US Immigration and Visas in the Age of COVID
LEGAL DISCLAIMER:

The following presentation is for informational and educational purposes, and is not a substitute for individual legal advice. With regards to someone’s particular situation, an attorney should be consulted with respect to your personal case.
What we will cover

- The Current Situation!!!
- Life (and visas) gets in the way
  - Know your options
  - Navigating the visa process
- What to do and how to help (yourself)
  - The politics of Normalcy?
Takeaways!

Be Flexible!

Recognize your Short – Medium – Long Term Goals!
International postdocs

- More than 50% are foreign nationals
- Further down their career path
  - Different Issues
  - F-1 OPT + Stem = 3 years; J-1 Research Scholar = 5 years; H-1B = 6 years
Who can help?

In Academia:

Still under the umbrella of the International Office

OPT (STEM)

J-1 Research Scholars

H-1B Research associates

Titles & positions matter.....different at different institutions.

Your international office. Very important to stay in touch!!

What about the Career Office?

Postdoc Office/Networking Orgs should be PROACTIVE – just like today!
Being proactive

Organize Seminars & Programs

Keeping abreast of Changes

Reach out to, and interact with, the International office
BASIC KNOWLEDGE

STAY INFORMED!
The Current Situation:

- Keep in contact with your visa sponsor
- Be ready to adhere to procedural changes
- Be careful about “unauthorized” activity
- If status is “expiring” you can possibly request a change or extension of stay
- USCIS Field offices are open; Service Centers have been accepting and processing cases throughout the pandemic
  - Premium processing is back
- Be ready for processing delays – prepare early. Intake and receipts heavily affected
- The presidential proclamations affects people “outside” the US, waiting to be issued their green cards and certain temporary visas – NOT internal applications
- Visas are being issued for those working to treat or mitigate the effects of COVID-19
  - Review the law and regulations including NIE’s with a professional
Review of (COVID) Executive Orders & Presidential Proclamations

- Limit on Permanent Resident processing (Apr 2020); Expanded to H-1B and other visas (June 2020) – Lifted on April 1, 2021
- This pertained to “Immigrant and Non-Immigrant Visa Processing” at US Embassies and Consulates
- Utilized 212(f) of the INA which pertains to entry of aliens “detrimental to the United States”. However, initially Trump Administration utilized the idea of a “negative impact upon the labor market” as opposed to national security or public health. Recently, the Biden Administration looked more to the “public health” aspect
- Did NOT affect immigrant visa applications (I-485 Adjustment of Status), OR non-immigrant Visa applications here inside the US
- For travel TO the US, from anywhere, even with a VALID visa, you STILL need a negative COVID test. Travel from Schengen and other affected areas is still not permitted (absent a waiver). You can travel elsewhere and “quarantine” for 14 days – but be careful!

- REVIEW CAREFULLY IN THE CONTEXT OF YOUR SITUATION
USCIS Operations:

How has it played out?

- USCIS resumed premium processing & Field Offices have reopened
- USCIS did **NOT** close completely during the pandemic. Service Centers have continued processing throughout COVID-19
- Certain Employment Based Green Card applications have had the final interview requirement “waived”
- Interviews “re-started” last July
- Processing delays including issuance of receipts have been extensive
Visa Issues and questions

Academia versus Industry:

J-1 or H-1B, or OPT?

Transferring a J-1??

Can I do an O-1A?

Temporary or Permanent
F-1 OPT & STEM EXTENSION

TALK TO YOUR INTERNATIONAL OFFICE!
They are your friend!!

• OPT (post completion) – 12 months

• STEM EXTENSION:
  - up to 24 additional months
  - have a qualifying STEM degree
  - employer MUST be E-verify
  - bone fide “Employer-Employee” relationship
  - volunteer or self-employment work NOT permitted

• If you LEAVE academia, be careful about next steps & Visa options (i.e. H1B cap)
J-1s

• Don’t have to deal with USCIS
• Easy to Administer & Transferable (within academia)
  • J-2 Employment
  • Tax treaties
• 212(E)
  • Get a Waiver or fulfill it – it doesn’t go away!
  • Need a waiver for H1B or Green Card
H-1B Visas

- Cap Exempt v Cap Subject

- Academia is “exempt” from the cap – an H1B can be filed at ANY TIME – NOT so industry (cap was reached last month for this upcoming fiscal year)

- H-1b is dual intent and can be maintained up until the day you get GC

- Know the policy where you are – titles and positions matter

- Higher levels of scrutiny and adjudication standards – wages and types of position
  - Tightening of standards in “industry”
  - Deference to “prior approvals”
O-1 Visa

- Sciences/Business: O-1A – Sustained acclaim. Top of the field. No Kazarian…
- A Waiver is not required to obtain O-1 Visa if the applicant has an outstanding 212(e) requirement (approve/leave/return)
- Good option for “industry” if & when there are no H-1Bs available
  - BUT – a restrictive standard!

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Added pressures and responsibilities

Do you feel constrained with regards to their visa situation?
VISAS: Don’t be afraid to look at alternatives

Do know your employer policies?

