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Immigration and Higher Education: The ICE Age Has Arrived

Immigration Options and Proactive Planning for Institutions of Higher Education in an Era of Enforcement and Higher Fees

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Overview

- Nonimmigrant Status
 - F-1 – International Students
 - J-1 – Exchange Visitors (categories include Professor, Research Scholar, Short-term Scholar, Physician). Good news - 37 countries (including China, India, Brazil, South Korea and Turkey) were removed from the skills list so individuals from those countries not subject to two-year home residency requirement due to skills list.
 - H-1B – Specialty Occupations
 - O-1 – Individuals with Extraordinary Ability
- Permanent Residence
 - EB-2 PERM/Schedule A, Group II/National Interest Waiver (“NIW”)
 - EB-1A – Extraordinary Ability
 - EB-1B – Outstanding Professor or Researcher
- Citizenship

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F-1 / Optional Practical Training (OPT)

- Upon graduation, an F-1 student may be authorized up to a total of 12 months of full-time Optional Practical Training (OPT) at each educational level
- 24-month extension available for graduates with a bachelor's, master's or doctorate degree in a STEM field. Employer must be enrolled in E-Verify.

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A photograph showing four students from behind as they walk along a paved path in a campus setting. From left to right: a man in a maroon sweater with a yellow backpack, a man in a blue plaid shirt with a light blue backpack, a woman in a teal jacket with a white backpack, and a woman in a blue dress with a purple backpack. They are walking towards a large, leafy tree in the background.

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H-1B Visa Summary

- Allows for “dual intent”. Makes transitioning to a permanent residence and/or new visa status less restrictive. Also allows for travel without advance parole during green card process.
- Maximum stay of 6 years (an approved I-140 may allow H-1B status beyond 6 years if priority date is not current)
- Professional or “specialty” occupation requiring a bachelor’s degree or equivalent
- Employer specific
- Location specific
- Job specific
- Premium processing fee (\$2,965) common due to current processing delays (6-10) months

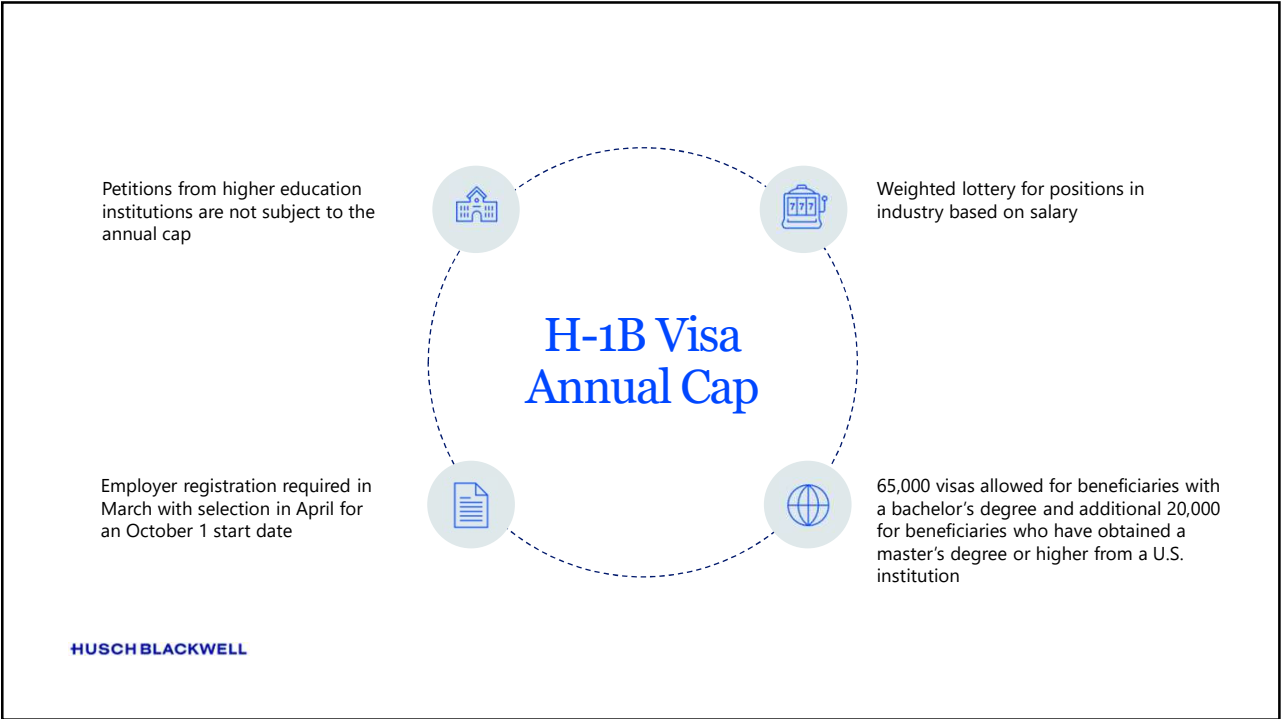
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H-1B \$100,000 Fee

