

H1B Information Session - Carnegie Mellon -

Presented by:

**Catherine Wadhvani, Esq., Fox Rothschild
Linda Gentile, Office of International Education**

October 18, 2011

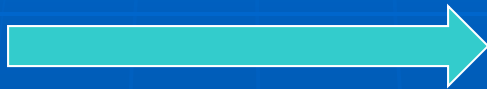
WHAT WILL BE COVERED IN THIS SESSION?

- **What is an H-1B Temporary Worker?**
- **Issues that impact CMU students**
- **Transition from current status**
- **OPT (Cap Gap, STEM extension)**
- **Other options**
- **H-1B Application and Issues**

H-1B Status

- Temporary Worker Status
- Employment in “specialty occupation”; job must require minimum of a bachelor degree

H-1B issues that impact CMU students

- April 1  Oct. 1
- Must have proof of degree at time of filing H-1B petition
- May graduates not certified by April 1
- If OPT ends before October 1, there is a "Cap Gap"

Transition from current status

- F-1 students, Optional Practical Training (OPT)
- J-1 students, Academic Training (AT)
- J-1 researcher or professor
 - Implications of 2-year home-residency
- CMU H-1Bs moving to private enterprise
- Other non-immigrants (TNs, E-3s, etc.)

Cap Gap Solution for F-1s on OPT

- OPT may be automatically extended to October 1
- Cap Gap OPT ends if H-1B is denied, rejected or withdrawn

STEM OPT Extension

- STEM = Science, Technology, Engineering, Mathematics
- Acceptable degree fields are taken from US DOE's Classification of Instructional Programs (CIP)
- CMU majors all have CIP code assigned

F-1 OPT STEM Extension

- 17-month extension of OPT
- CMU designated STEM majors (for OPT purpose) and CIP codes are posted in News section of OIE website at:
<http://www.studentaffairs.cmu.edu/oie/newsandevents/news/07-08/june/cipcode.html>
- Students still must maneuver F to H-1B transition with care

No STEM extension if...

- CMU major CIP code not designated as STEM
- Employer not in E-Verify
- PRIOR degree in a STEM field (but not most recent degree on which OPT is based)
- Minor in a STEM field
- CIP code assigned to major ends in "99"
- CMU is NOT an E-Verify employer for purpose of STEM OPT extension

What is E-Verify?

- US government web-based system used to verify employment eligibility of persons seeking employment in the US
- Impacts all employees (not just F-1 STEM students)

Other options

- J-1/J-2 exchange visitor (universities, research)
- H-1Bs for Singapore, Chile (6,800)
- O-1s / extraordinary ability
- TNs / Canadians & Mexicans (limited fields)
- E-3s / Australians (specialty occupations)
- Gs / international agencies
- Work outside the US/return later

H-1B General Information

- Temporary Worker Status
- Employment in “specialty occupation”; job must require minimum of a bachelor degree
- Employee must meet minimum requirements for position
- Employer- and job-specific petition
- Up to 3 years at a time
- 6 years total with potential for extensions beyond 6 years

The H-1B Cap

- H-1B Cap—annual numerical limit
- 58,200 + 6,800 (65,000)
- + 20,000 for advanced degree holders
- Fiscal Year 2012 (10/1/11 - 9/30/12)
- ~41,000 used out of 65,000 at last count
- ~19,000 used out of 20,000 (Master Cap) last count
- FY2011 Cap reached in late Jan. '11
- Supply and demand

The H-1B Cap and Exemptions

Employer Exemptions from cap:

- Employment for/at:
 - higher education institutions
 - non-profit organizations affiliated with an institution of higher education
 - non-profit research organizations or government research organizations
- Affiliation - Policy is under review
- Petitioner must show prior exemption approval between 6/6/06 and 4/28/11, during interim period

The H-1B Cap and Exemptions

Employee Exemption from cap:

- Employee Exemption if previously granted cap-subject H-1B status and:
 - extending w/in 6 years
 - seeking 7th+ year extension
 - is abroad and seeks remainder of 6 years

Amend or Extend Stay

Porting to a New Employer - Watch Cap
Subject or Not

H-1B Documents

- Valid Passport as photo ID for I-9
- I-94: bottom 1/3 of I-797 Approval Notice if in-country change of status to H-1B (keep old I-94 too!) or if no change of status, I-94 received at port of entry
- H-1B Visa Stamp
 - If in-country change of status, need not obtain visa stamp before beginning work
 - If no change of status, must obtain H-1B visa abroad H-1B I-94 at port of entry in order to work
- Watch end-date of I-94 every time you return from travel abroad!

H-1B Misc.

Entrepreneurs/Start-Ups

- Possible to obtain H-1B status for an entrepreneur with an ownership interest in own company, including sole EE, if can show that the company has an independent right to control the employment such as through a Board of Directors

H-1B Misc.

- Export Control Issue
 - Always existed under Export Control Law
 - 12/10 USCIS decided to add question to I-129
 - EE's access to certain controlled technology or technological data is a deemed export so ER may need an Export Control License
- 3P Worksite

Timing Issues

- Processing times vary:

“NORMAL”
2-6 months

PREMIUM
15 days

- Begin H-1B process 6 months before job starts or other work authorization ends (4/1 is earliest date per FY)
- Avoid employment gaps

Catherine V. Wadhvani, Esq.

FOX ♦ ROTHSCHILD_{L.L.P.}

ATTORNEYS AT LAW

625 Liberty Avenue
29th Floor
Pittsburgh, PA 15222

412-394-5540
cwadhvani@foxrothschild.com