A Seamless Transition from International Student to Researcher or Employee
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Scenario One

- J-1 Post-doctoral fellow performing research in the field of nanotechnology or “green chemistry”, funded in part by the National Science Foundation. He is subject to the 2 year home residency rule under 212(e) of the INA.
- Earned PhD in physics at same institution and would like to eventually obtain a green card.
- The aim of the research is to show that agricultural or plant-based feedstock can serve as the building blocks for a wide array of products now made from petrochemical feedstock.
- Has published one article on his research findings and has made a presentation at an international green chemistry conference. His work has led to the institution receiving additional grant money.
Questions

- What are the possible ways that our post doc could obtain his permanent residence?
- What steps should our post-doc take to put himself in a good position to obtain permanent residence?
J-1 issues:

- Really subject to 212(e)?
  - Advisory opinion
  - Skills list
  - No objection waiver
  - [http://travel.state.gov/visa/temp/info/info_1296.html](http://travel.state.gov/visa/temp/info/info_1296.html)

- Consulate error?
- Where did funding come from?
Non-immigrant visa options: O-1 visa

- §101(a)(15(O)) of the INA
- Extraordinary ability
- Must leave US to obtain O-1 status
- Issued initially for 3 years
- Bridge the gap
Discussion

Non-immigrant visa options:

H-1 visa

- §101(a)(15)(H) INA
- Specialty Occupation
- Prevailing Wage
- Subject to cap (with exceptions)
- Issued for a maximum of 6 years in 3 year increments
Discussion

Immigrant visa options:

- Outstanding Researcher  
  INA §203(b)(1)(B)
- Extraordinary Ability  
  INA §203(b)(1)(A)
- National Interest Waiver
- PERM

All choices have pros and cons
Outstanding Researcher

- Intended for individuals who have at least three years of experience in teaching and/or research in the academic field.
Outstanding Researcher

- Experience in teaching or research while working on an advanced degree will only be acceptable if
  - The applicant has acquired the degree,
  and
  - If the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding.
Outstanding Researcher

Supporting Documentation:

- Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:
Outstanding Researcher

- (A) Documentation of the applicant's receipt of major prizes or awards for outstanding achievement in the academic field;

- (B) Documentation of the applicant's membership in associations in the academic field which require outstanding achievements of their members;

- (C) Published material in professional publications written by others about the applicant's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
Outstanding Researcher

- (D) Evidence of the applicant's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;

- (E) Evidence of the applicant's original scientific or scholarly research contributions to the academic field; or

- (F) Evidence of the applicant's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field; and
Outstanding Researcher

- Evidence of teaching and/or research experience. This evidence shall be in the form of letter(s) from current or former employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the applicant.
Outstanding Researcher

- Needs to be a permanent job offer (Academic Track, Research Track etc.)
- Must have the ability to pay
- Publications must be relevant to research
PERM - What is a “Labor Certification”

An approval or “certification” document from the U.S. Department of Labor (DOL) that confirms:

- An employer in the U.S. has a permanent job opening;
- After testing the local marketplace, there are no American workers ready, willing and qualified to do the job; AND
- A qualified foreign worker has been located to fill the open position.
Scenario Two

- F-1 student graduated at top of her class with a degree in Fine Arts and is in the Optional Practical Training ("OPT") period which expires next June.

- Currently working for a graphic design firm creating designs to be used in advertising campaigns presented in a variety of media.

- On April 1 her employer will file an H-1B petition on her behalf.
Questions

- If she is not able to get H-1B status because of the numerical cap, what are her options in terms of her status and to allow her to continue working?

- In the alternative, if she obtains the status how might she fill the gap between the end of OPT in June and the beginning of the H-1B in October?
Discussion

- STEM
- Immigration will bridge the gap
- Switch to B-2 visa to bridge the gap
- Depart US and return in H-1 status
- Other visa options based on nationality i.e. TN or E-3
- B-1 in lieu of H-1
- Transfer to subsidiary abroad
- Independent consultant abroad
- H-3 options
- Go back to F-1
Scenario Three

- A student is currently on OPT ending July 24, 2009, and he also currently enrolled in a part time graduate program, which will qualify him for another post completion OPT.

