

FRAGOMEN

Notre Dame Immigration Program

Immigration for International Business Students

March 2023



WITH YOU TODAY



KYLE SOMMER

Senior Associate
New York

ksommer@fragomen.com



SCAN ME

AGENDA

- ▶ Overview of Notre Dame Immigration Program + Fragomen
- ▶ US Immigration Overview
- ▶ Student Immigration Status
- ▶ Post-Graduation Immigration Options
 - Temporary Visas
 - Permanent Visas (Green Cards)

WHO WE ARE



Largest and leading
global immigration firm



Strongest global
immigration network
across 170+ countries



4,900+ professionals
including 675+
immigration lawyers



Deep legal expertise
in immigration and
global mobility



More than **6,500**
corporate clients



Market-leader in
advisory & consulting



Pioneer **cutting-edge**
immigration technology
solutions



More data than
any other firm



OVERVIEW: NOTRE DAME IMMIGRATION PROGRAM

IMMIGRATION → INNOVATION



NOTRE DAME IMMIGRATION PROGRAM

MENDOZA COLLEGE OF BUSINESS

MBA & SPECIALIZED MASTERS PROGRAM + FRAGOMEN

Guide students and employers through the US Immigration Process



Information Session: Overview of program and immigration options



1:1 Consultation: Fragomen attorney available to meet with student to answer questions from Informational Session and prep student to speak with employer (20-30 mins)



Immigration Action Plan: Fragomen offers in-depth meeting with student (and employer). Includes personalized and strategic roadmap of student's immigration process. ***Legal Fees Apply***

ASSEMBLING YOUR ADVISORY TEAM

HOW FRAGOMEN CAN HELP

Immigration Lawyer	Other Professional
<ul style="list-style-type: none">✓ Strategic Immigration Planning✓ Application Preparation:<ul style="list-style-type: none">- F-1 OPT STEM EAD & Training Plan- Visas- Green Cards- Citizenship- Asylum✓ Consular Issues✓ Immigration Process✓ Compliance	<ul style="list-style-type: none">▶ Business Formation▶ Tax Planning▶ Social Security▶ Relocation▶ Employment Discrimination



US IMMIGRATION OVERVIEW

US IMMIGRATION OVERVIEW

- ▶ **Goals:** Diversity of nationalities, Fill gaps in US labor market; NOT merit-based
- ▶ **Requires work authorization** if performing productive work while **physically present in the US**
 - No specific remote work (“nomad”) visa in US
 - Applies to self-employment and running business or to secure certain financing (e.g. SBA loans)
- ▶ **Requires “sponsorship”** (school, employer, self, family) **OR humanitarian basis**
 - Self Employment (Independent Contractor/Freelancer) vs. Employer-Employee Relationship
 - Self-sponsorship available for some US immigration classifications
 - Sponsoring company may take a variety of forms (e.g. corporation, LLC) and must: (1) form/register (certificate of formation, business licenses), (2) Federal Tax Identification Number (FEIN), (3) pay relevant fees and taxes to maintain business, (4) actively engaged in doing business
- **Nonimmigrant (temporary) vs. Immigrant (permanent, “green card”) vs. US Citizen**

US IMMIGRATION DEPARTMENTS AND AGENCIES



Department of Homeland Security (DHS)

- ▶ United States Citizenship & Immigration Services - USCIS
- ▶ Immigration & Customs Enforcement – ICE (including Student and Exchange Visitor Program – SEVIS)
- ▶ Customs & Border Protection – CBP



Department of Labor (DOL)

- ▶ Office of Foreign Labor Certification
- ▶ PERM Processing Centers
- ▶ National Prevailing Wage Center (NPWC)
- ▶ State Workforce Agencies (SWAs)



Department of State (DOS)

- ▶ Bureau of Consular Affairs
- ▶ U.S. Embassies and Consulates

APPLICATIONS FOR EMPLOYMENT

- ▶ Employers are NOT required to hire non-US workers BUT...
 - Employers must not discriminate against individuals based on national origin, citizenship, or immigration status in the hiring, firing, recruiting, or referral for fee process
 - Employers must not engage in unfair documentary practices during employment eligibility verification (e.g. I-9, E-Verify)

Permissible Questions	! Impermissible Questions !
<i>Are you legally authorized to work in the United States?</i>	<i>If hired, can you provide proof that you are legally able to work in the U.S. for at least 12 months?</i>
<i>Do you now, or will you in the future, require sponsorship for employment visa status (e.g., H-1B visa status, etc.) to work legally in the United States?</i>	<i>Are you prevented from lawfully becoming employed in this country because of your visa or immigration status?</i>
<i>If so, are you currently in a period of Optional Practical Training (OPT)?</i>	<i>Can you please specify your citizenship or immigration status?</i>
<i>If you are currently in OPT, are you eligible for a 24-month OPT extension based upon a degree from a qualifying U.S. institution in Science, Technology, Engineering or Mathematics?</i>	

US IMMIGRATION OPTIONS

STUDENTS & RECENT GRADUATES

KEY NONIMMIGRANT (TEMPORARY) VISAS	
F-1 CPT	Work authorization integral to student's program of study
F-1 OPT, including STEM OPT	Work authorization related to student's major or program of study
B-1/B-2	Business Visitors / Tourists
H-1B (CAP or CAP-Exempt)	Individuals in specialty or professional occupations
TN	Workers from Canada or Mexico
O-1A	Individuals of extraordinary ability in the sciences , education, business , or athletics
L-1 (L-1A or L-1B)	<ul style="list-style-type: none"> L-1A: Intracompany managers or executives L-1B: Intracompany employees with specialized knowledge
E-1	Treaty Traders
E-2	Treaty Investors
Humanitarian	<ul style="list-style-type: none"> Asylum International Entrepreneur Parole (IEP)

