

# Immigration Workshop:

## H-1B Visa Employment and Post-OPT Options Informational Session



# Legal Disclaimer



- This does not constitute legal advice
- For informational purposes only
- For legal opinions or questions pertaining to your specific case, please schedule a consultation with one of our attorneys or contact your WR Immigration case team

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# Presenter



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- Founding Partner of Wolfsdorf Rosenthal LLP
- Over 20 years of experience in immigration law practice
- Who's Who Legal, Thought Leader in Corporate Immigration
- Best Lawyers Recognition
- Super Lawyers, Rising Star
- American Immigration Lawyer Association (AILA) Board of Publications, Department of Labor, Distance Learning, Field Operations and Healthcare Committees, and past Chair of AILA's Religious Worker Committee
- Southern California AILA Customs and Border Patrol Liaison

# Journey Forward with WR Immigration



WR Immigration's mission is to provide clients with the best experience through strategic legal services, predictive technology solutions, and inclusive collaboration



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## 10 Offices Globally, 200+ Professionals

We have the scale to provide global support

## Our Values

Creative, innovation, staying connected, client experience and compassionate counsel



# Discussion Topics

- H-1B lottery
- Other Temporary Visas (Nonimmigrant Visas)
- Immigrant Visas (Green Cards)
- Questions

# What is the H-1B Lottery?

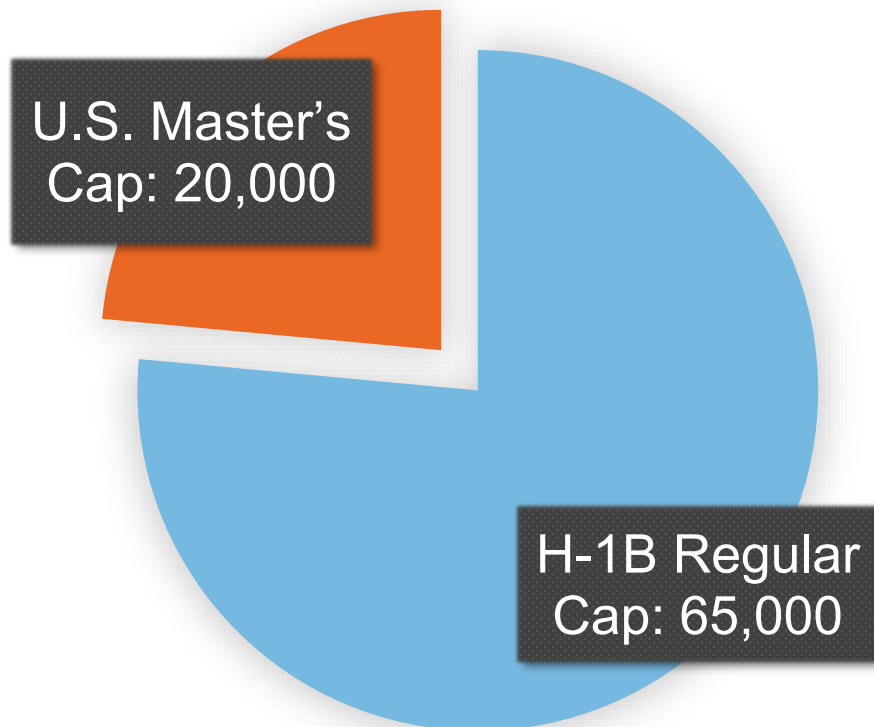


Congress created the H-1B visa, a work visa specifically for specialized workers. The maximum number of visas that can be issued each year is capped.

Since there are more applications received than visas available, the H-1B lottery was created to determine which applicants could apply. Every year, US Citizenship and Immigration Services (USCIS) runs a computer-generated random selection process that occurs in the spring, for a visa start date of October 1. This process is referred to as the H-1B Lottery or H-1B CAP season.

