



Navigating Immigration

David Wilks – September 8, 2020

Albany | Buffalo | New York City | Palm Beach | Saratoga Springs | Toronto

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About Hodgson Russ

Founded
1817

- Two Centuries of Experience
- Offices throughout New York State, as well as in Toronto and Florida
- Six dedicated immigration attorneys with decades of experience



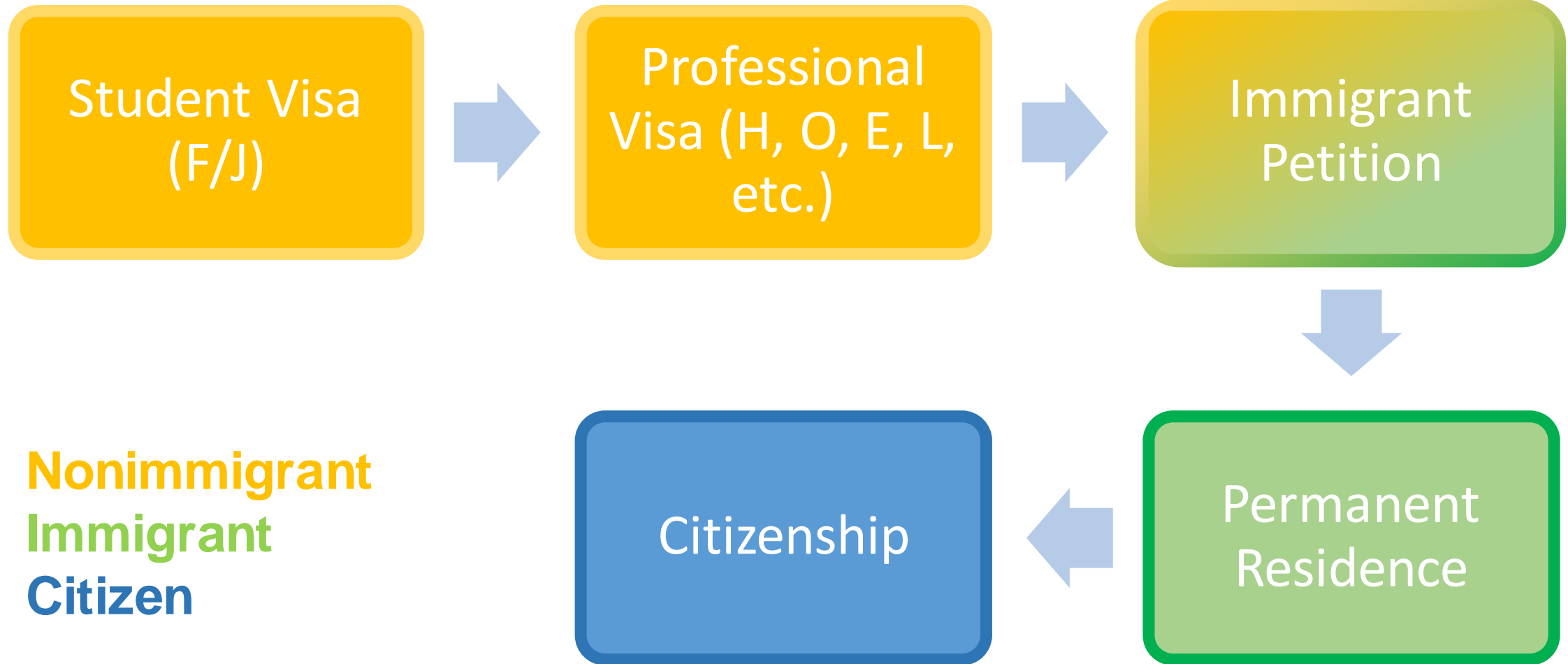
Navigating Immigration

Agenda

1. Immigration Overview
2. Nonimmigrant (Temporary Options)
3. Permanent Residence
4. Naturalization

Typical Immigration Path

Immigration Overview



Charting Your Path

Immigration Overview



- Everyone has a unique immigration path
- Questions to determine your path:
 - What is your risk tolerance?
 - What are your career goals?
 - What are your family needs?
- Protect yourself and stay compliant!
- Pay attention to changes:
 - Travel Ban
 - Public Charge

Temporary Work Visas

Nonimmigrant Visas

A Diplomats

B Visitors

C Transit

D Crewman

E Treaty Trader/Investor, Australian Specialty Occupation

F Student

G Foreign Government Representative

H Temporary Workers (H-1B Specialty Occupation)

