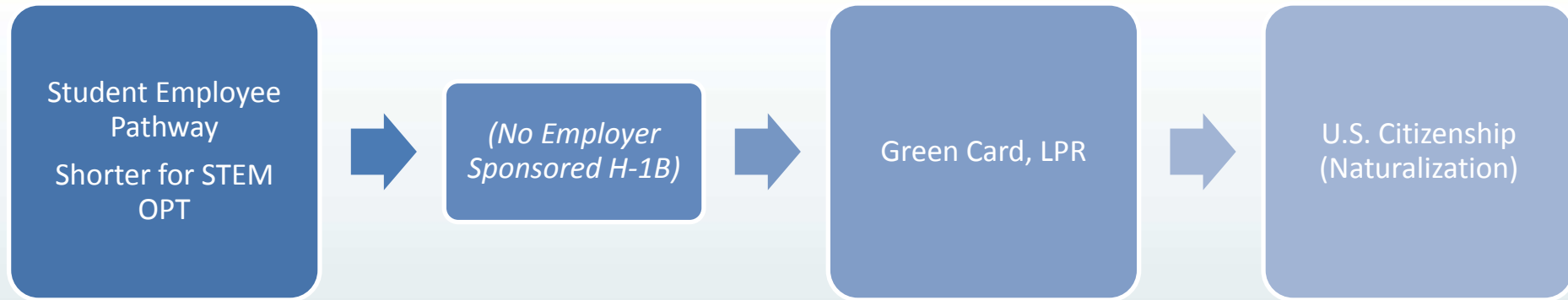
Green Card, LPR

U.S. Citizenship (Naturalization)

Temporary Visas by Letter

- **A** Diplomats
- **B** Visitors (business/pleasure)
- **C** Transit
- **D** Crewman
- **E** Treaty trader/investors
- **F** Academic students
- **G** International Organization
- **H** Temporary workers
- **I** Journalists/Media
- **J** Exchange visitors
- **K** Fiancés/fiancées of US citizens
- **L** Intra-company transferees
- **M** Vocational students
- **N** Parents or children of special immigrants
- **O** Persons of extraordinary ability
- **P** Athletes or entertainers
- **Q** International cultural exchange visitors
- **R** Religious workers
- **S** Federal witnesses (sneaky snitches)
- **T** Trafficking of persons victims
- **TN** NAFTA professionals (Mexico and Canada)
- **U** Certain crime victims
- **V** Certain spouses/children waiting for green cards

New Work Opportunity for Certain F-1 Students: STEM OPT



- STEM = Science, Technology, Engineering and Math
- Graduated F-1 STEM student to 36 months OPT
- For some, no need for employer-sponsored work visa, e.g., H-1B

Work Authorization Under OPT or STEM OPT

- ALL F-1 grads: 12 months work authorization to work in field of study = "OPT"
- STEM F-1s: Extra 24 months of work authorization if major listed = "STEM OPT"

<http://www.ice.gov/sevis/stemlist.htm>

- Non-STEM advance degree holder (e.g., MBA) may receive the 24 month STEM OPT extension based on a prior STEM degree (e.g., BS in Math) if not previously used = 4 years work
- STEM advance degree holder can access full 36 months OPT even if used full 36 months following prior STEM degree at lower level = 6 years work

What Jobs Qualify?

- OPT = work or volunteer in field of study, at least 20 hours per week, no pay requirements, start up and self-employment acceptable (self-employment)
- STEM OPT = need employer, no self-employment, salary commensurate with American workers, commissions and dividends okay
- Employer requirements to participate STEM OPT:
 - Must participate in the E-Verify program
 - Report to student's school on training, wages, evaluations and job changes