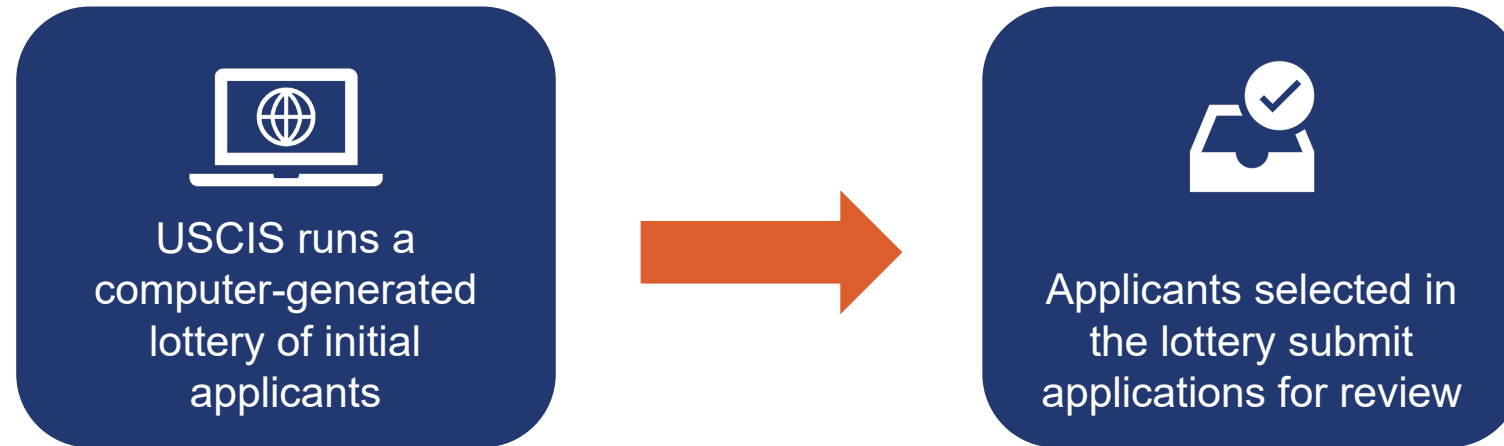
Lottery exempt organizations?

# How many H-1B visas are available?



- 65,000 new H-1B visas available each year
- Additional **20,000** reserved for individuals with a U.S. Master's degree or higher
- Total of **85,000 visas available**
- If you have a US Master's degree or PhD degree, you will be run through two separate lotteries (using the same registration).

# How are H-1Bs granted?



**Selection in the lottery does not mean that a visa is given; it means that the application may be filed for review.**

Once filed, an immigration officer will review the merits of the case and approve, deny, or issue a Request for Evidence for the case.

# Historical H-1B Lottery Data



There are many benefits associated with the H-1B visa, so there is a very high demand for this visa type. Over the past 5 years, the demand has decreased somewhat, which increases the selection rate for those who do enter.


	2021	2022	2023	2024	2025
Total Cases Submitted	308,613	483,927	780,884	479,953	358,737
Visas Available	85,000	85,000	85,000	85,000	85,000
Percentage Selected	28%	18%	11%	17%	23%

# Beneficiary-Centric Selection



- In FY25, USCIS implemented a new beneficiary-centric selection process
- Far fewer attempts to submit additional registrations to gain an unfair advantage of selection
- USCIS is hyper-focused on deterring and preventing abuse of the H-1B registration process

# Next Steps



**February 18**  
Employee  
questionnaire  
s due to WR  
team

**March 4 - 19**  
Registration  
opens to  
submit lottery  
applications

**By March 31**  
Lottery is run  
and WR is  
notified of  
selections

**April 1 – June 30**  
Full applications  
prepared and  
submitted for  
those selected in  
the lottery

**October 1**  
New H-1B  
visas go into  
effect

Note, some years  
there are additional  
lotteries (after June  
30) if they do not  
receive enough full  
applications

# How Will the Pre-Registration System Work?



- Full Legal Name
- Gender
- Date of Birth
- Confirmation of degree earned (Bachelor's degree or U.S. Master's degree)
  - OR Confirmation Degree issued by June 1<sup>st</sup>, 2026
- Country of Birth
- Country of Citizenship
- Passport Number of a VALID Passport
- Job Title
- OES SOC
- Wage Level of actual salary
- Worksite location(s)

# Impact to Travel Plans

In addition to travel limitations that may arise based on your current visa status or pending green card application, the H-1B lottery will impact international travel.

Can I travel before April 1?

No impact to H-1B.

Can I travel between April and June 30 (if selected)?

Yes, but with planning.

Can I travel once the application is submitted and pending?

Generally, NO but can discuss options.

Can I travel once the application is approved?