- Almost all universities are unable or unwilling to pay for it.
- How to avoid the fee?
 - The fee **does not** apply to the following which are viable options:
 - F-1 students changing status to H-1B
 - J-1 visa abroad and changing status to H-1B in U.S. if no two-year rule (if your institution does not have a J visa program, it should consider applying to become a program sponsor)
 - O-1 visa abroad and change of status to H-1B in U.S.
 - H-1B workers already in the U.S. seeking to change employers
 - Extensions or amendments for those in U.S. currently in H-1B status
 - March 17, 2026, bipartisan bill introduced in the House would waive \$100,000 fee for foreign health care professionals

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Texas Freeze on H-1B Petitions

- Texas Governor Greg Abbott ordered a freeze on new H-1B visa applications for state agencies and public universities on January 27, 2026, lasting until May 31, 2027, to investigate abuse.
- https://gov.texas.gov/uploads/files/press/H-1B_Visa_Program_Letter_1.27.2026_State_Agency_Heads_FINAL_.pdf
- Will other States follow?
- Likely U.S. Department of Labor prevailing wage increase (proposed rule already cleared by Office of Management and Budget (OMB)). Details released after publication. DOL finalized a regulation in 2021 that would have significantly increased wages. Challenged in court then next administration did not pursue it.
- How may higher impact your institution of higher education and what can you do to plan?



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Other Nonimmigrant Visas

✓

J-1 designed for individuals to participate in work and study-based exchange visitor programs.

✓

TN USMCA (formerly NAFTA) Professionals - Canadian/Mexican citizens

✓

H-1B1 Chile and Singapore

✓

E-3 Australia

✓

O-1 Extraordinary Ability

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O-1 Nonimmigrant Visa

Excellent choice for those who:

- 1. are in J-1 status and subject to the two-year home residence requirement (e.g., J-1 foreign physicians DS-2019 issued by ECFMG, Fulbright Scholars, government funding)
- 2. want to go into industry but are unable to obtain an H-1B due to lottery
- 3. need to avoid \$100,000 H-1B fee for consular processing cases

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O-1 Nonimmigrant Visa

- Must meet 3 of 10 criteria – similar criteria for EB-1A <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4>
- No subjective Final Merits determination which is part of EB-1A
- First O-1 typically valid for 3 years
- Must be renewed annually
- No limit on the number of renewals

Employment
Based
Permanent
Residence/
Immigrant
Visa

1

Labor Certification (PERM) - Test of the U.S. job market (filed by employer)

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I-140 Immigrant Petition for Alien Worker (filed by employer after PERM and for Schedule A, Group II, EB-1B; option for NIW and EB-1A)

- Based on PERM approval – must file within 180 days. EB-2 advanced degree professional
- Schedule A, Group II- avoid PERM process but need prevailing wage determination. May be viable choice for non-technical positions
- National Interest Waiver (NIW / EB-2 advanced degree or exceptional ability)- avoid PERM process
- EB-1A Alien of Extraordinary Ability – avoid PERM process
- EB-1B Outstanding Professor Researcher-avoid PERM process

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I-485 Adjustment of Status or Consular Processing (rare for higher ed plus visa ban)

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PERM Labor Certification

PERM Special Handling –
Teaching Positions

- Must prove that employee is the most qualified for the position after competitive national search (Chronicle, Inside Higher Ed, HigherEdJobs)
- PERM must be filed within 18 months of the date of the offer letter for teaching positions. Prevailing wage determination must be obtained by DOL and taking 5-8 months (were taking 12) so need to start soon after offer has been made. Current test of labor market (“readvertising” if 18 months missed or internal hire)

PERM Professional–
Non-Teaching Positions

- Must prove there are no qualified U.S. workers willing and able to accept the position after detailed recruitment process