US IMMIGRATION OPTIONS

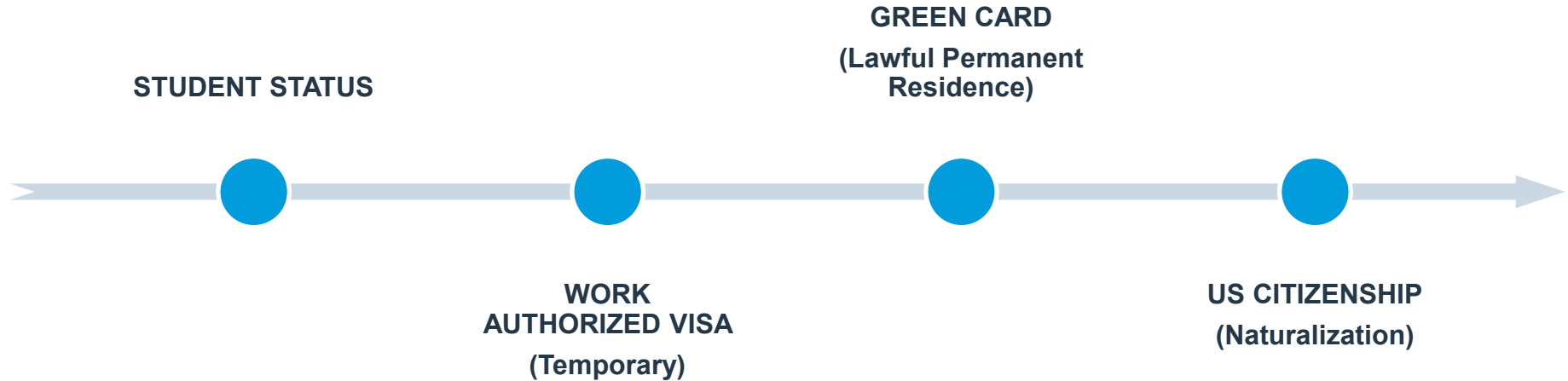
STUDENTS & RECENT GRADUTES

KEY IMMIGRANT (PERMANENT, GREEN CARD) VISAS	
EB-1	<ul style="list-style-type: none">• EB-1A: Individuals of Extraordinary Ability• EB-1B: Outstanding Professors or Researchers• EB-1C: Multinational Managers or Executives
EB-2	<ul style="list-style-type: none">• National Interest Waiver (NIW)• Professionals with Advanced Degree*
EB-3	<ul style="list-style-type: none">• Professionals*• Skill Workers*
EB-5	<ul style="list-style-type: none">• Immigrant Investor Program
Family-Based	<ul style="list-style-type: none">• Immediate relative (e.g. spouse) of US Citizen• Spouse of U.S. lawful permanent resident (green card holder)• Other relative of US citizen or lawful permanent resident
Diversity Lottery	<ul style="list-style-type: none">• Individuals from countries with low immigration rate to US

**Labor Certification (PERM) Required*

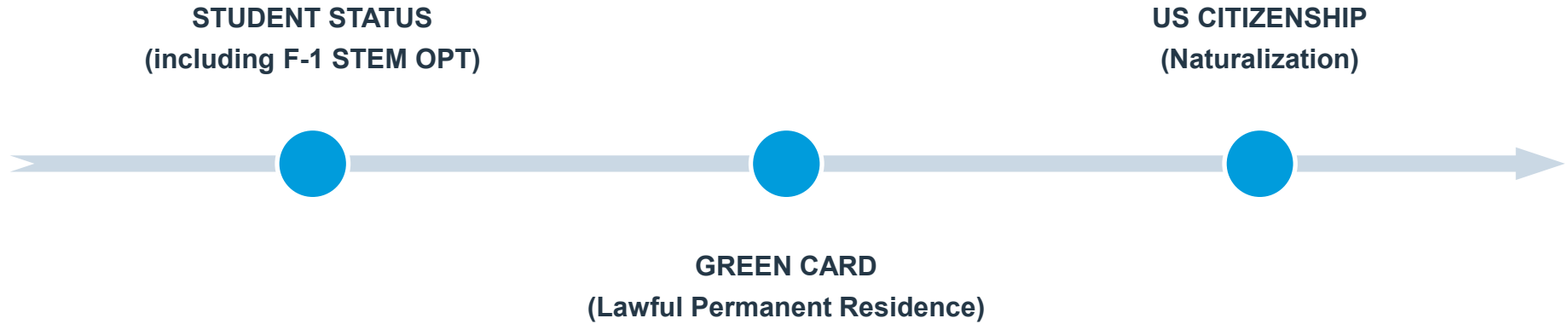
US IMMIGRATION LIFECYCLE

HYPOTHETICAL #1 INTERNATIONAL STUDENT IN THE US



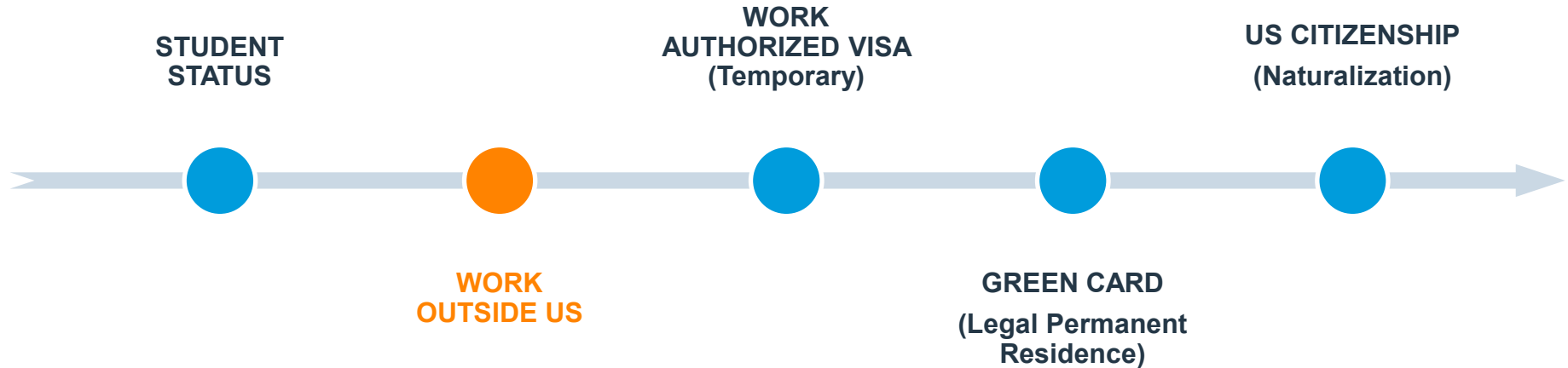
US IMMIGRATION LIFECYCLE

HYPOTHHTICAL #2 INTERNATIONAL STUDENT IN THE US



US IMMIGRATION LIFECYCLE

HYPOTHHTICAL #3 INTERNATIONAL STUDENT IN THE US





STUDENT IMMIGRATION STATUS

F-1 STUDENTS

OVERVIEW

- ▶ **Designated School Official (DSO) is primary contact for all questions related to F-1 status**
- ▶ **Available to students entering the U.S. for academic studies**
 - Must be full-time matriculated student at approved school
 - **STEM major highly recommended**
- ▶ **Student and Exchange Visitor Information System (SEVIS) used to manage student stays**
 - Web-based database system used by schools, overseen by ICE
 - Tracks foreign students
 - Generates Form I-20 certificates of eligibility for foreign student status
 - Student's record must be active in SEVIS to maintain status

