BASIC INFORMATION REGARDING IMMIGRATION

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General Overview

“Status” vs. “Visa”

**Status** is an official authorization to remain in the U.S. and engage in certain activities.

A **Visa** is an official document which authorizes an individual to come to the U.S. border or port of entry (international airport) and request entrance from U.S. Customs & Border Protection. (Virtual Important Stamp for Authorization-A Visa is an official endorsement in a passport.)

Many people use the words “status” and “visa” interchangeably. However, you only need a valid “status” to remain in the U.S. and you only need a valid “visa” to enter or re-enter the U.S. after leaving.

Exception to the Visa Requirement-
Certain Visitors to the U.S. are Not Required to Obtain Visas:

Canadians crossing over the U.S. border are generally not required to have a visa. Citizens from the 27 participating countries in the Visa Waiver Program also are not required to obtain a visa if they are planning to come to the U.S. for business or pleasure for a period of 90 days or less. However, there are strict conditions under which people may come to the U.S. under the Visa Waiver Program—they must have valid, machine-readable, passports; their stay is limited to a maximum of 90 days; they must have round-trip tickets, if they arrived by air or sea; and they must have proof of financial solvency. If they do not have a machine-readable passport, they must apply for and obtain a visitor visa.

Countries participating in the Visa Waiver Program are: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, The Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.
There are two main classes of status/visas: Non-Immigrant and Immigrant

A **non-immigrant** is an individual who is permitted to enter the U.S. for a period of limited duration for a specific purpose. Non-immigrants include: tourist (B-2), students (F-1), business executives (B-1), students (F-1), visiting scholar (J-1), workers in specialty occupation with bachelor’s degree or above (H-1B), etc. There is a wide range of non-immigrant status/visa.

A non-immigrant status/visa restricts duration of stay in the U.S. and purpose including whether or not employment is allowed.

An **immigrant** is a foreign-born individual who has been admitted to reside permanently in the U.S. as a lawful Permanent Resident (PR). Also known as having a “green card,” permanent residency allows an indefinite stay and freedom of employment.

**Other Important Immigration Terms**

**Undocumented Immigrant**- is a person who is present in the United States without the permission of the U.S. government. Undocumented immigrants enter the U.S. either illegally, without being inspected by an immigration officer, or by using false documents, or legally, with a temporary visa, and then remain in the U.S. beyond the expiration date of the visa.

**Naturalized citizen**- Permanent Residents are eligible to apply for U.S. citizenship through a process called naturalization. To qualify for naturalization, applicants generally must reside in the U.S. for five years (three if they are married to a U.S. citizen) without having committed any serious crimes, show that they have paid their taxes and are of “good moral character,” and demonstrate a knowledge of U.S. history and government as well as an ability to understand, speak, and write ordinary English.

**Refugee**- is a person outside the U.S. who seeks protection on the grounds that he or she fears persecution in his or her homeland. To obtain refugee status, a person must prove that he or she has a “well-founded fear of persecution” on the basis of at least one of five specifically-enumerated and internationally recognized grounds. Those grounds include the person’s race, religion, membership in a social group, political opinion, or national origin. A person who has already entered the United States, and who fears persecution if sent back to his or her country, may apply for asylum here. Once granted asylum, the person is called an “asylee.” Like a refugee, an asylum applicant must also prove that he or she has a “well-founded fear of persecution” based on the same enumerated grounds.
Brief Overview of Permanent Residency

How can someone obtain Permanent Residence?

1. Through family-sponsored immigration, a U.S. citizen can sponsor his or her foreign-born spouse, parent (if the sponsor is over the age of 21), minor and adult married and unmarried children, and brothers and sisters. A Permanent Resident can sponsor his or her spouse, minor children, and adult unmarried children. Our immigration system divides the family members eligible for sponsorship into two tiers. Immediate relatives of U.S. citizens—that is, spouses, unmarried minor children and parents, but not brothers and sisters or unmarried and married adult children—are admitted as their applications are approved.

2. Through employment-based immigration, a U.S. employer can sponsor an individual for a specific position where there is a demonstrated absence of U.S. workers.

Permanent Resident applications- The process for obtaining permanent residency varies based on the reason for the individuals petition family, employment or humanitarian/public policy). All applicants seeking employment based immigration must file two forms. The first petition is the Immigrant Petition for Alien Workers or I-140. The second petition is the Application to Register Permanent residence or Adjust Status or I-485.

Permanent Resident Card- This is the official card issued by U.S. Citizenship & immigration Services to permanent residents that confers both status and also serves as a permanent visa.

Preferences, Quotas & Waiting Lists

Employment sponsored people, relatives of green card holders, and older or married children of US citizens are all part of the immigrant preference system. The number of visas (visa quota) in each category or preference is set by the law. When the number of applications for green cards exceeds the number of green cards available, waiting lists are set up with the oldest applications at the top of the list and the most recent at the bottom. If a long list develops, it can take several years to reach the top of the list.

The Immigration and Nationality Act currently limits the number of employment based immigrants to 140,000 per year. These 140,000 slots are then subdivided between five employment based categories.

Preferences for Employment Green cards

EB-1 (Priority Workers) Workers with Extraordinary ability (Generally highly skilled workers of unique and rare talents) or Outstanding Professors or Researchers

EB-2 Professional with advanced degrees or persons of exceptional ability in the sciences, arts or business

EB-3 Skilled workers

EB-4 Special categories includes Armed Forces Members, Physicians, religious workers, Broadcasters, Iraqi/Afghan translators, etc.