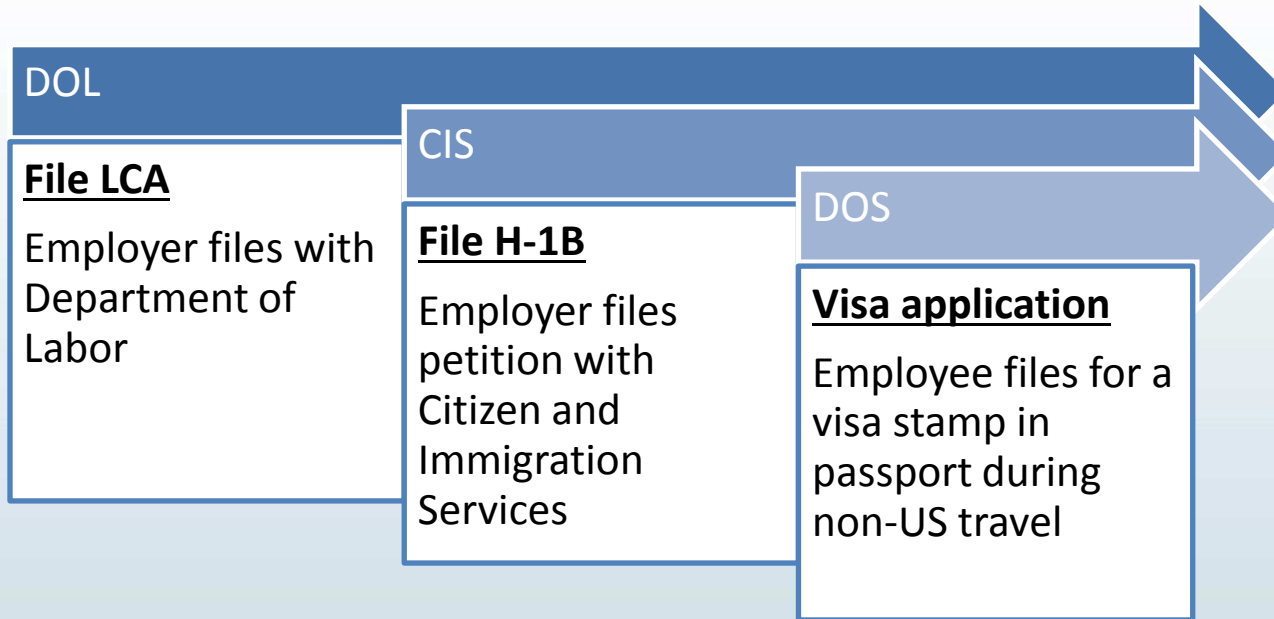
Nonimmigrant Visa Options

H-1B



- Employer sponsored for up to 6 years in a “specialty occupation”
- Three Requirements:
 1. Job must require a bachelor’s degree or higher in specific field – USCIS now imposing more exacting standard
 2. Beneficiary must have at least the relevant Bachelor’s degree or equivalent
 3. Employer must pay the required wage

H-1B Procedure



Advantages of H-1B

1. Duration:

- 6 year maximum
- 1 year stay outside U.S. refreshes 6 years
- Additional H extensions if green card started by end of 5th year

2. Time to work toward green card

3. No advertising or test of the U.S. labor market

4. No delay when you change employers

5. Some spouse work authorization by regulations

Disadvantages of H-1B

1. Each employer must file separate petition
2. Not flexible like F-1 OPT
3. Paperwork, cost and delay
 - Fees: approx. \$5,000 per filing, based on:
 - \$960 – cap-exempt fee
 - \$1,710 to \$2,460 – cap-subject fee
 - \$1,225 – expedite fee
 - \$3,500 approx. – legal fee
4. Primary disadvantage is inadequate supply – H-1B lottery

What is the H-1B “Cap”?

Non-university employers are subject to H-1B cap (annual quota)

65,000 per fiscal year

Reduced by 6,800 allocation for Chile and
Singapore

Separate 20,000 for U.S. master’s degree or
higher

Inadequate H-1B Quota April Lottery



- Cap-subject H-1B filings exceed supply
- All cap-H-1B employers file as early as possible, April 1
- Annual cap-H-1B quota filled in short time

• Recent lottery success rate approx. 35% for bachelor's degree holders

- FY 07 - May 26, 2006 (8 weeks)
- FY 08 - April 3, 2007 (1 day)
- FY 09 - April 7, 2008 (1 week, lottery)
- FY 10 - Dec. 21, 2009 (9 months)
- FY 11 - Jan. 26, 2011 (10 months)
- FY 12 - Nov. 22, 2011 (7.6 months)
- FY 13 - June 11, 2012 (2.4 months)
- FY 14 - April 5, 2013 (1 week, lottery)
- FY 15 - April 7, 2014 (1 week, lottery)
- FY 16 - April 7, 2015 (1 week, lottery)
- FY 17 - April 8, 2016 (1 week, lottery)

20,000 U.S. Master's Category H-1Bs



- Must have degree by April 1 (time of H-1B filing)
- Accredited U.S. institutions, excluding for-profit schools
- All advanced degrees included
- Master's cases considered under both caps (approx. 60% success rate)

