Welcome. With the high number of attendees, please note all lines have been muted for the event. Q&A can be posted at the right of your screen, but any questions (time permitting) will be addressed at the end of the event. If using Q&A – please send to both the host and the presenter. You can send direct questions (including request for copy of slides) to seminars@leclairryan.com with Immigration in the subject for reply after the event.

We have also applied for HRCI credit – please send an email to seminars@leclairryan.com if you are interested in the Certificate of Attendance once it’s moved from provisional status. Thank you.
The New Colossus

-Emma Lazarus

Not like the brazen giant of Greek fame,
With conquering limbs astride from land to land;
Here at our sea-washed, sunset gates shall stand
A mighty woman with a torch, whose flame
Is the imprisoned lightning, and her name
Mother of Exiles. From her beacon-hand
Glows world-wide welcome; her mild eyes command
The air-bridged harbor that twin cities frame.

“Keep, ancient lands, your storied pomp!” cries she
With silent lips. “Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tossed to me.
I lift my lamp beside the golden door!”
What Will We Cover Today?

- A broad overview of
  - Immigration System
  - Credentialing Requirement
  - Temporary Visa Options, e.g. H-1B, TN, O, E-3, J-1
  - J-1 Two Year Home Residency Requirement
  - Waiver of Two Year Home Residency Requirement
  - Permanent Visa Options (Green Card)
Government Regulation

- Department of Homeland Security
  US Citizenship & Immigration Services
  US Immigration & Customs Enforcement
  Directorate of Border & Transportation Security

- Department of Labor
  State Workforce Agencies

- Department of State
  National Visa Center
  Consular Posts

- Department of Justice
  Executive Office of Immigration Review
Immigrants v. Non-Immigrants

- Green Card
- Permanent
- Family Based Petitions
- Employment Based Petitions
- No limitation on activities, length of stay

- Alphabet Soup
- Temporary
- Tourism, Education & Employment Based
- Limitations on activities, length of stay
Goals of US Immigration System

- Encourage Investment
- "Best" and "Brightest" Arts, Sciences, Business, and Athletics
- Family Unity
- Workforce Shortages
HEALTHCARE WORKER CREDENTIALING
Credentialing Requirements – Physicians

- International Medical Graduates (IMGs), to qualify for most visa types within the U.S., must obtain an ECFMG Certificate, which shows equivalence to knowledge gained in a U.S. or Canadian medical school. To get an ECFMG certificate, IMGs must pass the U.S. Medical Licensing Examination (USMLE) Parts 1 and 2, as well as the ECFMG-administered English language exam.
Credentialing Requirements – Healthcare Workers

- Healthcare workers, other than physicians, to qualify for most visa types within the U.S., must obtain a “VisaScreen” certificate, which shows equivalence to knowledge gained in a U.S. nursing school, from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent credentialing organization, e.g. National Board for Certification in Occupational Therapy (NBCOT) and Foreign Credentialing Commission on Physical Therapy (FCCPT).
NONIMMIGRANT (TEMPORARY) VISAS
Non-Immigrant Visas – Employment-Based

Employer-Specific Visas Commonly Used

- H-1B Visa
- O-1 Visa
- TN Visa
- H-3 Visa
- J-1 Visa
H-1B Visa

- Reserved for “Specialty Occupations” = occupations requiring the equivalent of a four-year degree in a field related to the occupation
- Employer required to pay the “prevailing wage”
- No advertising/recruitment efforts required
H-1B Cap

- There are a limited number of H-1B visas issued each fiscal year (October 1st through September 30th)
- We begin applying for the next fiscal year on April 1st
- When will we reach the Cap?
- Cap-Subject Employer v. Cap-Exempt Employer
- Cap-Gap Solution
O-1 “Extraordinary” Ability Aliens

- Reserved for individuals with “extraordinary” or “outstanding” ability in the fields of science, education, business, athletics, the arts and entertainment
- Consultation from either a labor union or a leading organization, if any, in the field required
TN Visa