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Schedule A
Group II

Short cut to the permanent residence process by skipping the PERM Labor Certification process

For individuals with exceptional ability in the “sciences or arts” which was expanded in 2024 and includes any field for which U.S. colleges and universities commonly offer degrees

Employer must sponsor the petition

Requires prevailing wage determination and postings

Requires substantial evidence of exceptional ability

<https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-7>

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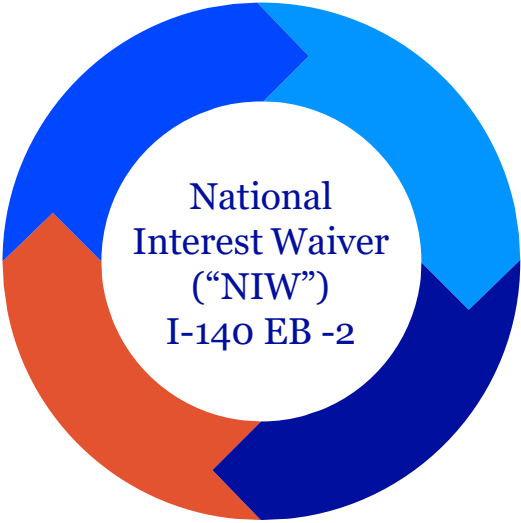
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National Interest Waiver (“NIW”)
I-140 EB -2

Benefits	Criteria
- Short cut to permanent residence by skipping the PERM Labor Certification process - Employer can sponsor or employee can sponsor themselves (PhD students and Postdocs – helps with career search if permanent resident when applying for jobs)	- The individual’s proposed endeavor has both substantial merit and national importance. (Forward Looking) - The individual is well positioned to advance the proposed endeavor (Past Success); and - On balance, it would be beneficial to the United States to waive the job offer and labor certification requirements. (National Interest) - Must possess an advanced degree or meet exceptional ability criteria at the time of filing

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New USCIS adjudication guidelines for persons with advanced STEM degrees and in particular for those working in one of the areas designated as a Critical and Emerging Technology.

Can file an NIW from anywhere in the world. No underlying status is necessary.

Can file directly from F-1 and J-1. J-1 two-year rule does not affect the NIW filing.

Premium processing is an option (45 business days) and priority dates advanced in March.



https://www.huschblackwell.com/industries_services/national-interest-waivers

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Extraordinary Ability

- Must meet at least three of ten criteria
 - The ten criteria and how they are interpreted can be found in the USCIS Policy Manual.
- USCIS Policy Manual for Extraordinary Ability provides helpful guidance on how an officer is to adjudicate each of the 10 criteria

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Extraordinary
Ability

- If three of ten criteria are satisfied, the USCIS Officer makes a subjective final merits determination on whether you are “one of that small percentage who have risen to the very top of the field of endeavor”
- The updated Policy Manual Guidance, provided important changes to the Final Merits evaluation and now recognizes the value of publishing in top ranked journals and being affiliated with a highly reputable institution as being indicative of having risen to the top of one’s field.
- Recent federal lawsuit in Nebraska successfully challenged the final merits determination and found that USCIS’s two-step *Kazarian* framework constituted a legislative change that required formal rulemaking, and that USCIS could not impose an additional substantive requirement through policy memoranda. *Mukherji v. Miller*, No. 4:24-cv-03170- (D. Neb. Jan. 28, 2026)
- Premium Processing is available – 15 business days

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Outstanding
Professor/
Researcher
EB-1B

Benefits

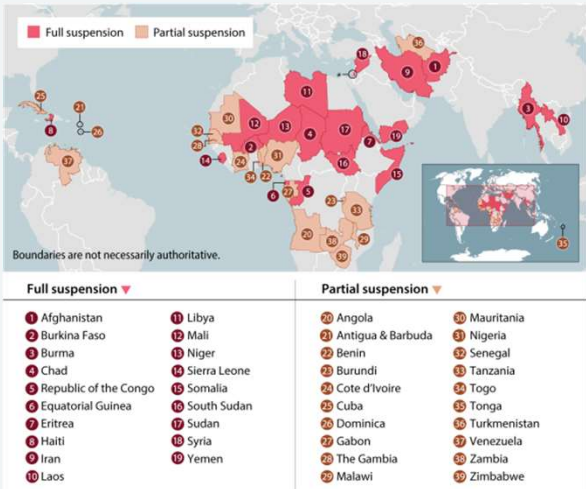
- Short cut to the permanent residence process by skipping the PERM Labor Certification process
- Employer must sponsor the EB-1B petition
- Must have international recognition for outstanding achievements in their academic field
- Must have at least 3 years of experience in teaching or research
- A job offer for a tenure-track position or comparable permanent research position is required
- Must meet at least 2 of 6 USCIS criteria-
<https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-first-preference-eb-1>
- Final merits determination

