

CONTENTS

Dedication	v
What People Are Saying About <i>The Academic Immigration Handbook</i>	vii
Summary of Contents	xi
About the Author.....	xiii
Acknowledgments	xv
Introduction	xxvii
Chapter 1	
STUDYING IN THE UNITED STATES	1
What statuses allow a foreign national to study in the United States?	1
What is an F-1 visa?	2
What is an M-1 visa?	3
What is a J-1 visa?	3
What is SEVIS?	5
Are students on F-1, M-1, and J-1 visas allowed to bring a spouse and children to the United States?	6
What are the steps involved for a student to acquire F-1, M-1, or J-1 status?	7
How does an F-1, M-1, or J-1 student apply for an initial visa in that category?	8
How does an F-1, M-1, or J-1 student enter the United States after obtaining a visa?	12
What is automatic revalidation?	14
Are there any special visa provisions for citizens of Canada or Bermuda?	16
How does one change status to the F-1, M-1, or J-1 category within the United States?	17
What about changes of status to M-1?	20
What about changes of status to J-1?	21

Can an F-1, M-1, or J-1 student work in the United States?22

How long can an F-1, M-1, and J-1 hold student status?23

Can F-1, M-1, or J-1 students legally attend school on a less than full-time basis?...25

Can F-1, M-1, or J-1 students transfer schools?.....27

Can an F-1, M-1, or J-1 student return to active student status if he or she has been out-of-status?..... 30

How then does one fix the student’s status?..... 33

1. Corrections without the need for SEVP or U.S. Department of State (DOS) approval..... 33
2. Corrections requiring SEVP or DOS review and approval 35
3. Reinstatement to J status 36
4. Reinstatement to F or M status..... 38
5. Consular processing 42
6. Green card 44

Chapter 2

WORKING IN THE UNITED STATES AS A STUDENT47

What is on-campus employment, and how does an F-1 student qualify for this type of employment?..... 51

What is off-campus employment, and how does an F-1 student qualify for this type of employment?..... 53

How does an F-1 student qualify to work as an intern for an international organization?.....57

How does a J-1 student qualify for employment?..... 58

Chapter 3

TRAINING IN THE UNITED STATES AS A STUDENT61

What is CPT and how does an F-1 student apply for this type of training?61

What are the pitfalls in applying for CPT and how can such pitfalls be addressed?...65

What is OPT and how does an F-1 student apply for it?70

What are some considerations in maintaining OPT?77

What is STEM OPT and how can an F-1 student qualify?78

1. Student in post-completion OPT 79
2. STEM degree from SEVP-certified and DOE-accredited school..... 79
3. Employer enrolled in E-Verify..... 82
4. Formal training..... 83

How does a student apply for STEM OPT? 84

What are some considerations in maintaining STEM OPT?..... 86

1. Reporting obligations..... 86

2. Terms and conditions of employment	87
3. Potential site visits.....	87
4. Unemployment.....	89
5. Self-employment and third-party worksites	90
6. Transfers.....	91
What is M-1 post-completion OPT and how can an M-1 student qualify?	91
What is academic training and how can a J-1 student qualify?	93
 Chapter 4	
POST-GRADUATION AND POST-TRAINING OPTIONS FOR STUDENTS.....	97
What considerations should the student understand when transitioning from an F-1, M-1, or J-1 student status?	97
1. F-1 Status.....	97
2. M-1 Status.....	103
3. J-1 Status.....	103
Which statuses can an F-1, M-1, or J-1 student pursue after graduation and academic or practical training?.....	105
What is H-1B status?	106
1. Cap-subject H-1Bs.....	106
2. Cap-exempt H-1Bs	110
What are the H-1B1 and E-3 statuses?	111
What is TN status?.....	112
What is O-1 status?.....	112
What is E-1/E-2 status?	113
What is L-1 status?	113
What is P status?.....	114
Can a student transition directly to a green card?	114
 Chapter 5	
WORKING AS A SCHOLAR IN J-1 STATUS	119
What J-1 categories do international scholars typically use?	119
Are J-1 scholars allowed to bring a spouse and children to the United States?.....	120
What are J-1 professors and research scholars, and how does one make use of these categories?	121
What are J-1 short-term scholars?	124
What are J-1 specialists?.....	125
What are J-1 alien physicians?	125
Clinical Exchange Programs	126
Nonclinical Exchange Programs	129