- Based on the new interim rule regarding OPT extension, the student is eligible for the 17 month OPT extensions because he is one of the identified STEM degrees.
Questions

- If the student gets the 17 months OPT extension which will end in December 2010, but he is graduating in June 2010 (Masters degree), when can he apply for his second OPT?

- If so, should the student apply for OPT 90 days before graduation or 90 days before the end of the 17 months extension?
Discussion

- OPT rules
- Grant of second OPT is different because of new OPT of 17 months
- Definition of full time course of study may vary
Scenario Four

- A student with unrelated STEM (Masters) degree is currently on OPT, which is about to expire. Because of the new OPT rule, he want to know if he can enroll at another school, get a STEM Masters degree, find an E-Verify employer and then file for an OPT STEM extension.
Discussion

- Full course of study
- Rule upon graduation
- Employer has to be enrolled into E-Verify (Aaron)
Scenario Five

- Student is on OPT and has two employers; a firm and the IRS. He has applied for the 17 months extension.
Questions

- Should he list both employers?
- What happens if one employer is not part of E-Verify - will he be forced to discontinue his employment with that employer?
- What if both employers are part of E-Verify – can he continue to work for both employers?
Discussion

- New I-765 application requires E-Verify employer to be identified on the application for employment
- SEVIS only allows listing for one employer
- Free market employment issues
- Potential Constitutional violations
E-Verify

- E-Verify (formerly known as the Basic Pilot Program)
- Mandated by Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)
- Partnership between the Department of Homeland Security (DHS) and Social Security Administration (SSA)
- Provides a means for participating employers to verify the employment eligibility status of newly-hired employees
E-Verify: How it Works

- Users submit information provided on the Form I-9
- System queries databases of:
  - Social Security Administration
  - Department of Homeland Security

E-Verify Program Goals

- Reduce unauthorized employment
- Minimize verification requirements
- Be quick and non-burdensome to employers
- Protect civil liberties and employee privacy
E-Verify: How it Works (Continued)

- Initial verification will return one of three results within seconds:
  - Employment Authorized
    - The employee is authorized to work
  - SSA Tentative Nonconfirmation
    - There is an information mismatch with SSA
  - DHS Verification in Process
    - DHS will usually respond within 24 hours with either an Employment Authorized or DHS Tentative Nonconfirmation
E-Verify: Case Resolution

- If Employment Authorized, the employer records the system-generated verification number on the Form I-9.
- If Tentative Nonconfirmation, the employee can contest the finding and then:
  - Social Security Number mismatches are resolved with SSA
  - Non-citizen status mismatches are resolved with DHS
- If the employee chooses not to contest, it is considered a Final Nonconfirmation and the employer may terminate the employee and resolve the case.
Tentative Nonconfirmation (TNC)

- Inform the employee and print and review the TNC notice with the employee.
- The employee chooses to “contest” or “not contest” the TNC.
- Refer the employee to the appropriate agency if the TNC is contested.
- The employee has 8 Federal Government workdays from the date of referral to visit or call the appropriate agency to resolve the discrepancy.

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TNC Case Resolution

- Employee continues to work while the case is being resolved.
- Once the employee resolves the discrepancy in his or her records, they should inform the employer.
- With both a SSA TNC and a DHS TNC, a response is electronically sent to the employer through the system. The employer should check E-Verify periodically for the response.