H-1B Cap Exemptions



Advantages:

- Lower filing fees
- No race, no quota
- Apply any time

Employers who are:

- College/university
- University affiliated nonprofits (i.e., university teaching hospitals)
- Non-profit research institution (rare)

Individuals who are:

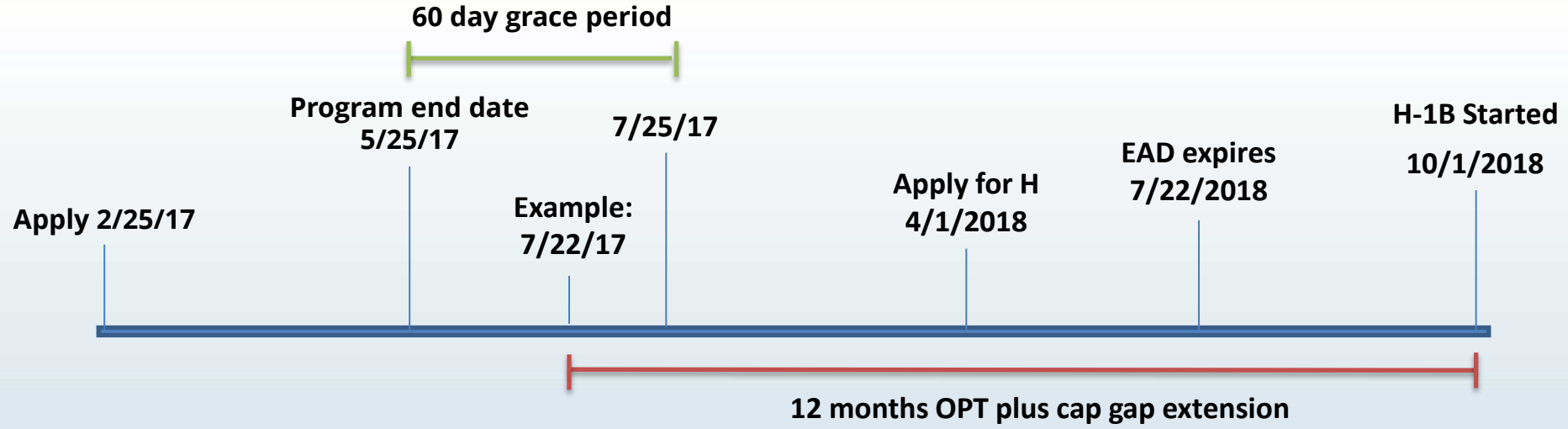
- Prior cap H-1B holders
- Employed “at” cap-exempt worksite
- Concurrently employed at cap-exempt worksite
- J-1 shortage area waived doctors

Changing Jobs on H-1B Visa



- Requires new filing by new employer
- Lottery not repeated for company H-1B to new company H-1B
- ‘Portability’ (start new job before approval of that employer’s H-1B petition) means no delay
- Moving from university job to private sector job requires April 1 filing (cap-exempt to cap-subject)

OPT Timeline & Cap Gap Extension



Apply up to 90 days before program end date and no later than 60 days after.

Timing of Hiring for OPT and H-1B



- **Graduating F-1s: Jan to March interview**
 - Timing of OPT work permit to match start date
 - Is H-1B necessary because OPT time not enough?
 - Future visa planning
- **Students working on OPT at another company**
 - OPT expiration and STEM extension timing
 - Avoiding a gap between OPT and H-1B
 - Future visa planning
- **H-1Bs working at other companies**
 - How much time of 6 year limit remains?
 - Has permanent resident process started and status?

Other Temporary Work Visas

More flexible – no lottery

Special conditions – special workers

Other Professional Nonimmigrant Visas



L-1: Multinational Transferee

- For employers with related foreign companies
- 12 months foreign employment
- Executive, manager, specialized knowledge
- Spouse work permits

E-3: Australian work visa

- 2 years
- Renewable indefinitely
- Professional positions
- Spouse and child work permits



- Mexican/ Canadian citizens
- Up to 3 years in job offer in listed occupation
- Same day application process possible
- Unlimited extensions
- Bachelor's degree/license in that field

Common TN Occupations:

- Accountant
- Architect
- College/university professor
- Computer systems analyst
- Engineer
- Management consultant
- Occupational therapist
- Registered nurse
- Scientific technician
- Graphic designer