F-1 STUDENTS

MAINTENANCE OF STATUS

▶ Admitted for “duration of status” (D/S)

- No specific period of stay
- Student is admitted for duration of academic program(s), plus grace period and additional time for practical training (if applicable)
- **Grace Period for Departure:** 60 days from program or practical training end date listed on I-20

▶ Consequences of failure to maintain/violate F-1 status or work without authorization

- No longer eligible to change status from within the US; Must apply at consular post abroad
- May impact eligibility for a green card
- Subject to removal (deportation)
- Does not accrue “unlawful presence” or trigger ban from the US

F-1 STUDENTS

MAINTENANCE OF STATUS (cont'd)

- ▶ **Work Authorization** available through “Practical Training” (CPT or OPT)
 - Eligible for CPT and OPT work authorization **at each level of education**
 - Physical EAD (not simply approval) required to commence/continue post-completion OPT
 - Hours/week requirements:
 - 20-hour max. (CPT/OPT academic year, increased max during breaks/holidays)
 - 20-hour min. (post graduation OPT)
 - **BEWARE: “Day 1 CPT Programs”**

- ▶ **Maximum Unemployment**
 - Post-Completion OPT: **90 days**
 - STEM OPT: **60 days** (in addition to Post-Completion OPT maximum)
 - Time between graduation and receipt of timely filed EAD does not constitute unemployment

F-1 STUDENTS

WORK AUTHORIZATION

Curricular Practical Training (CPT)	Optical Practical Training (OPT)	STEM OPT
<ul style="list-style-type: none"> ▶ Part of educational program ▶ Letter from school and endorsed I-20 ▶ Part-time during school year, full-time during breaks ▶ Must complete 1 academic year to be eligible ▶ Caution with “Day-1” CPT Programs 	<ul style="list-style-type: none"> ▶ Pre- or post-graduation ▶ 12-months of OPT allowed per degree program ▶ Field related to study ▶ Part-time during school year, full-time during breaks and after graduation ▶ Employment Authorization Document (EAD) and Form I-20 endorsed for post-graduation OPT ▶ Training <u>not</u> tied to a particular employer 	<ul style="list-style-type: none"> ▶ 24-month OPT extension available for some <i>Science, Technology, Engineering, Math (STEM)</i> graduates ▶ EAD and I-20 endorsed for STEM OPT ▶ Employer enrolled in E-Verify ▶ Training Plan (Form I-983)

F-1 STUDENTS

TYPES OF ACTIVITIES & ORGANIZATIONS FOR PRACTICAL TRAINING

- ▶ **Activities must be related to field of study**

- STEM OPT requires a detailed I-983 Training Plan

- ▶ **“Open Market”**

- Does not require a specific employer
- May work for employer (including self-created/owned company), self-employed/independent contractor, or through agency
- May work for multiple employers
- Employer and dates of employment must be listed on I-20

F-1 STUDENTS

PRACTICAL TRAINING WITH SELF-FORMED/OWNED COMPANIES

- ▶ **Students may form/own a company and invest in the company**
 - **Benefits:** Establish and grow business, maintain F-1 status/avoid unemployment
 - **“Pre- or Post OPT:** Self employment/independent contactor permissible
 - **STEM OPT:** E-verify and employer-employee relationship required

▶ Work Authorization

Required	Not Required
Company/Student “actively engaged in business” (i.e. run the business)* <i>*Required to maintain F-1 status/avoid triggering unemployment</i>	“Preliminary business planning” does not require work authorization since it is not considered “engage[ment] in business activities”

TRANSITION FROM STUDENT STATUS

- ▶ **Must file petition/application to change to another immigration status or depart US**
 - Before end of 60 grace period after F-1 status expires
 - Before reach 60-day (OPT) / 90-day (STEM OPT) maximum unemployment period

- ▶ **Do NOT overstay F-1 status**
 - Could have long-term impact on your ability to change to another status or return to the US
 - Considering changing to B-2 tourist status to allow more time in the US to wrap up affairs



POST-GRADUATION IMMIGRATION OPTIONS *TEMPORARY STATUS*

US IMMIGRATION OPTIONS

GRADUATES

KEY NONIMMIGRANT (TEMPORARY) VISAS & PROGRAMS

F-1 OPT, including STEM OPT	Work authorization related to student's major or program of study
B-1/B-2	Business Visitors / Tourists
H-1B (CAP or CAP-Exempt)	Individuals in specialty or professional occupations
O-1A	Individuals of extraordinary ability in the sciences , education, business , or athletics
L-1 (L-1A or L-1B)	L-1A: Intracompany managers or executives L-1B: Intracompany employees with specialized knowledge
TN	Workers from Canada or Mexico
E-1 / E-2	Treaty Traders / Treaty Investors
Other Employment-Based	International Entrepreneur Parole (IEP)
Humanitarian	Asylum



B-1 BUSINESS VISITOR / B-2 TOURIST

CONSIDER IF...

- ▶ **B-2 Tourist:** Nonimmigrant status is expiring and need to remain in the US to wrap-up affairs
- ▶ **B-1 Visitor:** Temporary travel to the US to engage in activities that to NOT amount to productive work

B-1 BUSINESS VISITOR / B-2 TOURIST

OVERVIEW

B-1/B-2	Business Visitors / Tourists
Annual Cap	None
Eligibility	<p>B-1: Business visitors entering the US for non-productive work (e.g. business meetings, solicit sales, negotiate contracts, independent research, conferences) that is for the benefit of a foreign entity</p> <p>B-2: Tourist</p> <p>-----</p> <p>Visa Exempt: Canada Visa Waiver Program/ESTA: See list of VWP countries and ESTA Requirements Visa Stamp: All other countries or otherwise not eligible for VWP</p>
Sponsorship	Varies
Compensation	B-1: Foreign payroll / B-2: N/A
Period of Admission	Visa Exempt & Visa Waiver/ESTA: 90 Days Visa Stamp: 6 months to 1 year
Maximum Period of Stay	None
Processing	Service Center (I-539, Change of Status application) or consular post (visa stamp)



H-1B SPECIALITY OCCUPATION PROFESSIONALS

CONSIDER IF...