- NAFTA Treaty
- For Canadian and Mexican citizens working in a qualifying occupation
- Limited List of Occupations in Healthcare field
  - Dentist
  - Dietician
  - Medical Laboratory Technologist
  - Nutritionist
  - Occupational Therapist
  - Pharmacist
  - Physician (teaching and/or research only)
  - Physiotherapist/Physical Therapist
  - Psychologist
  - Recreational Therapist
  - Registered Nurse
E-3 Visa

- For Australian citizens working in a qualifying occupation
- Like the H-1B Visa, the E-2 Visa is reserved for "Specialty Occupations" = occupations requiring the equivalent of a four-year degree in a field related to the occupation
- Employer required to pay the "prevailing wage"
- No advertising/recruitment efforts required
J-1 Exchange Visitors

- Promotes interchange of persons with knowledge and skills in fields of education, arts and sciences
- Unless an Employer has an approved J-1 Program, an exchange visitor must be placed through an approved J-1 program sponsor
- Used frequently by International Medical Graduates for clinical training
TWO YEAR HOME RESIDENCY REQUIREMENT
WAIVER OF REQUIREMENT
What is the 2-Year Home Residency Requirement?

The J-1 Visa is an “exchange” visitor program designed to promote the exchange of ideas, learning and culture. Certain J-1 Visa holders work or train in areas that trigger a requirement that they return home for two years following their stay in order to transfer and share with their homeland the ideas, learning and culture gained.
What Does it Mean?

J-1 Visa holders who are subject to a 2-Year home residency requirement may not, while subject to the requirement:

- Obtain H or L Visa status
- Change status within the U.S. (except to “A” or “G” status); or
- Adjust status to or be granted resident status.
Who is Subject to the Residency Requirement?

In short, a J-1 Visa holder is likely subject to the 2-Year Home Residency requirement if he or she is

- An International Medical Graduate engaged in clinical training
- Pursuing research sponsored or funded by U.S. or foreign government agencies (e.g. Fulbright)
- Enrolled in a U.S. program where the subject of the program is included in the Skills List
- A J-2 Visa holder where the principal J-1 Visa holder is subject to the requirement
What is a J-1 to Do?

- Fulfill the 2-Year requirement by returning to his or her country of nationality or last permanent residence
- Obtain another non-immigrant visa status to enable him or her to return to the U.S. for a new temporary stay, thereby postponing the 2-Year requirement
- Obtain a waiver of the 2-Year requirement
Waivers of the Residency Requirement

There are four roads to explore for the waiver of the 2-Year Home Residency Requirement:

- No-Objection Letter (generally not available to IMGs and Fulbright Scholars)
- Persecution
- Exceptional Hardship
- Interested Government Agency
  - Conrad 30 Waiver
  - Veterans Administration Waiver
  - Appalachian Regional Commission Waiver
  - Delta Regional Authority Waiver
  - Department of Health and Human Services (HHS) Waiver
IMMIGRANT (PERMANENT)
EMPLOYMENT-BASED VISAS
The Roads to Green Card

1. Family-Based Petition
2. Employment-Based Petition
3. Self-Petition
4. Asylum/Refugee
5. Special Legislation
Employment-Based Preferences

- EB-1 Priority Workers
  Extraordinary Ability
  Outstanding Professors and Researchers
  Multinational Executive and Managers

- EB-2 Advanced Degree or Exceptional Ability/National Interest Waiver
  Professionals holding Advanced Degrees
  Exceptional Ability in the sciences, arts, business, or athletics