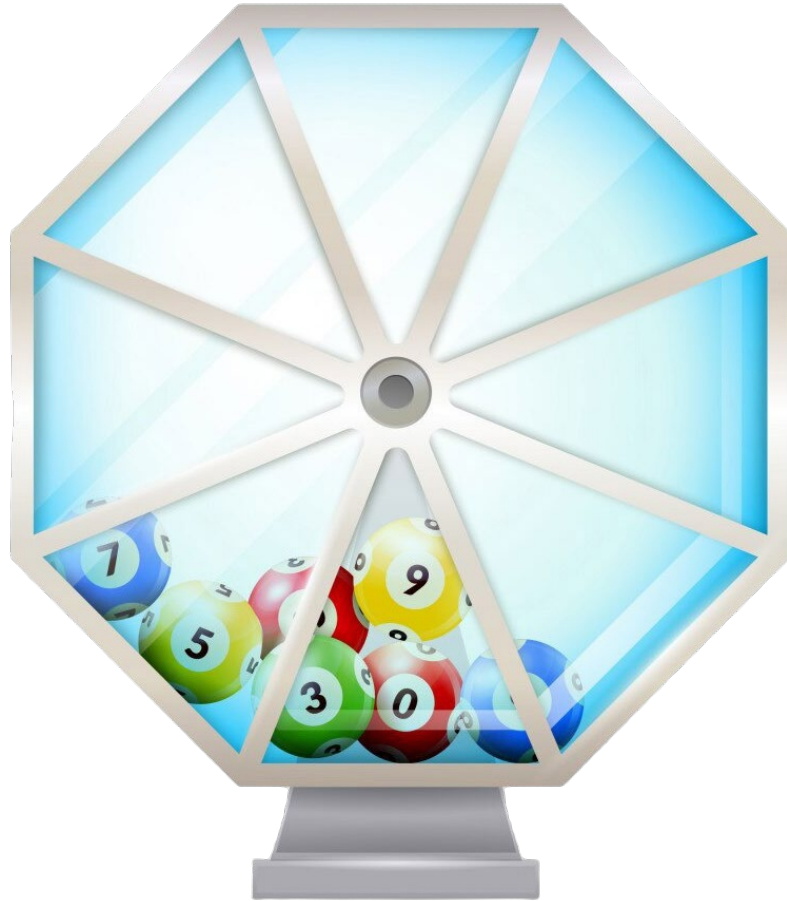
Yes, but with planning.

**Recommendation:** Do not finalize summer international travel plans until after the lottery results are released. Book refundable/changeable flights in case you are selected. If you have plans later in the summer, Premium Processing may be an option.

## \$100,000 Proclamation Fee

- As of **September 21, 2025**, certain new H-1B petitions must be filed with a **mandatory \$100,000 fee** under U.S. Citizenship and Immigration Services (USCIS) guidance.
- Applies to “new” H-1B petitions (e.g. new hires from abroad), not to petitions, extensions, or changes of status for existing H-1B visa holders.
- Payment must be made via pay.gov **before** filing the petition; failure to include proof of payment (or a valid exception) will result in denial.
- No national interest exemptions have been approved as of yet.

# H-1B Cap Selection UPDATES



In FY27 USCIS will implement wage level weighted selection process

The current purely random lottery will be replaced by a weighted lottery that favors beneficiaries with higher offered wages, based on Occupational Employment and Wage Statistics (OEWS) wage levels for the job's SOC code and location.

Under the proposed system:

Wage Level IV = 4 entries

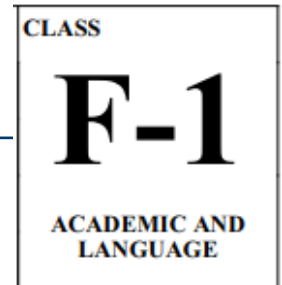
Wage Level III = 3 entries

Wage Level II = 2 entries

Wage Level I = 1 entry

# What is “Cap Gap” and How Do I Obtain it?

## “Cap Gap” Work Authorization



- Applies if your H-1B Petition was SELECTED and your F-1 OPT EAD or STEM EAD will expire *after* April 1 but *before* September 30
- If your case is selected in the lottery, F-1 OPT or STEM work authorization automatically extended to April 1, 2027
- Request updated I-20 from your school