- ▶ Possess a minimum of a bachelor's degree in a field related to the offered position
- ▶ The employer (including self-formed/owned business) will control/supervise the work of the beneficiary
- ▶ Compensation from US payroll

H-1B SPECIALITY OCCUPATION PROFESSIONALS

OVERVIEW

H-1B	Professionals working in a “specialty occupation”
Annual Cap*	<p>65,000 (including 6,800 for Chile and Singapore) + 20,000 U.S. advanced degree holders</p> <p>Registration begins March 1 each year for employment beginning October 1 <i>*Some case types (e.g. transfer, extensions) and employers are cap EXEMPT</i></p>
Eligibility	Min. of US bachelor’s degree or equivalent (foreign degree equivalent; 3 years experience = 1 year college)
Sponsorship	US company, including one formed by the beneficiary if work controlled/supervised by the entity
Compensation	<p>Labor Condition Application (LCA): Pay greater of the <i>actual wage or prevailing wage</i> for the occupation/geographic area. See DOL wage database or alternative wage survey (e.g. Mercer, Towers Watson, Dietrich, Radford)</p> <p>US payroll</p>

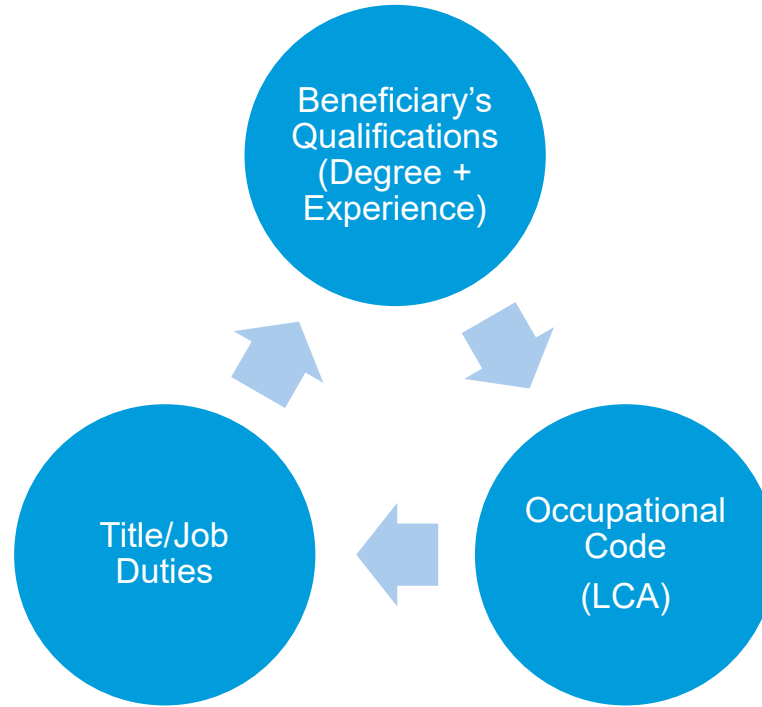
H-1B SPECIALITY OCCUPATION PROFESSIONALS

OVERVIEW

H-1B	Professionals working in a “specialty occupation”
Intermittent Presence Permitted?	No
Dependents	H-4 status; spouses may apply for work authorization at certain stage of the green card process
Termination of Employment	Employer is obliged to offer reasonable costs of return transportation to home country for dismissed employees
Period of Admission	3 years initial, extensions in 3-year increments
Maximum Period of Stay	6 years; post-6-year extensions at certain stage of green card process
Processing	Service Center in US or consular post abroad

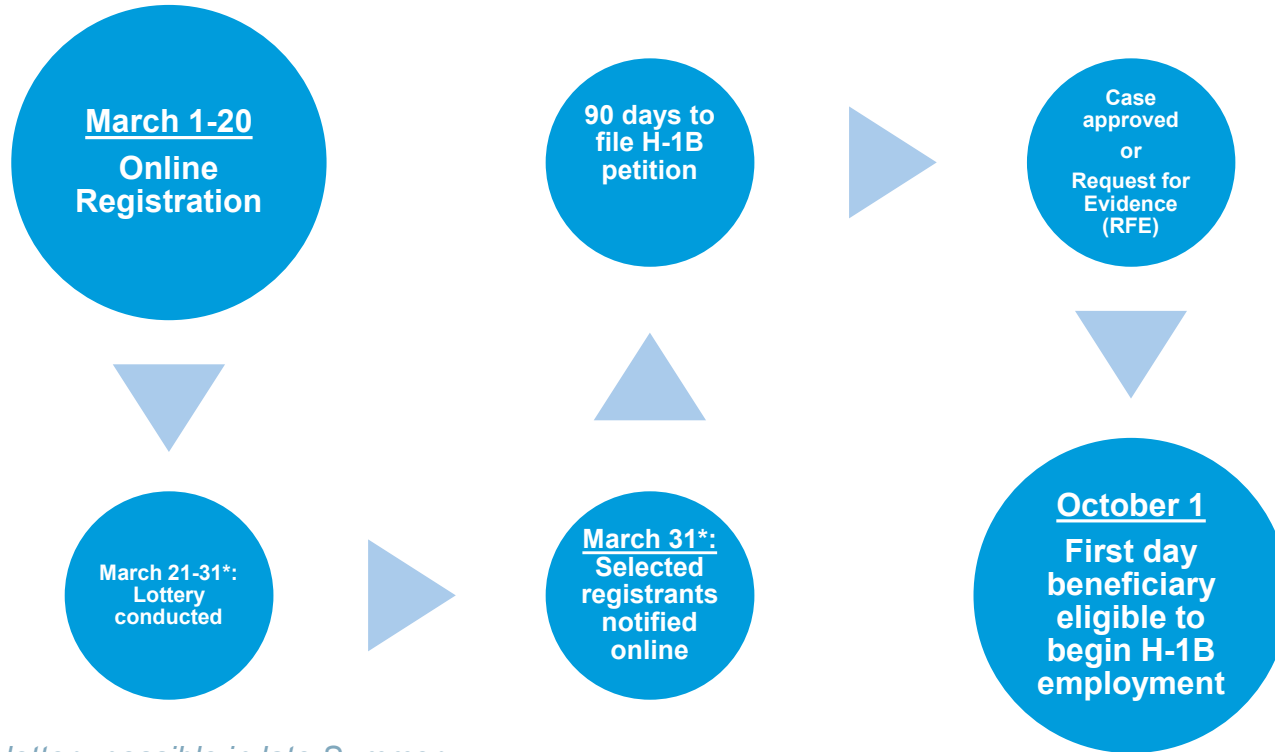
H-1B SPECIALITY OCCUPATION PROFESSIONALS