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Travel Suspensions & Issues

- 75 Countries – Immigrant Visa Suspension – “Public Benefits Reliance”
- 39 Countries /20 fully suspended (entry of immigrants and nonimmigrants) and 19 partially suspended (immigrants and certain nonimmigrants) – “Protecting ...National Security”
- Administrative Processing /Visa Delays / Mandamus
- Secondary Inspection / Social Media

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Issues for Students, Faculty and Staff and Helpful Resources

PRESIDENTS' ALLIANCE ON HIGHER EDUCATION AND IMMIGRATION

ICE arrests on campus.

<https://www.presidentsalliance.org/wp-content/uploads/2025/02/FAQ-Immigration-Enforcement-on-Campuses-October-2025.pdf>

ACE

I-9 issues - DACA, TPS, Undocumented, etc.

<https://www.acenet.edu/Documents/Issue-Brief-Immigration-Related-Campus-Concerns.pdf>

ACLU

Harboring

<https://www.aclu.org/documents/open-letter-to-federal-magistrate-judges-within-the-ninth-circuit-on-section-1324-warrant>

ABA

Unauthorized practice of immigration law. Cautious of staff advising, preparing or filing complicated immigration issue with no law license or malpractice insurance - resulting in loss of benefits, job, deportation –staff and institution named defendants. https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fightnotariofraud/avoiding-the-unauthorized-practice-of-immigration-law/



Immigrant Visa Suspension – 75 countries

<https://travel.state.gov/content/travel/en/News/visas-news/immigrant-visa-processing-updates-for-nationalities-at-high-risk-of-public-benefits-usage.html>

CONGRESS.GOV

“Travel Ban”

<https://www.congress.gov/crs-product/IN12631>

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ICE Visits and USCIS Interviews

How are they affecting faculty and staff at universities and what can or should be done?



- Student visa revocations and SEVIS terminations in March and April 2025 caused a lot of concern in the international higher education community – students (status/future) and institutions (enrollment/tuition/funding)
- <https://www.presidentsalliance.org/wp-content/uploads/2025/05/Updated-FAQ-Understanding-Recent-International-Student-Visa-Revocations-and-Apprehensions-Guidance-for-Colleges-Universities.pdf>
- Current administration has detained people at USCIS offices and during interviews.
- U.S. Immigration and Customs Enforcement (“ICE”) home visits and interviews – they are happening.
- Current immigration climate is making most individuals very anxious – more stress on international offices. Sufficiently staffed?
- Visa appointment delays, administrative processing and secondary inspection with electronic device searches.
- Interviews are increasing for green cards – even in employment-based cases.
- **GOOD NEWS** – well prepared H-1B, O-1, PERM, NIW, EB-1A, EB-1B petitions and clean I-485s are still being approved.

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Future Outlook

- Conduct an I-9 audit and investigate options for I-9 software and enrolling in E-Verify. Can be helpful for I-9 desk audits conducted by ICE through Homeland Security Investigations (HSI) division.
- Be prepared for site visits by USCIS/H-1Bs or DOL audits/PERMs
- Plan for likely significant increases in prevailing wages for PERMs and H-1Bs
- Applying to become a J-1 program sponsor through the State Department should be a consideration if your institution is not already a program sponsor
- Consider O-1 petitions for qualified applicants instead of H-1B petitions for travel and fee-related reasons
- Strict institutional control over petitions filed in the name of the institution which may not align with interests of employee or department

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Future
Outlook
(continued)

- National Interest Waiver, Outstanding Professor or Researcher, Extraordinary Ability petitions filed by the institution may be viable alternatives without the need for a DOL prevailing wage determination
- Educate faculty, staff, and students that what they post on social media could have immigration and international travel consequences
- Plan for audits, investigations or if ICE shows up at the home of an employee or on-campus
- It is a challenging time for the international community at institutions of higher education but with proper advance planning and preparation your institution can survive and even thrive during and after the ICE age

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Questions?

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Husch Blackwell Capabilities – National Interest Waivers

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