The Alphabet Soup of Immigration

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Today’s Objectives

History of IFSS
Federal agencies
Immigration Law/Resources
Overview of Common Statuses
  • Who is eligible
  • Intent/purpose
  • Length of stay
  • Relevant documents
  • Processing times
  • Fees and costs
Basic Immigration Terminology

Beneficiary = Foreign National
CBP = Customs and Border Protection
CFR = Code of Federal Regulations
COS = Change of Status
DHS = Department of Homeland Security
DOS = Department of State
FN = Foreign National
ICE = Immigration Customs Enforcement
INA = Immigration and Nationality Act
INS = Immigration and Naturalization Service
Petitioner = UW-Madison Department (in most cases)
PR = Permanent Resident (aka “Green Card”)
USCIS = U.S. Citizenship & Immigration Service
VWP = Visa Waiver Program
WAE = Work Authorization End (for the I-9; the date someone can legally work until)
History

19th century

- International students attended the UW, but not yet significantly

1924

- 1st official list of foreign students recorded
  - 16 women and 108 men
  - Largest groups: China (44), Canada (16), India (8), and Japan (7)

1948

- 1st part-time foreign student advisor for the 320 international students and housed in French and Italian Department

1959

- Office of Foreign Advisor established in Division of Student Affairs
History

1962
• Renamed the Office for Foreign Students and Faculty (OFFSAF); under the Office of International Studies and Programs

1973
• OFFSAF moved to the Division of the Academic Support Services of the Chancellor’s Office

1974
• OFFSAF moved to International Studies and Programs

1976
• OFFSAF moved to the Division of Academic Services
History

1986
• Renamed the Office of International Students and Scholar Services (OISF)

1993
• OISF divided into two sections:
  • Student section – International Student and Scholar Services (ISSS)
  • Faculty section – Office of International Faculty and Staff (OIFS)

2000 - Present
• Scholar advisor moved permanent to OIFS
  • Student section renamed ISS (International Student Services)
  • Faculty section renamed IFSS (International Faculty & Staff Services)
International Faculty & Staff Services

• Provides comprehensive assistance to the University of Wisconsin-Madison on all aspects of non-student immigration

• Acts as the liaison between the University and all government agencies involved in immigration matters

• Assists both the institution and individuals in complying with immigration laws and regulations as it relates to their employment
Current UW-Madison Stats

- F-1: 5,718
- J-1: 1,812
- H-1B: 250 active at any time
- TN: 37
- E-3: 5
- O-1: 2
- PR: UW sponsors approximately 40 per year
Federal Agencies
Department of Homeland Security

- U.S. Citizenship and Immigration Services
- U.S. Immigration and Customs Enforcement
- U.S. Customs and Border Protection
Department of State

U.S. Embassies and Consulates around the world
Legal Resources/Citations

- Immigration law is federal law, not state law or UW policy
- Applies to individuals only when they are inside the U.S.
- **Title 8 of the C.F.R.** – deals with "Aliens and Nationality," as does **Title 8 of the U.S. Code**
- Statutes governing immigration law in the **Immigration Nationality Act** (INA)
- USCIS **Federal Register Publications**, including notices, proposed, interim and final rules
- **Foreign Affairs Manual** (FAM) – Chapter 9 (visas)
- **WI State Statute 14.11(2)** prohibits the State from employing special counsel without the Governor’s approval
Overview of Immigration at UW-Madison

Are you ready?
Immigration Categories

Immigrant

- Persons seeking to remain in the U.S. *permanently*
- 13 immigrant categories
- May engage in almost all types of employment
- After requisite period of residence – may apply for U.S. citizenship (i.e. naturalization)

Non-Immigrant

- Persons seeking entry into the U.S. for a *limited* period of time and a specific purpose
- More than 20 nonimmigrant categories: A-V
- Category depends on the purpose of entry into the U.S.
Status versus Visa

Status

- Legal category under which the visitor was admitted by CBP
- Dictates the purpose of this visit
- Dictates what is permissible and prohibited
- Dictates the duration of the visit
- Can change status inside US*
- IFSS assists in obtaining the status

Visa

- Issued by a U.S. embassy or consulate abroad
- Stamp/sticker laminated into the passport
- Can expire while in the U.S.
- Can have more than one visa stamp in the passport
Common Statuses at UW

Immigrant Category

- Permanent Resident

Non-Immigrant Categories

- B-1/B-2 (VWP/ESTA)
- F-1 and F1/OPT
- J-1
- H-1B
- E-3
- TN
- O-1
B-1 and B-2
Visitors for Business or Pleasure

They are here to visit!