- EB-3 Professionals, Skilled Workers & Other Workers

- EB-4 Special Immigrants

- EB-5 Employment Creation (Investment)
Basic Employment-Based IV Process

<table>
<thead>
<tr>
<th>Labor Certification</th>
<th>Petition</th>
<th>Adjustment of Status/Consular</th>
</tr>
</thead>
<tbody>
<tr>
<td>Test US Market to ensure that there are no qualified US Workers ready, willing, and able to accept the job position.</td>
<td>A Petition Package is filed with the USCIS. The USCIS will review the Petition Package to ensure:</td>
<td>An Application Package is filed with the USCIS.</td>
</tr>
<tr>
<td>We work with the Employer and target Employee to identify in detail the target job duties and requirements and the target Employee’s education, work experience, skills and abilities.</td>
<td>The Employer has the financial ability to pay the offered wage at the time the case commenced (filing of labor certification).</td>
<td>At this stage, the Applicant may also apply for employment authorization and travel permission.</td>
</tr>
<tr>
<td>We then prepare an appropriate Application, advertise the job, counsel the Employer through the recruitment efforts, and finalize the process. Once final, we submit the case to the U.S. Department of Labor.</td>
<td>The Employee has the skills, qualifications, and experience necessary to perform the job.</td>
<td>The principal Applicant’s spouse and children may also seek legal permanent resident status, employment authorization and travel permission.</td>
</tr>
</tbody>
</table>

Note: travel permission is not recommended in all cases.
## Visa Bulletin – October 2012

<table>
<thead>
<tr>
<th>Employment-Based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>CHINA-mainland born</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
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</thead>
<tbody>
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<td>15JUL07</td>
<td>01SEP04</td>
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<td>08FEB06</td>
<td>15OCT02</td>
<td>22OCT06</td>
<td>01AUG06</td>
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<td>Other Workers</td>
<td>22OCT06</td>
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<td>01AUG06</td>
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<tr>
<td>Certain Religious Workers</td>
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<tr>
<td>Targeted Employment Areas/Regional Centers</td>
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<td>C</td>
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</table>
# Permanent Residency Paths for Physicians

<table>
<thead>
<tr>
<th>Category</th>
<th>Type</th>
<th>Labor Certification?</th>
</tr>
</thead>
<tbody>
<tr>
<td>EB-1</td>
<td>Extraordinary Ability</td>
<td>No</td>
</tr>
<tr>
<td>EB-1</td>
<td>Outstanding Researcher or Professor</td>
<td>No</td>
</tr>
<tr>
<td>EB-2</td>
<td>National Interest Waiver - Research</td>
<td>No</td>
</tr>
<tr>
<td>EB-2</td>
<td>National Interest Waiver – Clinical Shortage</td>
<td>No</td>
</tr>
<tr>
<td>EB-2</td>
<td>Advance Degree Professional</td>
<td>Yes</td>
</tr>
</tbody>
</table>
## Permanent Residency Paths for Other Healthcare Workers

<table>
<thead>
<tr>
<th>Category</th>
<th>Type</th>
<th>Labor Certification?</th>
</tr>
</thead>
<tbody>
<tr>
<td>EB-2</td>
<td>Advance Degree Professional</td>
<td>Yes, except Registered Nurses and Physical Therapists</td>
</tr>
<tr>
<td>EB-3</td>
<td>Professional or Skilled Worker</td>
<td>Yes, except Registered Nurses and Physical Therapists</td>
</tr>
</tbody>
</table>
Extraordinary Ability

- EB-1 Category
- Self-Petition
- No Job Offer or Labor Certification Required
- “Extraordinary Ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor
- Follows reduced permanent residency process – Petition and Adjustment of Status
Extraordinary Ability Proof

- Sustained national or international acclaim and evidence that his or her achievements have been recognized in the field of expertise.
- Major internationally recognized award
  OR
- At least three “other” items
Extraordinary Ability “Other” Proof

- Lesser nationally or internationally recognized prizes/awards
- Membership in associations which require outstanding achievements
- Published material about the applicant
- Applicant’s participation as the “judge” of others
- Original scientific, scholarly, etc., contributions of major significance
- Authorship of scholarly articles
- Display of work
- Performed in leading or critical roles in organizations with distinguished reputation
- High salary in relation to others in the field
- Commercial successes
- Other comparable evidence
Outstanding Researchers & Professors

- EB-1 Category
- Employer Sponsored
- Job Offer Required/No Labor Certification
- Permanent, in reference to a research position, means either: (1) tenured; (2) tenure-track; or (3) for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment
- Follows reduced permanent residency process – Petition and Adjustment of Status
Outstanding Researchers & Professors