Is institutional or company sponsorship a possibility?

As highly qualified individuals you have options – IMPORTANT in the current climate!

Are you aware of self-sponsored green cards?

There are now multiple career options outside of academia…
EMPLOYER sponsored Versus SELF SPONSORED

Employer: Traditional method and (somewhat) easily navigable

Self: **YOU** are driving the process. Gives you additional options; can open doors; but, restrictive. Be prepared and understand the process.

Transitional/non-traditional Fields – are they allowable?

If you can process a “Self” petitioned application, you have more options regarding ongoing employment.
Options for Employer Sponsored green cards

PERM (The “Traditional” Method)

Employer advertises the position to see if any qualified US Citizen or PR apply

File with DOL. Upon certification, then file with USCIS

PERM Special Handling (University setting)

Special Process for Universities designed to recruit the MOST QUALIFIED Applicant

Outstanding Researcher (EB-1):

No Advertising

6 criteria, show you meet 2: Plus a minimum of 3 years experience

Employer SPONSORED & must show at least 3 full time employees and Position is “Permanent” (includes tenure, tenure track, at-will, etc.)
SELF-SPONSORED GREEN CARDS:

Is this something I can consider?

• What is it? – a “self” sponsored application
• What am I asking? – Do I “QUALIFY” for a Green Card?
• Am I qualified? – strong professional credentials (the importance of work **NOT** enough)
• What can I do? – prepare yourself and be ready!

• **Get a full and frank evaluation!**
The intent to continue working in your field in the USA

You are NOT tied to a specific employer!

**IMPORTANT** - You do NOT have to be physically present in the US to file – apply from overseas and come to the USA with your green card! So if you have to leave, you can STILL PURSUE THIS!
Extraordinary Ability

Evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. One-time achievement (that is, a major, international recognized award)

OR

Meet a minimum of three out of ten listed criteria

Post-Kazarian: objective v Subjective criteria – Important!

NOT all criteria pertain to the sciences!
Recognized as one of the few at the top of your field. Sustained national or international acclaim

a consistent career of excellence

NOT EASY!
National Interest Waiver
what is it?

What to look at in the NIW:

Almost certainly a “better” alternative for postdocs

A cumulative and broad analysis of your overall body of work.

The mere act of publication/presentation etc won’t be enough!

(As in the EB1A) You drive the process – continuation in your field! NOT tied to any specific employer
Test:
Matter of Dhanasar

1. Substantial Merit and National Importance

2. The Foreign National is well positioned to advance the proposed endeavor

3. It would be beneficial to the US to waive the requirements of a job offer and LC
Previously citation carried a high degree of importance.

Now: Cover Articles & Editorial highlights. Standards of publication/journal rankings.

Have others utilized/implemented your findings/grants/funding/your work!

How well positioned are you?
HOW STRONG IS MY CASE?

WHAT DO I NEED TO BRING TO THE TABLE?

Image courtesy of Stuart Miles/FreeDigitalPhotos.net
Publication Record

It’s what you’re supposed to do
Quality > Quantity

Nature, Cell, Science?
Helps, but not required...

Remember what YOUR specialty is
Recognition from others in the Field!

Citations

Cover Articles & Editorial highlights

Have others utilized/implemented your findings
NETWORK

Use your professional relationships
Expert opinion letters

Shouldn’t form the basis of your application

Independent Letters are a plus

They need to be specific (not general)
Transitional and Non-Traditional Careers

In pursuing a “self-sponsored” application, you are required to continue working in the “same or allied field” of endeavor. Apply your scientific knowledge!
What Does Retrogression Mean?

THERE ARE “FILING” & “FINAL ACTION”

June 2021 Visa Bulletin (Final Action Dates):

**EB-1:** Everyone CURRENT
This will likely RETROGRESS soon for China and India

**EB-2 (NIW & PERM)**
All Countries: CURRENT (Keep an eye on it)
- China: May 1, 2017
- India: December 1, 2010

Strategize!
For China and India: You can HOLD your place in line by Filing an EB2
Be mature enough to look at this pragmatically

There are difficult issues and hurdles

Not everyone may work it out

Prepare yourselves and

learn what is in front of you
Science is important & so are International researchers

Science is both international and transitional

With proper guidance you can get to where you want (and need) to be
Some Housekeeping:

The Original (Muslim) Travel Ban has been LIFTED

If you are working in an area of security (or other “delicate” field) make sure that you set up **ANY** visa appointment well in advance – Administrative Processing (221g)

**DUI/DWI – VISA REVOCATION (DON’T NEED A CONVICTION)**

**EXTREME VETTING** – social media/phones/computers (passwords)

USCIS have indicated that they will return to giving “deference” to prior approvals
The Politics of it all...

Fairness for high skilled immigrants act - removal of “per country limits” is under consideration

Will H-4 work authorization be revoked?

Positive change will (hopefully) be coming but don’t expect it to happen overnight

Will Congress pass a Bill? STEM is in play! That’s the big question. Stay appraised, but wait for the actual, real information.

THANK YOU!
For a review of your case, or a free consultation of your visa or green card application:

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