• Cannot be an employee (not even $0) or paid wages*
• Length of stay determined by purpose of visit
  • Typically, no longer than 6 months
  • CBP makes determination at the time of entry into U.S.
• Travel expenses can be reimbursed (contact Accounting Services)
• Apply for visa stamp or, if eligible, Visa Waiver Program (VWP)
• IFSS cannot sponsor or assist with B-1 applications

*can be paid honorariums only on B-1
B-1: Business Visits

- Consult with business associates
- Attend a scientific, educational, professional or business convention or conference
- Settle an estate
- Negotiate a contract

B-2: Tourist Visits

- Tourism
- Vacation (holiday)
- Visit w/ friends or relatives
- Medical treatment
- Participation in social events hosted by fraternal, social or service organizations
- Participation by amateurs in musical, sports, or similar events or contests, if not being paid for participating
- Enrollment in a short recreational course of study, not for credit toward a degree
NOT permitted in B status

- Employment
- Study
- $0 appointments
- Paid performances or any professional performance before a paying audience
- Arrival as a crewmember on a ship or aircraft
- Work as foreign press, radio, film, journalists, or other information media
- Permanent residence in the U.S.
Visa Waiver Program (VWP) & Electronic System for Travel Authorization (ESTA)

- VWP allows citizens of certain countries to travel to the U.S. for tourism or business for stays of 90 days or less without first obtaining a visa

ESTA

- Automated web-based system to pre-screen travelers before they are allowed to board a plane to the U.S. for tourism or business
- Done in lieu of going to the consulate for a visa interview and stamp
F-1
International Students

- Students attending a full-time degree or academic program at a school, college, or university
- Can only work 20 hours per week while classes are in session
  - Can work full time during breaks
- ISS office generates the Form I-20
- No cost to the UW
F-1/OPT

International Students on Optional Practical Training

- Recent graduates
- Work must be in his/her field of study
- All graduates eligible for 12 months of OPT
- STEM graduates can extend OPT for additional 24 months
- Specific questions should be addressed to the ISS
J-1 Categories

Available to UW-Madison to use:
- Professor and Research Scholar
- Short-Term Scholar
- Specialist
- Student (ISS)

Not available to UW-Madison to use:
- Au Pair
- Camp Counselor
- Government Visitor
- Intern
- International Visitor
- Alien Physician (ECFMG only)
- Secondary School Student
- Summer Work Travel
- Teacher
- Trainee
J-1 Exchange Visitor Scholars

- Individuals seeking a cultural and knowledge exchange in the U.S.
  - Teach, study, conduct research, or receive on the job training
- Must have a completed a Bachelor’s degree
- Can be paid or unpaid by the UW
- At UW, mostly postdocs and employees-in-training
- Mandatory health insurance requirement
- No clinical (direct patient contact) work allowed
- English proficiency is required
- Length of stay: 1 day → 5 years
- IFSS office generates the DS-2019
- No cost to the UW
H-1B
Temporary Worker in Specialty Occupation

- Individuals seeking temporary employment in the U.S.
- To qualify for an H-1B, both conditions must be met:
  1. Position must require at least a Bachelor’s degree in a specialty occupation, AND
  2. Beneficiary must possess at least the required minimum qualifications for the position.
H-1B
Temporary Worker in Specialty Occupation

- Employer and employment specific
- Must be paid by the UW at least the prevailing wage as set forth by the DOL
- Length of Stay: 1 day → 6 years*
  - Status valid in increments up to 3 years at a time
- IFSS files petition, USCIS adjudicates
- Form I-797
- Cost to the UW: $460 - $2,185 (paid by department)
The H-1B Cap

- Annual fiscal year limit of 65,000 H-1Bs
  - First 20,000 petitions for positions that require at least a Master’s degree do not count toward the cap
- Employers file petitions on or after April 1 for employment to begin on October 1
- Institutions of higher education are exempt from the cap, so…

Does NOT apply to UW-Madison!
E-3
Australian Temporary Worker in Specialty Occupation

• Very similar to H-1Bs
• Australian nationals seeking temporary employment in the U.S.
• Employer and employment specific
• Must be paid by the UW at least the prevailing wage as set forth by the DOL
• To qualify for an E-3, both conditions must be met:
  1. Position must require at least a Bachelor’s degree in a specialty occupation, AND
  2. Beneficiary must possess at least the required minimum qualifications for the position.
E-3
Australians Temporary Worker in Specialty Occupation

- Length of stay: Indefinite
  - Status valid in increments of up to 2 years at a time
- Form I-797
- Cost to the UW: $460 in certain circumstances
- Main differences from an H-1B?
  - No cap on how long they can hold this status
  - Dependents can work
  - Can obtain E-3 status without UW filing a petition in certain circumstances
Citizens of Canada and Mexico intending to engage in professional business activities on a temporary basis.