EB-5 Immigrants who invest in new commercial enterprises that benefit the U.S. and create at least 10 full time jobs for U.S. workers.

*Major advantage of EB-1 petitions: EB-1 Permanent Resident petitions do not require Labor Certification.

The Department of State (DOS) keeps track of how many immigrant visa numbers are used in each preference category and by each country. Each month the DOS publishes a “Visa Bulletin” that states which priority dates of immigrants have become current. Once an immigrant’s priority date is current, the individual may then file the second petition for adjustment of status.
Important facts about Permanent Residents

- Allows foreign nationals to stay in the U.S. indefinitely, generally in ten year renewable periods.
- Allows holder the freedom to change employers and hold multiply jobs at one time.
- It is both a status and a permanent visa, which allows freedom to travel.
- After five years the holder may apply for U.S. citizenship.

Sample Permanent Resident Card
Types of Permanent Resident Petitions

EB-1 Extraordinary Ability

“Extraordinary ability means a level of expertise indicating that the individual is one of that very small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. section 204.5(h)(2)

EB-1 Extraordinary Ability requires: That the individual demonstrate extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim. Your achievements must be recognized in your field through extensive documentation. No offer of employment is required.

Evidence: The petitioner must meet 3 of 10 criteria* below, or provide evidence of a one-time achievement (i.e., Pulitzer, Oscar, Olympic Medal, Nobel Peace Prize)

You must meet 3 out of the 10 listed criteria below to prove extraordinary ability in your field:

- Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence
- Evidence of your membership in associations in the field which demand outstanding achievement of their members
- Evidence of published material about you in professional or major trade publications or other major media
- Evidence that you have been asked to judge the work of others, either individually or on a panel
- Evidence of your original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
- Evidence of your authorship of scholarly articles in professional or major trade publications or other major media
- Evidence that your work has been displayed at artistic exhibitions or showcases
- Evidence of your performance of a leading or critical role in distinguished organizations
- Evidence that you command a high salary or other significantly high remuneration in relation to others in the field
- Evidence of your commercial successes in the performing arts

The Statutory Criteria: (INA § 203(b)(1)(A))

(i) The alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) The alien seeks to enter the U.S. to continue to work in the area of extraordinary ability, and

(iii) The alien’s entry into the U.S. will substantially benefit prospectively the U.S.

Note: An alien may self-petition for the EB-1 Extraordinary Ability category. However, in the petition the Alien must prove, that he or she will continue to work in the area of expertise.
EB-1 Outstanding Professor or Researcher

Basic Requirements

1. The individual is recognized internationally as outstanding in a specific academic area.
2. The individual has at least 3 years of experience in teaching or research in the academic area.
3. The alien seeks to enter the U.S.
   i. For a tenured position (or a tenure-track position) within a university or institution of higher education, or
   ii. for a comparable position with a university or institution of higher education to conduct research in the area, or
   iii. for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

(I.N.A. § 203(b)(1)(B))

Documentary Evidence That A Person is an Outstanding Professor Or Researcher

Regulations specify that evidence must be presented in at least two of the following categories, to prove that the individual is internationally recognized as outstanding in the academic field:

- Evidence of receipt of major prizes or awards for outstanding achievement
- Evidence of membership in associations that require their members to demonstrate outstanding achievement
- Evidence of published material in professional publications written by others about the alien's work in the academic field
- Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
- Evidence of original scientific or scholarly research contributions in the field
- Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

(8 C.F.R. § 204.5(i)(3)(i))

Note: An EB-1 Outstanding Professor or Researcher petition must be filed by the alien’s employer and the position the alien holds must be “permanent.” Under 8 CFR section 204.5(i)(2), permanent means “either tenured, tenure-track or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.”
EB-2 Advanced Degree

Basic Requirements

1. Is a member of the profession
2. Has an advanced degree; and
3. The job requires an advanced degree as a minimum requirement.
   (The advanced degree must match the job requirements.)

“Advanced degree means any United States academic professional degree or a foreign equivalent degree above that of baccalaureate. A U.S. baccalaureate degree or foreign equivalent degree followed by at least 5 years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a U.S. doctorate or a foreign equivalent degree.” 8 C.F.R. §204.5(k)(2)

The position must be “permanent.” EB-2 petitions require labor certification by the Office of Foreign Labor Certification.

(See, Manual for Recruiting & Hiring Foreign Nationals for further information regarding the procedures for permanent resident petitions for the standard EB-2 petitions.)
Non-Immigrant Workers

While there are many different types of non-immigrant status/visa’s in the U.S., at WKU the most common type of non-immigrant status is called **H-1B**.

**What is an H-1B status?**
H-1B refers to temporary Specialty Occupational workers. The individual applying for an H-1B status must have obtained the educational degree of baccalaureate or higher and be qualified to work in a specific occupation because of the degree they have obtained and the specialized knowledge obtained from the degree.

**Important facts about H-1B Status**
- Holder may only work for the sponsoring employer.
- Term of status is limited to two renewable three year periods.
- Holder may only engage in the job as specified and defined by the petition.
- Must be continuous employment. (There are exceptions for teachers who traditionally do not work in the summer. There are also specific exceptions for life events such as extended illness or maternity leave.)
- If employment is terminated prior to expiration of status term, employer is required to offer the holder the cost of returning to their home country.
- Maximum duration of stay is six years.
- Upon expiration of status time period, the non-immigrant must leave the U.S. within 10 days.

(See, Manual for Recruiting & Hiring Foreign Nationals for further information regarding the procedures for H-1B procedures.)