I Press/Journalist

J Exchange Visitor

K Fiancé(e)/Spouse/Minor Child

L Intracompany Transfer (Executives/Managers/Specialized)

M Vocational Student

N Special Immigrant's Parents or Children

O Extraordinary Ability

P Athletes, Artists, and Entertainers

Q Cultural Exchange

R Religious Worker

S Witnesses

T Trafficking Victims

TN NAFTA Professional

U Crime Victims

H-1B Requirements

Job
Requires
Specific
Bachelor's
Degree (or
higher)

Foreign
National has
the
Required
Degree (or
equivalent)

Employer
Pays
"Required
Wage"

For Licensed
Occupations
– holds the
Required
License

- 3 year increments
- Extensions up to 6 years (unless permanent residence started by year 5)
- Spouse cannot work until permanent residence started

Annual H-1B Cap

6,800 (H-1B1) for Singapore and Chile Nationals

20,000 for Individuals with U.S. Master's Degree or Ph.D.

65,000 For Individuals with Bachelor's Degree

FISCAL YEAR RUNS
OCTOBER 1 TO
SEPTEMBER 30

FILE SIX MONTH IN
ADVANCE (APRIL)

IF MORE
PETITIONS THAN
VISAS → LOTTERY

H-1B Cap Process

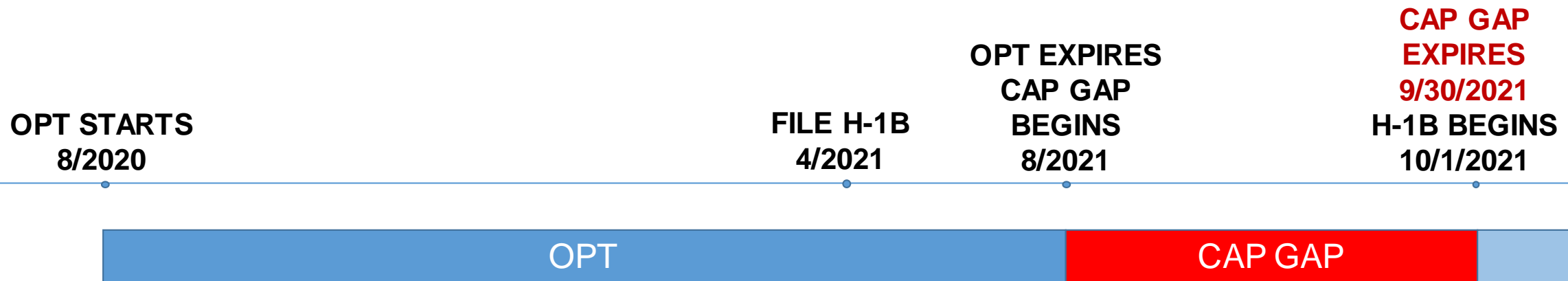
Nonimmigrant Visas

1. Employers pre-register their employees in the Spring (March)
 - USCIS charges a \$10 fee
2. If oversubscribed, USCIS conducts a lottery based on electronic registrations
 - USCIS (using previous system) received over 200,000 in 2019
 - Registering but not following through is flagged for fraud
3. If selected, employer has 90 days to submit H-1B petition
 - Must have certified LCA
 - Pay required fees: \$460 (I-129), \$500 (Fraud Detection and Prevention, \$750/\$1500 (ACWIA)
 - Can pay Premium Processing Fee (\$1,440)

Cap Gap

Nonimmigrant Visas

- H-1B Cap petitions are valid October 1.
- OPT may expire prior to October 1.
- Cap Gap bridges this gap in work authorization.
- **ONLY FOR CHANGE OF STATUS PETITIONS**



Exempt Employers

- **Universities and Colleges**
- **Nonprofits affiliated with Universities and Colleges**
- **Nonprofit or Government Research Organizations**

Exempt Employees

- **Employed at but not by a Cap-Exempt Employer**
- **Concurrent Employment by Cap-Exempt Employer**
- **J-1 Waiver Doctor**

L-1 Intracompany Transfer

Nonimmigrant Visas



- Transfer manager, executive or specialized knowledge employee from affiliated foreign company.
- 1 year in last 3 years
- L-1A: 3+2+2
- L-1B: 3+2
- Similar Green Card Path
- Spouse Can Work