E-1/E-2 Visa



- **E-1 Treaty Traders**
 - Substantial trade, principally between the U.S. and home country.
- **E-2 Treaty Investors**
 - Invest substantial capital in a bona fide enterprise in the U.S.
 - Toronto Consulate has indicated that \$50,000 is the lowest “substantial investment” they have approved
- **E-1/E-2 Generally**
 - Can start or buy a company
 - Company must be 50% owned by nationals of the same treaty country
 - Can be employed by a company qualifying for E-1/E-2 status where the owner(s) shares your nationality
 - Holders of E-1/E-2 status can lead, direct, manage
 - No China, India; few Middle Eastern or African countries
 - Spouse can work.
 - No limit on extensions.



Must prove 3 of 8 criteria:

1. Receipt of a nationally or internationally recognized prize for achievement in field
2. Membership in associations in field that require “outstanding achievement” of their members
3. Material published about applicant in major trade publications or other major media
4. Applicant served as a judge of others in field either individually or on a panel
5. Original, scientific, scholarly, artistic, athletic, or business-related contributions of major significance in field
6. Authorship of scholarly articles in field
7. Performing a critical or leading role for organizations that have a distinguished reputation
8. Command a high salary in field

Other Nonimmigrant Visa Categories



- **F/J:** Study and Research
- **J:** Professional trainees/Interns
- **H-3:** Training Program

Spouses



- E-1, E-2, E-3, L-1, and J-1 status allow spouses to work in any field, and now some H-1Bs
- Spouse may also be able to pursue permanent residence

How to Sponsor for US Permanent Residency?

Family-based

Employment-based

Diversity Lottery

Family-Based Green Card Categories (FB)



	Spouse, Parents, children under 21	Sons and daughter 21+	Married sons/ daughter	Siblings	Nationality = China, Mexico, Philippines, India
US citizen sponsor > 21	Yes	Yes	Yes	Yes	No difference
Approx. wait time	None	6 years	12 years	13 years	longer
LPR/CPR sponsor > 21	Yes – spouse, child No - parents	Yes	No	No	
Approx. wait time	1.5 years	7 years	N/A	N/A	Longer

Visa Bulletin: Family-Based April 2017



Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01JAN11	01JAN11	01JAN11	01JUN95	01MAY06
F2A	22NOV15	22NOV15	22NOV15	22NOV15	22NOV15
F2B	08FEB11	08FEB11	08FEB11	01JUN96	01FEB07
F3	22AUG05	22AUG05	22AUG05	01MAY95	01JAN95
F4	01JUL04	01JUL04	01MAY04	01DEC97	01APR94

Diversity Lottery (DV)



Program allows 50,000 randomly selected diversity visas (DVs) annually, must meet strict eligibility requirements, from countries with low immigration rates

Eligibility requirements:

- Receive a visa based on education or work
- Must have a high school education or
- Two years of work experience within the past five years
- Current program: [DV-2017 Program Instructions](#)

Employment PR Process Usually Requires PERM



- What: A certification from the Department of Labor that a particular position at a particular company is “open” for a foreign national because no qualified U.S. workers are available to fill the position
- How: Employer completes 5 kinds of advertising/recruitment to show no qualified U.S. workers applied for the position
- When: Date of PERM filing = initial green card application date, triggering start of quota waiting period, if any
- Streamlined process for professors (“special handling”)

PERM-Based Green Card Process



Employment-Based Green Card Categories (EB)

Priority Workers (EB-1)

40,000 visas per year

- Extraordinary ability (self-sponsor)
- Outstanding professors & researchers (tenure-track position)
- Business executives & managers (no labor certification required)

Advanced degree holders (EB-2)

40,000 visas per year

- Professionals with advanced degrees or exceptional ability in sciences, arts & business (labor certification required)
- National Interest Waiver of labor certification requirement

Skilled & unskilled workers (EB-3)

40,000 visas per year

- Skilled workers in short supply
- Professionals with bachelor's degree
- Unskilled workers in short supply (all require labor certification)

Special Immigrants (EB-4)

10,000 visas per year

- Religious workers; certain US govt. employees; Panama Canal employees; plus certain dependent juveniles

Investors (EB-5)

10,000 visas per year

- Must invest between \$500,000 and \$1 million
- Must create at least 10 full-time jobs

Employment-Based Green Card Categories (continued)