- Requires evidence that the individual is recognized internationally as outstanding in the academic field
- At least three years experience
- Evidence shall consist of at least two of the following:
  - Receipt of major prizes or awards
  - Membership in associations which require outstanding achievements
  - Published materials about the researcher
  - Researcher sits as the judge of others
  - Original scientific or scholarly research contributions to the academic field
  - Authorship of scholarly books or articles
National Interest Waiver - Research

- EB-2 Category
- Self-Petition
- Available to individuals (primarily researchers)
  - Who seek employment in an area of “substantial intrinsic merit”
  - Who’s work will result in a benefit national in scope
  - Who can established that the “significant” benefit derived from the individual’s participation in the field of endeavor considerably outweighs the inherent national interest in protecting U.S. workers through the labor certification process
- Follows reduced permanent residency process – Petition and Adjustment of Status
National Interest Waiver – Clinical Shortage

- EB-2 Category
- Self Petition
- Available to physicians who agree
  - To work full-time in a clinical practice for five years
  - In a primary care (e.g. general practitioner, family practice, general internist, pediatrician, obstetrician/gynecologist, or psychiatrist) or as a specialty physician
  - In a Health Professional Shortage Area (HPSA), Mental Health Professional Area (MHPSA – for psychiatrists only), a Medically Underserved Area (MUA), or Veterans Affairs facility, or for specialist in a Physician Scarcity Area (PSA)
  - With an attestation from a federal agency or state department of health that has knowledge of the physician, confirming the physician’s qualifications and that his or her work is in the public interest
- Follows reduced permanent residency process – Petition and Adjustment of Status
Advanced Degree Professional

- EB-2 Category
- Employer sponsored
- Can be used for Physicians or certain Healthcare Workers
- Requires job offer
- Requires at least a Master’s Degree = Advanced Degree
- Can utilize Master’s Degree equivalency rule = Bachelor’s Degree + 5 years of progressive experience - Be very careful with 3 year Bachelor Degrees!
- Follows basic permanent residency process: labor certification, petition, adjustment of status
Professional and Skilled Workers

- EB-3 Category
- Employer sponsored
- Can be used for Healthcare Workers
- Requires job offer
- Profession designation requires at least a Bachelor’s Degree; Cannot utilize degree equivalency rules; Be very careful with 3 year Bachelor Degrees!
- Skilled Worker designation requires at least two years experience or training to perform the job.
- Follows basic permanent residency process: labor certification, petition, adjustment of status
Alien Labor Certification (PERM)

- The purpose of the alien employment certification process is to protect the U.S. workforce.
- Will be issued only if the DOL determines there are no “available, willing and qualified” U.S. Workers for the particular job involved.
Required Recruitment For PERM

For all job positions other than “Special Handling”

- Internal posting for ten consecutive business days
- Place job order with state employment agency for 30 days
- Use of any and all in-house media (intranet, internal postings, etc.)
- Two *print* advertisements (Sundays) in the newspaper of general circulation for area of employment.
Additional Required Recruitment

- If the job is for a “professional” job (one which requires at least a bachelor’s degree or higher), must undertake three additional recruitment steps from a list of ten approved by the DOL:

  - Job fairs
  - Employer’s Website
  - Job search website
  - On-campus recruiting
  - Trade/professional organization
  - Radio/television ads
  - Employee referral program
  - Campus placement office
  - Local or ethnic newspapers
  - Private employment firms
Special Handling Rules for College and University “Teachers”

- Teachers: College and university teachers have the benefit of “special handling” rules.

- Under the special handling rules, teachers enjoy a more lenient selection standard than all other occupations (“best qualified” versus “no qualified U.S. workers”).

- The case must be filed within 18 months from the date the individual was “selected”. Generally you may consider the date of the offer letter as the “selection” date. Schools should consider a notice provision on the 18 month rule.

- The process does require one national print or on-line advertisement and an internal posting for 10 business days.
Everywhere immigrants have enriched and strengthened the fabric of American life.

- John F. Kennedy
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