E-1 Treaty Trader / E-2 Investor / E-3 Specialty Occupation

Nonimmigrant Visas

- Nationals of [Treaty Countries](#) can do trade with or invest in the U.S. (E-1/E-2)
- Certain employees of E-1/E-2 beneficiaries can also get E status
- Australians working in specialty occupations can get E-3 status (similar to H-1B)
- 2 year entries
- No maximum extensions
- Spouse can work



TN NAFTA Professionals

Nonimmigrant Visas



- Canadians and Mexicans ONLY
- 3 years of status in particular occupations: [FULL LIST](#)
- Cannot be self employed
- No spouse work authorization
- No specific maximum

O-1 Extraordinary Ability

Nonimmigrant Visas

- Foreign nationals with extraordinary ability
 - Major Award **OR**
 - Meet at least 3 criteria (published articles, awards, major impact, important position, high salary, work as judge, etc.)
- 3 + 1 + 1...
- No maximum extensions
- Spouse cannot work



Path to a Green Card

Permanent Residence



- Considerations:
 - Live or work anywhere in the U.S.
 - Cannot vote
 - Worldwide taxation
 - Family considerations
- Primary Options:
 - Diversity Lottery
 - Family-based
 - Employment-based

Diversity Lottery

Permanent
Residence

- Nationals of nations that send fewer immigrants to U.S.
- 50,000 each year
- High School diploma or 2 years of professional work experience
- Available in the Fall



Family-Based

Permanent Residence



- Immediate relatives (minor children, spouses, parents of adults) of U.S. citizens
- (F1) Unmarried sons and daughters of U.S. Citizens
- (F2A) Spouses and minor children of permanent residents
- (F2B) Unmarried sons and daughters (over 21) of permanent residents
- (F3) Married sons and daughters of U.S. citizens
- (F4) Brothers and sisters of adult U.S. citizens

Family-Based Visa Bulletin

Permanent
Residence

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	08OCT13	08OCT13	08OCT13	15SEP97	01SEP09
F2A	C	C	C	C	C
F2B	15SEP14	15SEP14	15SEP14	15OCT98	01OCT09
F3	15DEC07	15DEC07	15DEC07	08APR96	01OCT99
F4	01JUL06	01JUL06	08DEC04	15FEB98	01DEC99

Employment Based

Permanent Residence



- (EB-1) Extraordinary Ability, Outstanding Researcher, Multinational Manager
- (EB-2) National Interest Waiver, Labor Certification (advanced degree or exceptional ability)
- (EB-3) Labor Certification (all others)
- (EB-4) Special Immigrants
- (EB-5) Investors

Labor Certification

Permanent Residence

- Department of Labor sets wage
- Employer recruits for position
- If no U.S. worker available → file with Department of Labor
- If certified → file with USCIS
- Adjustment/Consular processing when priority date “current”



Employment-Based Visa Bulletin

Permanent Residence

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	01MAR19	01JUN17	01MAR19	01MAR15	01MAR19	01MAR19	01MAR19
2nd	C	15AUG15	C	22MAY09	C	C	C
3rd	01JAN17	22MAR16	01JAN17	15JAN09	01JAN17	01JAN17	01JAN17
Other Workers	01JAN17	01JUN08	01JAN17	15JAN09	01JAN17	01JAN17	01JAN17
4th	C	C	15JUL16	C	15NOV17	C	C
Certain Religious Workers	C	C	15JUL16	C	15NOV17	C	C
5th Non-Regional Center (C5 and T5)	C	15MAY15	C	22OCT18	C	C	15JAN17
5th Regional Center (I5 and R5)	C	15MAY15	C	22OCT18	C	C	15JAN17

- EB-1A – Extraordinary Ability
 - Similar to O-1
 - Does not require employer
- EB-1B – Outstanding Researcher
 - Similar to O-1 (only meet 2 criteria)
 - Tenure Track or permanent position
- EB-1C – Multinational Manager
 - Similar to L-1A
 - Managers and Executives Only
- National Interest Waiver
 - Standard:
 - Substantial merit / National importance
 - Well positioned to advance endeavor
 - Beneficial to U.S. to waive labor certification requirement
 - Does not require employer
 - Physician – work in underserved area

Becoming a Citizen

Naturalization

- 3 or 5 years of permanent residence
- Physical presence
- Continuous residence
- Good moral character
- English and Civics Tests
- Benefits:
 - Can vote
 - U.S. Passport
 - No risk of deportation
 - Can run for office/serve on jury



Take Aways



1. Plan ahead
2. Set your priorities
3. Protect yourself

Questions?

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