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# **KYACAP**

**Immigration Law Update:  
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***Overview of Employment-  
Based Immigration:  
Sponsoring Individuals to  
Work in the United States***

# **Government Agencies Involved in the U.S. Immigration Process**

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- Department of Homeland Security (U.S. Citizenship and Immigration Services) [www.uscis.gov](http://www.uscis.gov)
- Department of State [www.state.gov](http://www.state.gov)
- Department of Labor [www.dol.gov](http://www.dol.gov)
- State Workforce Job Offices (Kentucky Office of Employment and Training) [www.oet.ky.gov](http://www.oet.ky.gov)



# ***Alphabet Soup of Temporary Visa Categories***

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- *B-1 business visitors*
- *H-1B specialty occupation professionals*
- *H-2B temporary seasonal workers*
- *H-3 and J-1 career trainees*
- *L-1 intra-company transferees*
- *TN Trade NAFTA for Canadian and Mexican nationals*



# **B-1 Business Visitors**

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- For commercial transactions, meetings and contract negotiations
- Local employment not permitted
- Cannot receive compensation from any U.S. source
- Visits for six months or less



# H-1B Specialty Occupation Professionals

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- Professional positions which require a bachelor's degree in a specific area
- Must pay the "required" wage
- Must not adversely impact working conditions of U.S. workers
- Must provide notice to workers
- Must retain wage documentation for public inspection
- Subject to numerical limitations



# H-1B Backlogs and Shortages

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- 65,000 H-1Bs available per year for individuals with bachelor's degrees
- Additional 20,000 H-1Bs for individuals with US Master's Degrees
- Cap exempt employment: institutions of higher learning; research organizations; physicians serving 3-year J-1 waiver period



# H-1B cap problems

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- FY 2008 begins October 1, 2007
- All FY 2008 H-1B's used up April 1, 2007
- All FY 2008 Master's Cap H-1B's used up in May, 2007
- Student EAD's typically expire in June/July; so they face status problems





# H-2A and H-2B Temporary Workers

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- Available for temporary agricultural (H-2A) and nonagricultural (H-2B) work of a seasonal nature
- Must test the U.S. labor market and prove that U.S. workers are not available
- Must pay the required wage
- H-2B subject to numerical limitations



# H-3 and J-1 Trainees

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- May receive career training in the U.S.
- Typically must show it is not available in one's home country and it will benefit the employee's career abroad
- Wage and insurance requirements
- J-1 trainees often must live in their home country for 2 years at end of training unless waiver is granted



# L-1 Intra-Company Transferees

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- Used by employers with multinational operations
- Employee must have worked with a qualifying affiliate outside the U.S. for 1 year in 3 years prior to transfer
- Nature of the work with the company as an executive, manager or specialized knowledge employee
- No wage and document retention requirements
- Work authorization for spouses
- Blanket L program for frequent transfers



# **TN (Trade NAFTA) for Canadian and Mexican Nationals**

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- Available to designated professionals from Canada or Mexico
- Positions include Accountants, Architects and Animal Breeders, Engineers, etc.
- Degree requirements vary by job
- Different processes for Canadians and Mexicans
- Difficult to pursue permanent residence



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# ***Sponsoring Individual Employees for U.S. Permanent Residence***

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- ***PERM Labor Certification***
- ***Backlogs in Employment-Based  
Permanent Residence Categories***
- ***Categories that do not Require a Test  
of the U.S. Labor Market***
- ***Healthcare Shortage Areas***



# PERM Labor Certification

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- Testing the U.S. job market for able and qualified U.S. workers
- Required for most professional and skilled positions
- Paying the “prevailing wage”
- Backlogs in the old DOL system
- The DOL online PERM filing program
- <http://workforcesecurity.doleta.gov/foreign/perm.asp>



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# **Categories That Do Not Require a Test of the U.S. Labor Market**

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- **Intra-company executives and managers**
- **Aliens of extraordinary ability**
- **Outstanding researchers and professors**



# Employer I-140 Petition to USCIS

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- After Labor Certification is approved (if required), Employer submits I-140 Immigrant Petition to USCIS
- Must prove employee has credentials, and employer has ability to pay the required wage (if labor certification was required)
- 6-8 months; or 2 weeks if premium processing is available





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# Backlogs in Employment- Based Permanent Residence Workers

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- Numerical limitations on employment-based visa categories
- Your degree matters: advanced degrees versus skilled workers
- Where you're from matters: country of origin
- [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)



# Health Care Immigration: Temporary Options for Nurses and Allied Professionals

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- **H-1B specialty occupation**
  - Only for specialized nursing positions
  - State license requirement
  - Subject to numerical cap
- **H-1C**
  - RNs at qualifying hospitals in Health Professional Shortage Areas
- **TNs for Mexicans and Canadians**
  - State license requirement
  - Difficult to pursue permanent residence
- **Visa Screen Certificate requirement**
  - Qualifications comparable to U.S. workers



# Health Care Immigration: Permanent Residence Options for Nurses and Allied Professionals

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- Schedule A for Nurses and Physical Therapists
  - **RNs:** CGFNS Certificate, unrestricted state license or NCLEX-RN exam passage
  - **Physical Therapists:** State confirmation of eligibility
- PERM Labor Certification for other positions
- Visa Screen certificate requirement
- Significant permanent residence backlogs



# Health Care Immigration: Temporary Options for Physicians

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- J-1 Exchange Visitor
  - Foreign Medical Graduates often participate in U.S. residency and fellowship programs in J-1 status
  - Participation usually subjects physician to 2-year home residency requirement



# **Health Care Immigration: Temporary Options for Physicians (Cont'd)**

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- **H-1B**
  - Physicians eligible for H-1B to perform clinical services, teach, or conduct research
  - FMGs who undertake J-1 programs must either serve the time at home or obtain waiver of 2-year home residency requirement
  - Waivers are available to physicians who will serve 3 years in areas designated as Health Care Professional Shortage Area (HPSA) or Medically Underserved Area (MUA)



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# **Health Care Immigration: Temporary Options for Physicians (Cont'd)**

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- **TN**
  - Available to physicians to perform medical research but not to perform clinical services



# Health Care Immigration: Permanent Residence Options for Physicians

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- PERM Labor Certification available for most positions
- "Special Handling" labor Certification for physicians who also serve as medical school faculty members
- National Interest Waiver ("NIW") of labor certification for physicians who have served 5 years in a HPSA or MJA
  - Significant litigation over whether the 5 years of service must be in H-1B status, and whether 3-year J service time may be counted toward the 5-year NIW service period



# Family-based cases for immediate relatives

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- I-130 filed by US citizen spouse for spouse, adult child for parent, or parent for minor child (but not parent for adult child)
- I-485 application by sponsored family member may be filed simultaneously, or if outside US, may apply for visa after I-130 is approved