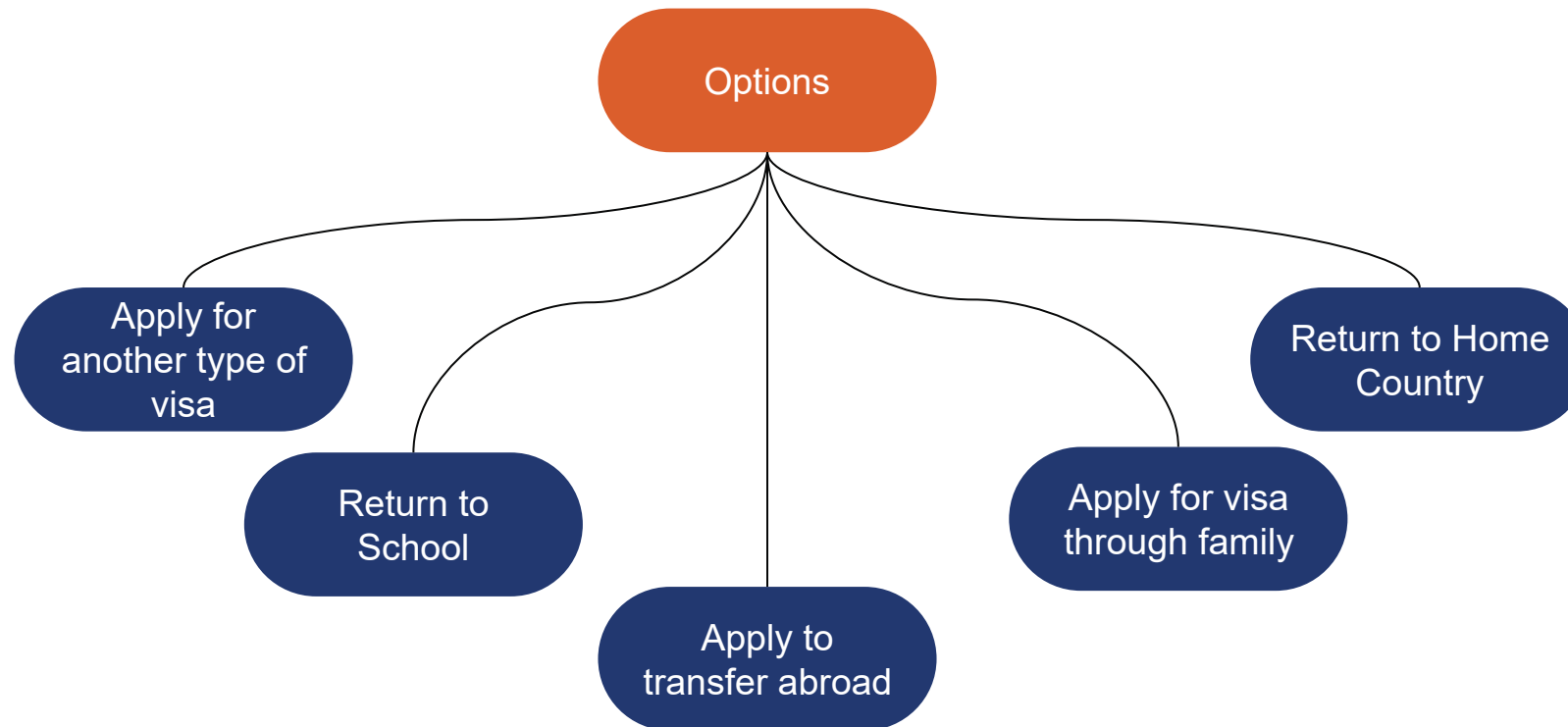
# H-1B Visa



- Standard professional visa
- Job must require at least bachelor's degree in specific field to perform duties (e.g., Financial Analyst, Accountant, Electrical Engineer, Software Engineer, Graphic Designer, etc.)
- Minimum wage requirements
- Employer-specific
- Can be for part-time employment
- Size of employer is not a disqualification
- 6 year maximum; granted in 3-year increments
- 60-day grace period if terminated

# What Happens if I am Not Selected?

If this is your “last chance” in the H-1B lottery, there are a few options to consider:



# Other Nonimmigrant Work Visas



# Free Trade Agreement Visas



- Requires professional occupation and degree
- H-1B1s for Chile and Singapore – 18 months
- TN visas for Canadians and Mexicans:
  - Check TN Appendix 1603.D.1
  - Canadians can apply at border or airport; Mexicans apply for visa at U.S. Consulate in Mexico
- E-3 visas for Australian professionals

# Dependent Work Authorization



- H-4 EAD
  - Based on spouse's H-1B status and green card process
  - Valid for length of H-4 status
  - Renewable based on H-1B extensions
  