TNC Case Resolution (Continued)

- The employer will receive one of three results:
  - Employment Authorized
  - Final Nonconfirmation
  - Reverify and Update Employee Data then Resubmit

- The employer then resolves the case in E-Verify.
Employer Responsibilities

- E-Verify must ONLY be used to verify NEW hires, and must be initiated after the employee accepts the position (hire date) and within 3 days of the employee’s actual start date.
- E-Verify procedures must be applied to ALL new hires, regardless of citizenship status.
**Employer Responsibilities**

- Employer must post a notice in an area visible to prospective employees that it is a E-Verify Participant.
- Employer must post an Anti-Discrimination Notice issued by the Office of Special Counsel for Immigration – Related Unfair Employment Practices, Department of Justice (DOJ) in an area visible to prospective employees.
E-Verify: Registration

- Register online: www.dhs.gov/E-Verify
- Select access method:
  - Depending on the answer(s) selected, one of three access methods will be established:
    - Employer
    - Designated Agent
    - Corporate Administrator

E-Verify: Access Methods

- Employer
  - Nearly all E-Verify participants, regardless of business size or structure, are registered as an Employer. The Employer Access Method allows your company to electronically verify the employment eligibility of your newly hired employees.
  - Click “Yes” to question 1 and “No” to questions 2, 3, and 4.
  - Most Common

- Designated Agent
  - Only select this registration type if your company performs verification queries for a client company (i.e. Outsourcing services, Third-Party Payroll Services, etc.)
  - Check “Yes” to question 2 and “No” to questions 1, 3, and 4.
  - Least Common
E-Verify: Access Methods

- Corporate Administrator
  - Some companies may have E-Verify accounts for multiple offices or locations. The Corporate Administrator role allows you to create, manage, and oversee these accounts. You can view reports and administer new and existing E-Verify accounts.
  - Your Corporate Administrator account does NOT allow you to perform employment eligibility verifications.
  - Click “Yes” to question 3 and “No” to questions 1, 2, and 4.
E-Verify: Registration (Continued)
- User Name, Password, and E-Verify Web Address will be e-mailed to registrant within 48 hours.
- Download and read the E-Verify User Manual.
- Complete an online tutorial before performing queries.
- Download, print, and post the E-Verify Participation Poster and the Office of Special Council Anti-Discrimination Poster.

E-Verify: Adding Users
- Program Administrators have the ability to add, delete, and modify users.
- After registration, log on to the E-Verify system.
- Select “Add User” from the left hand menu.

E-Verify: Adding Users (Continued)
- Select the appropriate “User Role” for the new user
  - General Users can run verification queries and run reports on queries they have initiated.
  - Program Administrators can run verification queries, add new users, delete users, change passwords, and run reports on queries.
E-Verify Usage Statistics

- Over 58,000 participating employees
- Nearly 3 million queries run in FY 2007
- 92% of verification queries are instantly verified as "Employment Authorized"

Top Industries Using E-Verify:
- Doctors, Lawyers, CPAs
- Administrative and Support Services
- Professional, Scientific, and Technical Services
- Food Services, Catering and Access Storages

E-Verify Improvements

- Reducing incidence of mismatches
- Developing a mechanism to recruit employees
- Developing monitoring & compliance tools

State Legislation

- Mandate (7)
- Support (5)
- Encourage (3)
- Pending (18)
**State Legislation**

- States that have enacted legislation that mandates the use of E-Verify:
  - AR, GA, CO, OK, RI (required for public contractors)
- States that have enacted legislation that encourages the use of E-Verify:
  - TN, MO
- States that require their state agencies participate in E-Verify:
  - ID, NC, PA, WI, UT, RI
- States that have legislation pending that mandates employers to verify new hires using E-Verify:
  - CA, WV, PA, SC, TN, WV (would require public employers)
  - IL, IN, IA, MO, RI, KS, NJ (would require all public and private employers)
  - CO, FL (would require all contractors and subcontractors compiling for work on public contracts to register)

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**For More Information**

- Employers who have questions about E-Verify or SAVE should call DHS at (888) 464-4218.

- **E-Verify Website:** [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify)

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**Disclaimer**

- Immigration law can be complex and it is impossible to describe every aspect of every process.
- This presentation provides basic information to help you become generally familiar with rules and procedures. For more information or the law and regulations please see our website: [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).
Thank You