EB-1	EB-2	EB-3	EB-5
<u>Extra-ordinary ability</u> <u>no PERM</u>	<u>Advanced degree with</u> <u>PERM</u>	<u>Bachelor's degree with PERM</u>	Investors in job-creating project of Regional Center
<u>Tenure-track professor</u> <u>Permanent researcher</u> <u>no PERM</u>	<u>Exceptional ability with</u> <u>PERM</u>	<u>Skilled workers with PERM</u>	In self-managed business
<u>Multinational transferees</u> <u>no PERM</u>	<u>National Interest</u> <u>Waiver no PERM</u>	<u>Unskilled workers with PERM</u>	
No quota delay	0-7 years	1-11 years	2+ years (China only)
3 -12 months processing time	3 - 24 months processing time	24+ months processing time	2 – 3 years processing time

Visa Bulletin: Employment February 2017



Employment-based	All Chargeability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01MAR13	22APR09	C	C
3rd	C	01MAY14	01JUL05	C	01SEP13
Other Workers	C	01AUG09	01JUL05	C	01SEP13
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 th Non-Regional Center (C5 and T5)	C	15JUN14	C	C	C
5 th Regional Center (I5 and R5)	C	15JUN14	C	C	C

Fast Track: Non-PERM Green Card Pathways



- **EB-1 priority workers:**

1. EB-1-A Extraordinary ability aliens
 - i. Self-sponsor
 - ii. Similar to O-1A NIV
2. EB-1-B Outstanding professors and researchers
3. EB-1-C Multinational executives and managers
 - i. Similar to L-1A NIV

- **EB-2 “national interest” workers:**

- i. Self-sponsored
- ii. Advanced degree or exceptional ability
- iii. Doing work in the national interest

EB-5 Immigrant Investors



- Self-sponsored
- Must invest in U.S. companies that benefit U.S. economy and create or save at least 10 full-time U.S. worker jobs
- \$1 million normally required to invest; \$500,000 in rural or poor areas
- Receive conditional residence for two years; then file again to show job creation and receive permanent green card
- Quota backlogs for Chinese nationals

Timing and Planning for Green Cards



- Complex process (PERM, I-140, AOS) > 5 years
- Quota delays affect Bachelor's degree level jobs (EB-3) and India and China Masters and Bachelor's degrees (EB-2)
- During quota delay wait period, employer-sponsored temporary work visa necessary
- USCIS issued a rule recently that liberalizes work permissions for many foreign nationals, especially those affected by long quota delays in the employment-based green card categories

Immigration Resources (Government)



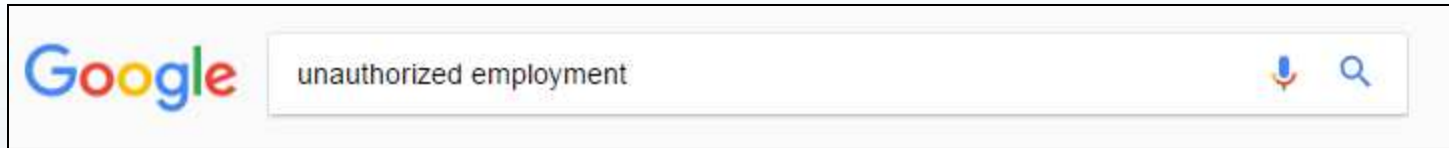
- Links to embassies & consulates worldwide
- Application procedures and consulate closings
- Wardens messages and travel advisories
- Public announcements
- Derivative citizenship and renunciation
- Visa Bulletin regarding priority dates



U.S. Citizenship and Immigration Services

- Statutes & regulations
- Forms
- Procedures and instructions
- Contact information
- Processing times

The Internet: A tool for you, and for USCIS



- . Google
- . LinkedIn
- . Facebook
- . Online articles

Make sure your web presence only has authorized work!

Parting Thoughts



- Realistic assessment is important
- Planning ahead is key
- Get to know employers soon
- Think of alternative and creative employment options

Contact Us



**215 East State Street, Suite 200
P.O. Box 6435
Ithaca, New York 14851**

**Level 29, Tower 1, Jing An Kerry Center
No. 1515 Nanjing West Road
Shanghai 200040, China**

**Ithaca Office: 607-273-4200
China Mobile: 86.185.1211.8168**

info@millermayer.com

www.millermayer.com

MILLER MAYER LLP