- L-2/E-1/2/3/J-2 EAD
  - Based on spouse's L-1, E or J status

# O-1 Visas



## O-1 Alien of Extraordinary Ability in Arts, Science, Education or Sports

- Extensive documentation demonstrating the applicant's accomplishments, such as awards, high salary, press articles about the applicant, reference letters and/or holding critical position with distinguished companies, is required
- O-1s for academics/researchers - publications, citations (fields with low citation rates?), reviewing activity

# E-2 Visas



- Requisite treaty exists
- Individual and/or business possess the nationality of the treaty country
- Applicant has invested
- Enterprise is a real and operating commercial enterprise
- Enterprise is more than a marginal one solely for earning a living
- Applicant can "develop and direct" the enterprise
- Applicant is destined to an executive/supervisory position or possesses skills essential to the firm's operations in the United States

# Consular Posts



- NIV interview waiver mostly discontinued
- Uptick in administrative processing
- Consular processing delays still present and require early planning
- Appointments may not be present at high-travel posts
- No more third country appointments, except very limited exceptions
- Travel bans and increased scrutiny

# Immigrant Visas (Green Cards)



# Why you should start thinking now about a green card?

- There are multiple paths for you to seek a green card yourself without employer sponsorship:
  - National Interest Waiver
  - Diversity Lottery
  - Family Based
  - EB-1A
  - EB-5
  - Gold Card



# DV Green Card Lottery

- DV Green Card Lottery ([www.travel.state.gov](http://www.travel.state.gov))
- Diversity Immigrant Visa Program – aka DV lottery
- Over 50,000 green cards – APPLY!!!
- Free registration period is October - November each year
- Countries who have sent more than 50,000 immigrants to the U.S. over the past 5 years are not eligible (changes every year): Canada, China, India, Mexico, Philippines, etc.
- Based on country of birth of applicant, or spouse.



# Family-Based Immigrant Visas



- Immediate Relative: spouse, parent, minor children of U.S. citizens (under 21)
- 12–18 month approx. processing
- Adult child must be 21 and U.S. domiciled to sponsor parents

# Visa Bulletin



Visa  
Bulletin

- U.S. limits the number of family- and employment-based immigrant visas (green cards) issued each year
- Limits number of green cards issued under each preference category and country of birth

# Visa Bulletin March 2026 - Family-Based



<b>Family-Sponsored</b>	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
F1	08NOV16	08NOV16	08NOV16	22DEC06	01MAR13
F2A	01FEB24	01FEB24	01FEB24	01FEB23	01FEB24
F2B	01DEC16	01DEC16	01DEC16	15FEB09	22DEC12
F3	08SEP11	08SEP11	08SEP11	01MAY01	01MAR05
F4	08JAN08	08JAN08	01NOV06	08APR01	01SEP06

# Visa Bulletin March 2026

## - Employment-Based



<b>Employment-based</b>	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
1st	C	01MAR23	01MAR23	C	C
2nd	15OCT24	01SEP21	15SEP13	15OCT24	15OCT24
3rd	01OCT23	01MAY21	15NOV13	01OCT23	01AUG23
Other Workers	01NOV21	08DEC18	15NOV13	01NOV21	01NOV21
4th	15JUL21	15JUL21	15JUL21	15JUL21	15JUL21
Certain Religious Workers	15JUL21	15JUL21	15JUL21	15JUL21	15JUL21
5th Unreserved (including C5, T5, I5, R5, NU, RU)	C	15AUG16	01MAY22	C	C
5th Set Aside: Rural (20%, including NR, RR)	C	C	C	C	C
5th Set Aside: High Unemployment (10%, including NH, RH)	C	C	C	C	C
5th Set Aside: Infrastructure (2%, including RI)	C	C	C	C	C

# Employment-Based Immigrant Visas – First Preference (EB-1)



## Extraordinary Ability (EB-1A)

- May self-sponsor
- Must meet certain criteria and final merits determination

## Outstanding Researchers/Professors (EB-1B)

- International recognition for outstanding achievements
- 3 years experience in teaching/research
- Requires sponsor and permanent job offer

## Multinational Executives and Managers (EB-1C)

- Must be manager/executive overseas and in the U.S. for one year in past 3 years

# Employment Based Immigrant Visas – Second & Third Preference (EB-2 & EB-3)

## EB-2 (Second Preference)

- PERM for Advanced Degree Holders
  - Master's or higher degree or foreign equivalent
  - Bachelor plus 5 years progressive experience
- Schedule A, Group II Alien of Exceptional Ability in Arts, Sciences or Performing Arts
- National Interest Waiver (NIW)
- PERM for Professionals with BA degree or foreign equivalent
- PERM for Skilled Workers with 2 years experience
- PERM for Other Workers