ALIGNMENT OF H-1B ELEMENTS



H-1B SPECIALITY OCCUPATION PROFESSIONALS

H-1B CAP PROCESS



**Additional lottery possible in late Summer*

H-1B SPECIALITY OCCUPATION PROFESSIONALS

H-1B CAP EXEMPT EMPLOYERS

- ▶ NOT subject to H-1B Cap so can apply at anytime
- ▶ Qualifying organizations:
 - **Institutions of higher education** (public or non-profit, not for profit; any department)
 - **Non-profit entities which are “related to” or “affiliated with” (shared ownership/control) institutions of higher education and “fundamental activity” directly contributes to research or education mission** (NOT: service, community, policy, arts organizations)
 - **Non-profit research organizations** (basic or applied research)
 - **Government research organizations** (federal/state/local; basic or applied research)
- ▶ Online searchable databases of H-1B cap exempt eligible employers

H-1B SPECIALITY OCCUPATION PROFESSIONALS

CONCURRENT H-1B: CAP EXEMPT + CAP SUBJECT EMPLOYMENT

- ▶ NOT subject to H-1B cap for employment IF *concurrently* approved for H-1B cap exempt employment



- ▶ **Concurrent H-1B Programs**

- ▶ Open Avenues (<https://www.openavenuesfoundation.org/global-talent>)
- ▶ International Innovators Initiative (IN2NYC) (<https://www.in2.nyc/>) : International entrepreneurs who have started a business (overseas or in the US)



O-1 INDIVIDUALS OF EXTRAORDINARY ABILITY

CONSIDER IF...

- ▶ Expert in science or business as evidenced by awards, publications, and other significant achievements
- ▶ Traditionally self-employed

O-1 INDIVIDUALS OF EXTRAORDINARY ABILITY

OVERVIEW

O-1	Individuals of extraordinary ability
Annual Cap	No
Eligibility	<p>Beneficiary has extraordinary ability in the sciences, education, business, or athletics and position in the US is in the area of extraordinary ability</p> <p>One-time achievement (e.g. Olympic Medal or Nobel prize), <u>or at least three (3) of the following:</u></p> <ul style="list-style-type: none">▶ Receipt of lesser nationally and internationally recognized prizes or awards▶ Membership in associations in the field▶ Published materials about the individual▶ Participation as a judge of the work of others in the▶ Original contributions in the field▶ Authorship of scholarly articles in the field▶ Serving in a critical or essential capacity for organizations with a distinguished reputation▶ Commanding a high salary

O-1 INDIVIDUALS OF EXTRAORDINARY ABILITY

OVERVIEW

O-1	Individuals of extraordinary ability
Sponsorship	US entity, including <i>agent</i> of the beneficiary
Compensation	US or foreign payroll
Intermittent Presence Permitted?	Yes
Dependents	O-3 status; no work authorization
Termination of Employment	No action required
Period of Admission	3 years initial, extensions in 1-year increments (3-year increments possible)
Maximum Period of Stay	None
Processing	Service Center in US or consular post abroad Premium (expedited) processing available

O-1 EXTRAORDINARY ABILITY

AGENT O-1

- ▶ Who can US agents sponsor for O1?
 - ✓ Traditionally **self-employed workers**
 - ✓ Workers who use **agents to arrange short-term employment** with numerous employers
 - ✓ A **foreign employer** who authorizes an agent to act on his/her behalf

- ▶ Who can be a US agent?
 - ✓ The **actual employer** of the beneficiary
 - ✓ The **representative** of both the employer and the beneficiary
 - ✓ A person or entity to act in place of the employer(s) as its **authorized by the employer(s) agent**



L-1 INTRACOMPANY TRANSFEREE

CONSIDER IF...

- ▶ Employed with a foreign subsidiary or affiliate of US entity for at least 1 year
- ▶ Work in a managerial, executive or position involving unique or advanced knowledge
- ▶ Needed in the US to open a new US subsidiary affiliate of a foreign entity

L-1 INTRACOMPANY TRANSFEREE

OVERVIEW

L-1	Allows sponsor to transfer managers, executives, or specialized knowledge workers from overseas to US
Annual Cap	No
Eligibility	<p>L-1A: Managers or Executives L-1B: Specialized Knowledge Workers</p> <p>Qualifying relationship between the U.S. sponsor and foreign company (parent, subsidiary, affiliate, branch or joint venture)</p> <p>Companies actively doing business for at least 1 year (Exception: see New Office L-1)</p> <p>Beneficiary possesses 1 year of employment with qualifying company abroad in 3 years preceding transfer to U.S. and bachelor's degree (if L-1 blanket)</p>
Sponsorship	US company, including new office or one formed by the beneficiary if work controlled/supervised by the entity

L-1 INTRACOMPANY TRANSFEREE

OVERVIEW

L-1	Allows sponsor to transfer managers, executives, or specialized knowledge workers from overseas to US
Compensation	US or foreign payroll
Intermittent Presence Permitted?	Yes; Does not count toward maximum period of stay
Dependents	L-2; Automatic work authorization for spouses
Termination of Employment	No action required
Period of Admission	3 years initial, extensions in 2-year increments
Maximum Period of Stay*	L-1A: 7 years *Does not apply to intermittent travelers L-1B: 5 years
Processing	L-1 Individual: Apply at Service Center L-1 Blanket: Apply at consular post L-1 USMCA (Canadians): Apply at port of entry

L-1 INTRACOMPANY TRANSFEREES

NEW OFFICE L-1

- ▶ **New Office L-1A:** Available where U.S. office has been doing business for less than 1 year if:

Criteria	Suggested Evidence
1. Physical premises	<i>signed lease or ownership documentation</i>
2. Beneficiary worked for a related entity abroad as a manager or executive for at least 1 year within the past 3 years	<i>job description, pay statements, evidence of managerial or executive authority</i>
3. New office must grow to relieve beneficiary from performing the hands-on, day-to-day functions of the company	<i>business plan, organizational structure, transfer of the U.S. investment funds</i>

- ▶ **New Office L-1B:** (1) satisfies above criteria, (2) accompanied by L-1A, and (3) company demonstrates ability to pay the beneficiary



TN STATUS

CONSIDER IF...