What are the steps involved for a scholar to acquire J-1 status? 130

How does a J-1 scholar apply for an initial visa and enter the United States? 131

How does one change status to J-1 within the United States?..... 134

How does a J-1 scholar transfer programs?..... 135

How does a scholar change his or her J-1 category?..... 136

What obstacles or considerations should the scholar understand when transitioning from J-1 status? 137

Chapter 6

WORKING AS A SCHOLAR IN H-1B STATUS..... 139

What are the requirements for the H-1B position?..... 140

 Criterion 1: A bachelor’s or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 148

 Criterion 2: The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with such a degree. 149

 Criterion 3: The employer normally requires a degree or its equivalent for the position. 150

 Criterion 4: The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree. 150

What is required of the H-1B beneficiary? 151

What is required of the H-1B petitioner? 153

What is H-1B cap exemption? 154

 1. Institution of higher education 155

 2. Nonprofit entity affiliated with an institution of higher education..... 153

 3. Nonprofit or governmental research organization..... 156

 4. “Employed at” cap exemption..... 157

 5. Concurrent cap-exempt H-1B 158

 6. Cap-exempt Conrad 30 and shortage area J-1 waiver recipients..... 159

 7. Other cap-exempt considerations 159

What are the H-1B wage requirements?..... 160

 1. Actual wage..... 160

 2. Prevailing wage 160

 3. Other prevailing wage considerations 165

What is a labor condition application? 167

What is a public access file? 169

What are some other employer compliance obligations?..... 171

 1. Timing for payment of the required wage..... 171

2. Payment during nonproductive time..... 171

What are the steps involved in filing an H-1B petition?..... 172

Is there a \$100,000 fee now attached to H-1B petitions? 174

What are some considerations in maintaining H-1B status?..... 176

 1. H-1B time limits 176

 2. H-1B portability and 240-day extensions 177

 3. H-1B grace periods 178

 4. Material or other changes 179

Can H-1B workers bring dependents to the United States?..... 182

Foreign Labor Certification Data Center Wage Search..... 183

Chapter 7

WORKING AS A SCHOLAR IN ANOTHER STATUS..... 185

 What is O-1 status?..... 185

 1. Criteria 186

 2. Advisory opinion 191

 3. Filing an O-1 petition..... 192

 4. O-1 maintenance and compliance considerations..... 194

 What is TN status?..... 195

 1. Eligibility requirements 198

 2. Obtaining TN status..... 199

 3. TN Maintenance and Compliance Considerations 203

 What are the H-1B1 and E-3 categories?..... 204

 1. What are the eligibility requirements for H-1B1?..... 205

 2. How does one obtain H-1B1 and E-3 status?..... 206

 3. H-1B1 and E-3 Maintenance and Compliance Considerations 208

Chapter 8

INTRODUCTION TO THE J-1 HOME RESIDENCE REQUIREMENT 211

 How does a J-1 exchange visitor become subject to §212(e)? 211

 1. Government funding..... 213

 2. Exchange Visitor Skills List..... 216

 3. Graduate medical education 219

 How does §212(e) restrict the J-1 exchange visitor’s transition to another status? 220

 1. Cannot change status within the United States..... 221

 2. Cannot obtain certain nonimmigrant visas 222

 3. Cannot obtain permanent residence..... 224

Which government entities have authority over the applicability of
 INA §212(e)? 224

How does a J-1 exchange visitor satisfy INA §212(e)? 226

1. How to satisfy INA §212(e)..... 226
2. Where to satisfy INA §212(e)..... 228

How does an applicant document satisfaction of INA §212(e)? 229

Unique Considerations in Satisfaction 230

1. Incremental satisfaction 230
2. Sleeping in Canada..... 231
3. Substantial compliance 232
4. Impossibility of performance 232
5. More than one program..... 234