## EB-3 (Third Preference) – PERM

# Employment-Based Immigrant Visas – First Preference (EB-1A)



- Lesser nationally or internationally recognized prizes or awards for excellence in the field;
- Membership in associations that require outstanding achievements;
- Published material about the applicant in professional or major trade publications or other major media about his or her work in the field;
- Participation as a judge of the work of others in the same or an allied field;
- Original scientific contributions of major significance to the field;
- Authorship of scholarly articles in the field, published in professional or major trade publications or other major media;
- Performance in a leading or critical role for organizations or establishments with distinguished reputations;
- Commanding a high salary or other significantly high remuneration for services in relation to others in

# EB-2 National Interest Waiver (NIW)



- Self-sponsored
- Substantial merit and national importance
  - Not a closed list (AI, machine learning, medical research, entrepreneurship, health and safety, national defense, economic benefit in a depressed area, culture, education, etc.)
- Well-positioned to advance the national interest
- On balance, the regular labor certification process should be waived in the national interest

# PERM Labor Certification Process



PERM Labor Certification process:

- Employer must conduct “good faith” recruitment efforts and show there is no qualified U.S. worker to do the job
- Filed with the Department of Labor

# EB-5 Green Card Option



- Through Investment of \$800K – current for Indian- and Chinese-born applicants
- **Based on U.S. Job Creation:** Right to live in US permanently based on an investment of lawfully obtained capital (can be gifted or lent) into a US company that creates jobs for US workers; 95% go with Regional Center EB-5 projects
- **Concurrent Filing Advantage:** Indians in US on valid visas (e.g., H-1B, F-1, L-1) can now file their I-526 and I-485 (adjustment of status) applications simultaneously, allowing them to live, work, and travel while waiting for a green card — even with visa backlogs
- **Reserved Visa Set-Asides:** Investing in a rural, high-unemployment, or infrastructure project to benefit from visa set-asides under the EB-5 Reform and Integrity Act of 2022 not subject to the old backlog
- **Avoid Aging Out:** Concurrent filing may help “lock in” your child’s age under the Child Status Protection Act (CSPA), reducing the risk of children aging out of dependent eligibility during long wait times
- **Risk of Status Gaps:** While pending adjustment can protect against unlawful presence, it may not be considered valid nonimmigrant status — increasing risks if the adjustment of status is denied. Careful planning is essential if your current visa status will expire soon

# Gold Card?

## Overview

- Executive Order issued 09/19/25
- Accelerated permanent residence
- Uses existing EB-1 and EB-2 categories
- \$1,000,000 contribution per applicant if individual
- \$15,000 filing fee per applicant
- Non-refundable

## Eligibility

- Must qualify under EB-1 or EB-2
- Full admissibility required
- Extensive personal and financial disclosure

## Key considerations

- New and untested program
- EB-1 and EB-2 backlogs still apply
- Approval not guaranteed

# Adjustment of Status Key Issues



- Actual immigration –check for identity, criminal record, immigration violations and medical to show admissibility to the U.S.
- Birth certificates –Indian birth certificates? Incomplete birth certificates? Late registration
- Criminal records –DUI? **Smoking/possession of marijuana is still a crime under federal law**
- Maintaining underlying immigration status
- Medical issues and vaccinations
- Dependents (spouse and children under 21) are eligible for green cards
- Work permit and travel documents within 180 days of filing (restrictions on travel for some temporary statuses)
- Interviews

# Know Your Rights:



If ICE or Law Enforcement Stops You

For more information, read this ACLU “Know Your Rights” guide.



<https://www.aclu.org/know-your-rights/immigrants->

# Recommendations – What Can We Do?



- Stay informed and prepared
- Always Carry immigration status documents (passports, updated I-94 records, I-20s, DS-2019s, I-797 approvals, green cards, and other relevant visa documents)
- Remain compliant (studies, job duties, worksites, hours, etc.)
- Avoid activities that can lead to criminal behavior
- Update personal information (employer, legal counsel and USCIS (e.g., AR-11) as appropriate)
- Be strategic about your immigration and plan ahead
- Avoid travel?
- Embassies/Consulates and Customs and Border Protection

# Questions & Answers



# Stay Informed



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Newsletter

Telephone & Email

YouTube

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News, insights, and resources

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We look forward to serving your  
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