- ▶ Canadian or Mexican citizen
- ▶ Position that aligns to an occupation on the occupation list in the USMCA
- ▶ Employed with a US, Canadian, Mexican entity

TN STATUS

OVERVIEW

TN	Workers from Canada or Mexico
Annual Cap	No
Eligibility	<p>Canadian or Mexican citizen</p> <p>Position aligns to occupation listed in the United States-Mexico-Canada Agreement (USMCA) and beneficiary possesses the minimum requirements</p> <p>Examples: Accountant, Computer Systems Analyst, Engineer, Economist, Management Consultant*</p>
Sponsorship	US company (typically), including one formed by the beneficiary if work controlled/supervised by the entity
Compensation	US or foreign payroll

TN STATUS

OVERVIEW

TN	Workers from Canada or Mexico
Intermittent Presence Permitted?	Yes
Dependents	TD status; no work authorization
Termination of Employment	No action required
Period of Admission	3 years initial, extensions in 3-year increments (Canadian) / 1-year increments (Mexican)
Maximum Period of Stay	None
Processing	Canadians apply at Service Center in US or port of entry Mexicans apply at consular post abroad



E-1 TREATY TRADER & E-2 TREATY INVESTOR

CONSIDER IF...

- ▶ National/employee of organization of eligible treaty country
- ▶ Job duties are executive, managerial, or essential to engage in international trade (E-1) or invest in US business (E-2)
- ▶ NO Requirement of 1 year employment abroad (unlike L-1)

E-1 TREATY TRADER

OVERVIEW

E-1 TREATY TRADER	Allows national/organization and its employees of treaty country admission to US to engage in international trade
Annual Cap	No
Eligibility – Treaty Trader	<p><u>National of a country</u> that US maintains a treaty of commerce and navigation, qualifying international agreement, or deemed a qualifying country by legislation</p> <ul style="list-style-type: none">• Examples: <i>Canada, China (Taiwan), Colombia, Ireland, Mexico, Pakistan, Spain, Sweden</i> <p>Carry on <i>substantial</i> trade (no minimum volume or monetary value)</p> <p>Carry on <i>principal</i> trade between the United States and the treaty country (50% international trade of treaty trader is between US and treaty country)</p> <p>To sponsor E-1 employees: Individual, or entity at least 50% owned by nationals of the treaty country.</p>

E-2 TREATY INVESTOR

OVERVIEW

E-2 TREATY INVESTOR	Allows national/organization and its employees of treaty country admission to US to invest in US business
Annual Cap	No
Eligibility – Treaty Investor	<p><u>National of a country</u> that US maintains a treaty of commerce and navigation</p> <ul style="list-style-type: none">• Examples: <i>Canada, China (Taiwan), Colombia, Ireland, Mexico, Pakistan, Spain, Sweden</i> <p>Invest “a substantial amount” of capital (relative to cost of purchase, successful operation) in a bona fide enterprise in the US (actively doing business)</p> <p>Develop and direct the investment enterprise in US (at least 50% ownership of the enterprise or operational control through a managerial position or similar)</p> <p>To sponsor E-1 employees: Individual, or entity at least 50% owned by nationals of the treaty country.</p>

E-1 TREATY TRADER & E-2 TREATY INVESTOR

OVERVIEW

E-1 TREATY TRADER E-2 TREATY INVESTOR	Allows national/organization and its employees of treaty country admission to US to engage in international trade or invest in US business
Eligibility – Employee of Treaty Trader or Investor	Same nationality of the principal employer (who must have the nationality of the treaty country) Satisfy definition of “employee” (employer-employee relationship) Engage in job duties that are executive <u>or</u> supervisory <u>or</u> essential
Sponsorship	Individual Treaty Trader or treaty organization’s parent/subsidiaries (including self-formed/owned business)
Compensation	US or foreign payroll
Intermittent Presence Permitted?	Yes

E-1 TREATY TRADER & E-2 TREATY INVESTOR

OVERVIEW

E-1 TREATY TRADER E-2 TREATY INVESTOR	Allows national/organization and its employees of treaty country admission to US to engage in international trade or invest in US business
Dependents	E-1S/Y or E-2S/Y; Automatic work authorization for spouses
Termination of Employment	No action required
Period of Admission	2 years initial, extensions in 2-year increments (including by CBP upon each admission to US)
Maximum Period of Stay*	None
Processing	Service Center in US (if physically present in US) or consular post

ASYLUM

- ▶ Seek protection in the US due to having **suffered persecution or fear of suffering persecution upon return to country** due to: *Race, Religion, Nationality, Membership in a particular social group (e.g. sexual orientation), Political opinion*
- ▶ Must apply within 1 year of last entering the US (some exceptions apply)
- ▶ Eligible to apply for work authorization (EAD) after asylum application pending for 1 year
- ▶ Eligible to apply for a green card 1 year after grant of asylum





INTERNATIONAL ENTREPRENEUR RULE (IER)

- ▶ Entry (parole) into the US to grow start-up
- ▶ **Applicant Requirements**
 - Substantial ownership interest in start-up entity (10%)
 - Central and active role in the start-up entity
 - Entrepreneur will provide a significant public benefit to the US through their role
- ▶ **Start-up Entity Requirements**
 - Created in US within the past 5 years
 - Received significant investment of capital (\$250K+) from certain qualified U.S. investors
 - Received significant awards or grants (\$100K+)

TRANSITION FROM NONIMMIGRANT TO IMMIGRANT STATUS

- ▶ File final step of green card process (I-485) before nonimmigrant “max out” date
- ▶ Potential Limitations on Travel (once I-485 filed)
 - If Dual Intent: No limitations on travel since eligible to simultaneously hold nonimmigrant and immigrant status without restrictions on travel
 - If NO Dual Intent: Not permitted to travel outside US until Advance Parole (I-131) issued

Dual Intent	Quasi-Dual Intent	No Dual Intent
H-1B, L-1, E-1, E-2	O-1	F-1, TN

- ▶ May apply for green card directly from F-1 status BUT only helpful for students born in countries that do not have green card backlogs