J-2 Matters 235

Chapter 9

J-1 WAIVERS 237

What types of J-1 waivers are available?..... 237

What is the process of applying for a J-1 waiver? 239

What is a no objection waiver? 241

What is an IGA waiver?..... 243

What is a shortage area or Conrad 30 waiver?..... 247

1. Shortage areas 248
2. Conrad 30 waiver requirements 250
3. Federal agency shortage area waiver requirements..... 252

What is a hardship waiver? 256

1. Exceptional hardship..... 257
2. Hardship waiver application procedures 261

What is a persecution waiver? 261

1. Comparison of persecution waiver with asylum..... 262
2. Persecution waiver application procedures 263

What are other important J-1 waiver considerations?..... 263

1. Timing..... 264
2. Ability to extend J-1 status..... 266
3. Moving to another nonimmigrant status or permanent residence 266
4. U.S. government funding 268
5. Multiple waivers 269

J-2 Matters 270

Chapter 10

INTRODUCTION TO PERMANENT RESIDENCE AND THE PERM LABOR

CERTIFICATION 273

- What are the categories of permanent residence? 274
- What is the Trump Gold Card?..... 276
- What is the *Visa Bulletin*, and how do I use it? 276
 - 1. Priority date 277
 - 2. Per-country limits 277
 - 3. Chargeability 278
 - 4. Adjustment of status versus consular processing..... 278
- What is dual intent? 283
- Are there any important admissibility requirements related to physicians? 283
- What is the PERM labor certification? 284
- What steps are involved in the basic PERM process? 285
- How does the special handling PERM for college and university teachers differ from the basic PERM process?..... 296
- What is the “hybrid” PERM? 301
- What is the Schedule A green card process? 302

Chapter 11

EB-1 AND NATIONAL INTEREST WAIVERS 305

- What is an outstanding professor and researcher green card (EB-1B)?..... 306
- What is an extraordinary ability green card? 309
- How is the field defined?..... 310
- What are some ways to document satisfaction of eligibility criteria? 311
 - 1. Major prizes or awards 312
 - 2. Prestigious memberships 313
 - 3. Published material about the individual’s work..... 313
 - 4. Judge of the work of others 314
 - 5. Original contributions 315
 - 6. Authorship of scholarly articles 317
 - 7. Display of the individual’s work (EB-1A only) 318
 - 8. Leading and critical role (EB-1A only) 319
 - 9. High salary (EB-1A only)..... 320
 - 10. Commercial success (EB-1A only) 321
- What is a national interest waiver? 321
 - 1. Substantial merit and national importance..... 323
 - 2. Well-positioned to advance the endeavor 324
 - 3. Beneficial to waive the job offer and PERM requirements 325

What is a physician national interest waiver?	326
Chapter 12	
IMPORTANT CONSIDERATIONS FOR INSTITUTIONS.....	331
What are some best practices to maintain compliance with immigration laws?	333
1. Centralize immigration functions as much as is feasible	333
2. Build a bridge between ISSS and HR	333
3. Have an I-9 compliance plan.....	334
4. Do not take on too much in-house immigration work.....	335
5. Have a plan to handle site visits	335
6. Review the institution’s recruitment processes—special handling PERM reselection	338
When should institutions involve an outside immigration attorney?	340
1. Unauthorized practice of law	341
2. Liability concerns.....	342
3. Preservation of the institution’s SEVP or DOS accreditation	343
4. Complexity.....	344
5. Lack of resources	344
How should an institution select an immigration attorney?	344
What are some best practices for an institution’s immigration sponsorship policy?.....	346
Chapter 13	
HIRING AN IMMIGRATION ATTORNEY.....	349
Do you need an attorney?.....	350
What about people who call themselves “immigration consultants”?	350
What should you look for in an attorney?	351
What can I do if I just cannot afford a quality immigration attorney?	355
What should I do if my attorney mismanages my case?	355
Resources	357
Appendix A: DS-2019, Certificate of Eligibility for Exchange Visitor Status (J Nonimmigrant)	359
Appendix B: Nonimmigrants: Who Can Study? (July 2018)	361
Appendix C: DHS STEM Designated Degree Program List	363
Appendix D: I-20, Certificate of Eligibility for Nonimmigrant Student Status	379
Appendix E: F-1 Students Obtaining Another Nonimmigrant Classification	383
Appendix F: Excerpt: United States-Mexico-Canada Agreement	391

Appendix G: 2009 Revised Exchange Visitor Skills List 401

Appendix H: INA §212(e) Waiver Recommendations 409

Abbreviations 411

Subject-Matter Index 415