Employment must be in one of the 63 NAFTA-specified occupations listed in Appendix 1603.D.1 of the NAFTA treaty.
- Must meet minimum qualifications of profession

Must be paid employee

I-94 card

Length of stay: indefinite
- Status valid in increments of up to 3 years at a time
TN
Trade NAFTA Treaty Professional Worker

• If outside U.S.:
  • CBP approves status at border
    • Canadians DO NOT need visa stamp; Mexicans DO
  • No cost to UW

• If inside the U.S.:
  • IFSS can file petition inside U.S. but will cost department $460
  • USCIS adjudicates and generates approval/denial
O-1
Aliens of Extraordinary Ability

- Individuals who have achieved and sustained national or international acclaim for extraordinary ability in the sciences, arts, education, business or athletics and intends to work in the U.S. on a temporary basis within his or her area of extraordinary ability
- Must be paid employee
- Length of stay: Indefinite
  - Initial O-1 for three years
  - Extensions up to one year at a time
- Very subjective petition
O-1
Aliens of Extraordinary Ability

- Cost to the UW: $460+
- I-797
- Responsibility is wholly on employee and Department to prepare the petition
  - IFSS will review for completeness (not content necessarily)
  - USCIS adjudicates and generates approval/denial
LPR or PR
Legal Permanent Residents

- Green card holders
- Authorized to live and work on a permanently in the U.S. Whereas most nonimmigrants must document their intent to depart the U.S. after a period in the U.S., green card holders should have the intent to remain in the U.S.
- Several ways to obtain PR:
  - Through a job
  - Through family
  - Through Asylee or Refugee status
  - Diversity Lottery Program
  - For more, go to [www.uscis.gov/green-card](http://www.uscis.gov/green-card)
Permanent Residency

• Per Country Limits
  • No more than seven (7) percent of U.S. immigrant visas (green cards) may be issued to natives of any one country in a federal fiscal year
  • Federal fiscal year runs October 1 – September 30
  • China and India have extremely high rates of immigration to the U.S.; therefore, a backlog exists to obtain a green card in those countries:
    • China is currently backlogged to September 2012
    • India is currently backlogged to February 2008
Permanent Residency
Teaching Faculty

• UW-Madison is committed to pursuing permanent residency for teaching faculty so we may continue to employ those individuals

• Employment Based Second Preference (EB-2) Petition
  • Professionals holding advanced degrees or exceptional ability
  • Must have teaching component and be a full time permanent position
  • National recruitment must be conducted that meets DOL standards
  • PVL and ads must meet DOL requirements
  • PERM Labor Certification must be filed
  • Select the most qualified
Permanent Residency

Academic Staff Research Positions

- Departments decide whether the need for the employee’s services necessitates an application for permanent residence
- Limited options for UW sponsorship
- Employment Based First Preference (EB-1B) Petition:
  - Professionals with extraordinary ability
  - Demonstrated through sustained national or international acclaim
  - Achievements must be recognized in your field through extensive documentation
  - Think Pulitzer, Oscar, Olympic Medal, Nobel Peace Prize
  - Must have at least three years of post-degree experience
  - Petition is very subjective
Permanent Residency Self Sponsorship

- Anyone can apply for PR on their own at any time
- If employee uses an attorney, s/he can only file certain employment based PR petitions (EB-1A and NIW)
  - Any family based petition can be filed
- IFSS has a partial list of attorneys in Madison, Milwaukee and Chicago who can help
- Ask colleagues
- AILA – [www.aila.org](http://www.aila.org)
- WI Bar Association – [www.wisbar.org](http://www.wisbar.org)
Permanent Residency

Additional Information

• Status never expires but card does
• PR card valid typically for ten years (unless removed by federal courts)
  • Must renew card for other purposes (i.e. driver’s license renewals)
• Must be a PR for several years before applying for citizenship (naturalization)
  • IFSS cannot assist with naturalization applications
Timeline with IFSS
Timeline with Governmental Agencies
Additional Fees and Costs to Employee

- Depends on status
  - J-1: SEVIS fee and visa fee
  - H-1B/E-3: visa fee
  - TN: $50 at border
  - O-1: visa fee
  - PR: Filing fees
- Dependents (spouse and unmarried children under 21) also have fees that must be paid
EASY, RIGHT?
We are here to help!

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