NONIMMIGRANT MAX OUT DATES

MAXIMUM STAY FOR COMMON NONIMMIGRANT (TEMPORARY) VISAS & PROGRAMS

F-1	Duration of Status (D/S) per Form I-20
H-1B	6 years (with possibility for post 6-year extensions)
TN	No maximum, extensions in 3-year increments
O-1A	No maximum, extensions in 1-year (possibly 3-year) increments
L-1 (L-1A or L-1B)	L-1A: 7 years L-1B: 5 years
E-1	No maximum, extension in 2-year increments
E-2	No maximum, extension in 2-year increments
Humanitarian	Asylum: No maximum



POST-GRADUATION IMMIGRATION OPTIONS
PERMANENT RESIDENT STATUS (“GREEN CARD”)

US IMMIGRATION OPTIONS

STUDENTS & GRADUTES

KEY IMMIGRANT (PERMANENT, GREEN CARD) VISAS & PROGRAMS	
Diversity Lottery	<ul style="list-style-type: none">▶ Individuals from countries with low immigration rate to US
Family-Based	<ul style="list-style-type: none">▶ Spouse of US Citizen or lawful permanent resident▶ Other relative of US citizen or lawful permanent resident
EB-1	<ul style="list-style-type: none">▶ EB-1A: Individuals of Extraordinary Ability▶ EB-1B: Outstanding Professors or Researchers▶ EB-1C: Multinational Managers or Executives
EB-2	<ul style="list-style-type: none">▶ National Interest Waiver (NIW)▶ Professionals with Advanced Degree*
EB-3	<ul style="list-style-type: none">▶ Professionals*▶ Skill Workers*
EB-5	<ul style="list-style-type: none">▶ Immigrant Investor Program

**Labor Certification (PERM) Required*

DIVERSITY LOTTERY

OVERVIEW

Diversity Lottery	Individuals from countries with low US immigration rates
Eligibility	<p>Who is <u>NOT</u> eligible?* <i>Bangladesh, Brazil, Canada, China (including Hong Kong), Colombia, Dominican Republic, El Salvador, Haiti, Honduras, India, Jamaica, Mexico, Nigeria, Pakistan, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, Venezuela, and Vietnam</i></p> <p>Who is eligible?* Most other countries, including <i>Macau SAR and Taiwan</i></p> <p>Education/Experience requirements</p> <p>*DV-2023</p>
Processing	<p>Online registration: early October – early November Apply to adjust status from within US or at consular post</p>

FAMILY-BASED GREEN CARD PROCESS

Family Sponsors:

US Citizen spouse, parent, or sibling

Legal Permanent Resident spouse or parent



Step 1 I-130 Petition

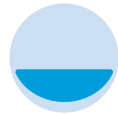
- ✓ Immigrant Petition for Alien Worker filed with USCIS
- ✓ Family sponsor must demonstrate financial support of beneficiary
- ✓ May file concurrently with Step 2 (some cases)



Step 2 I-485 Application

- ✓ Adjustment of Status application filed with USCIS or consular
- ✓ Can only file when immigrant visa number becomes available (based on beneficiary's country of birth and FB green card category)
- ✓ Can file Supplemental EAD/AP applications
- ✓ Interview (likely)

EMPLOYMENT-BASED GREEN CARD PROCESS



Step 1 PERM (if applicable)

- ✓ Establish job description and min. education, experience, and skills
- ✓ Confirm that the beneficiary meets the min. requirements
- ✓ Prevailing Wage Determination. See [DOL wage database](#) or *alternative wage survey (e.g. Mercer, Towers Watson, Dietrich, Radford)*
- ✓ Recruitment: Test of labor market for any qualified, willing, and able US workers
- ✓ PERM application submitted to electronically to DOL



Step 1 or 2 I-140 Petition

- ✓ Immigrant Petition for Alien Worker filed with USCIS
- ✓ I-140 petition must be filed within 180 days of PERM application's approval (certification) (if applicable)
- ✓ May file concurrently with final step (some cases)
- ✓ Premium Processing (some petitions) = Response from USCIS within 15 days of submission)



Step 2 or 3 I-485 Application

- ✓ Adjustment of Status application filed with USCIS
- ✓ Can only file when immigrant visa number becomes available (based on beneficiary's country of birth and EB green card category)
- ✓ Can file Supplemental EAD/AP applications
- ✓ Interview (likely)

GREEN CARD AVAILABILITY

- ▶ Limited number of green cards available each year and distributed equally among all green card categories
- ▶ Availability of green cards
 - Determined by: (1) country of birth (not citizenship), (2) preference category (EB-1, EB-2, EB-3), (3) priority date (date PERM application filed (if applicable) or date I-140/I-130 filed)
 - Governed by monthly Department of State visa bulletin
- ▶ Once available green cards have been allocated, the green card category is considered to be oversubscribed, resulting in a **retrogression**
- ▶ If a green card category is retrogressed, the individual cannot file and USCIS cannot adjudicate the final step of the green card application process (I-485, Application to Adjust status) until green cards become available again

EB-1A INDIVIDUALS OF EXTRAORDINARY ABILITY

OVERVIEW

EB-1A	Individuals of extraordinary ability
Similar Nonimmigrant Category	O-1
Eligibility	<p>Beneficiary has extraordinary ability in the sciences, education, business, or athletics and position in the US is in the area of extraordinary ability</p> <p>One-time achievement (e.g. Olympic Medal or Nobel prize), <u>or at least three (3) of the following:</u></p> <ul style="list-style-type: none">• Receipt of lesser prizes or awards• Membership in associations in the field• Published materials about the individual• Participation as a judge of the work of others in the• Original contributions in the field• Authorship of scholarly articles in the field• Serving in a critical or essential capacity for organizations with a distinguished reputation• Commanding a high salary
Sponsorship	<ul style="list-style-type: none">• US company or self-petition

EB-1B OUTSTANDING PROFESSORS OR RESEARCHERS

OVERVIEW

EB-1B	Outstanding researchers
Similar Nonimmigrant Category	O-1
Eligibility	<p>Beneficiary has international recognition for their outstanding achievements in a particular academic field</p> <p>3 years experience in teaching or research in academic area. Entering the US to pursue teaching or research position Private employer must employ at least 3 researchers</p> <p><u>At least two (2) of the following:</u></p> <ul style="list-style-type: none">• Receipt of major prizes or awards• Membership in associations• Published material• Participation as a judge of the work of others• Original scientific or scholarly research• Authorship of scholarly books or articles
Sponsorship	<ul style="list-style-type: none">• US company

EB-1C MULTINATIONAL MANAGERS OR EXECUTIVES

OVERVIEW

EB-1C	Multinational managers or executives
Similar Nonimmigrant Category	L-1A
Eligibility	<p><u>BOTH</u> role abroad and role in the US must be managerial (unlike L-1A)</p> <p>Qualifying relationship between the U.S. sponsor and foreign company (parent, subsidiary, affiliate, branch or joint venture)</p> <p>Companies actively doing business for at least 1 year</p> <p>Beneficiary possesses 1 year of employment with qualifying company abroad in 3 years preceding transfer to U.S. and bachelor's degree (if L-1 blanket)</p>
Sponsorship	US company

EB-2 NATIONAL INTEREST WAIVER

OVERVIEW

EB-2: National Interest	US national interest to waive the job offer/PERM
Eligibility	<p>Beneficiary has international recognition for their outstanding achievements in a particular academic field</p> <p>Advanced degree or “exceptional ability”</p> <p><u>All of the following:</u></p> <ul style="list-style-type: none">• Proposed endeavor has both substantial merit and national importance.• Beneficiary is well positioned to advance the proposed endeavor• It would be beneficial to the US to waive the requirements of a job offer/PERM <p>Example: Business venture related to healthcare or security</p>
Sponsorship	<ul style="list-style-type: none">• US company or self-petition

EB-2 & EB-3: PERM-BASED

Category	Min. Requirements of Offered Position
EB-2: Advanced Degree Professionals	<p>Master's degree <u>OR</u></p> <p>Bachelor's degree (single-source) + at least 5 years of post-bachelor's degree progressively responsible experience</p> <p><i>Note: Even if the beneficiary has a Master's degree, the beneficiary is only eligible for EB-2 if the minimum requirements meet the above criteria</i></p>
EB-3: Professional	Bachelor's degree
EB-3: Skilled Worker	At least 2 years of training and/or experience

EB-5 INVESTOR

- ▶ Investors are eligible to apply for a Green Card (permanent residence) if they:
 - Make the necessary investment in a new commercial, for-profit enterprise in the United States; and
 - Plan to create or preserve 10 permanent full-time jobs for qualified U.S. workers.

Minimum Investment Amount	Targeted Employment Area Investment Amount	High-Employment Area Investment Amount
\$1,800,000	\$900,000	\$1,800,000



US IMMIGRATION TRENDS

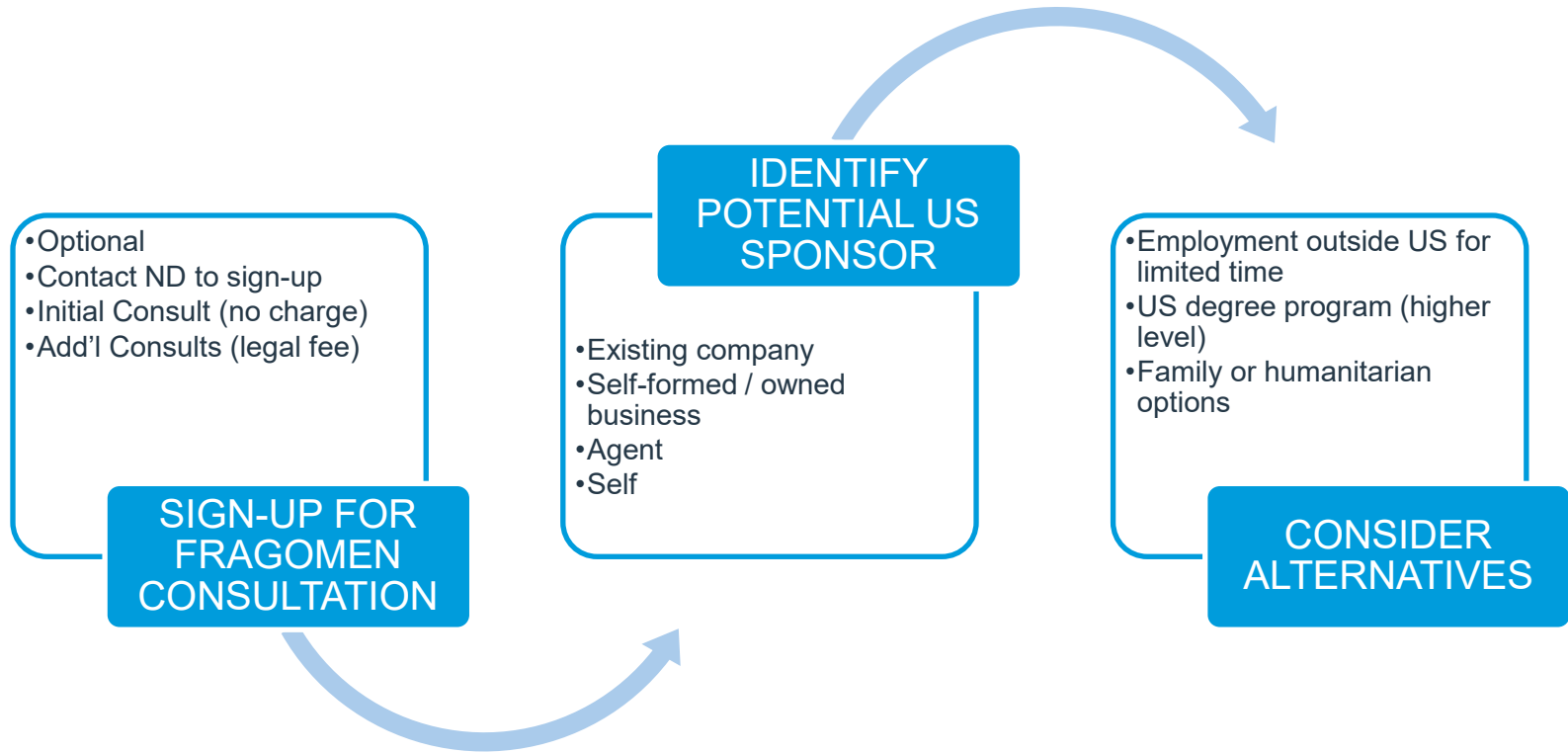
- ▶ Updated **guidance** on the impact of layoffs on immigration status
- ▶ **Premium Processing** for F-1 OPT and STEM OPT EAD applications (30 calendar days)
- ▶ **Digital Nomad visas** (non-US)
- ▶ **National Interest Waiver (NIW) involving STEM fields** currently have relatively high approval rate



NEXT STEPS

NOTRE DAME IMMIGRATION PROGRAM

NEXT STEPS





QUESTIONS & ANSWERS

FRAGOMEN

Thank You

