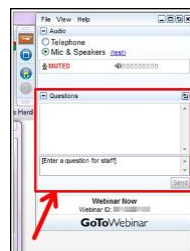
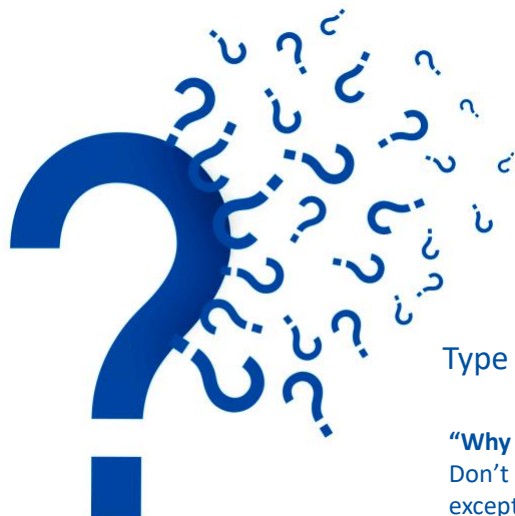


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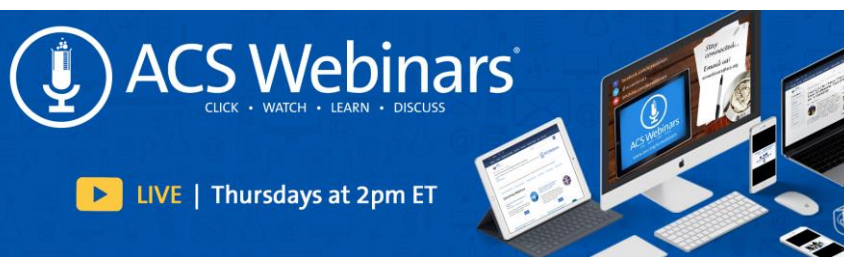


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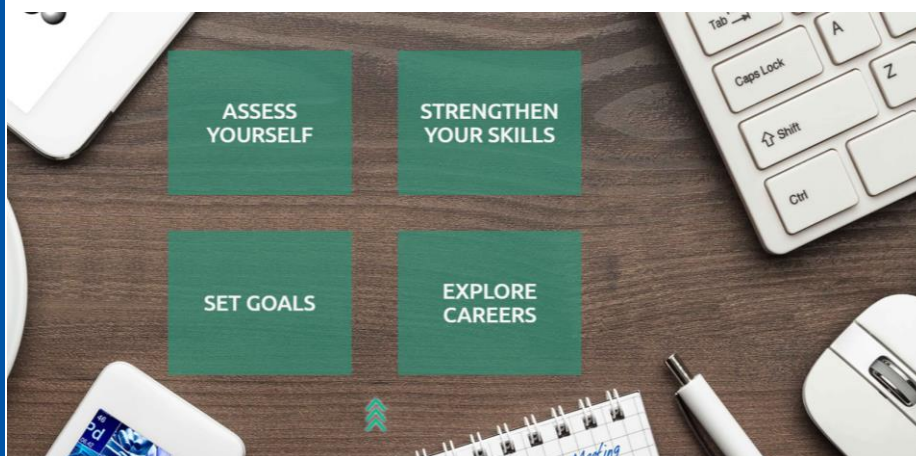
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11



## *Navigating My Research Career: How to Manage US Immigration & Visa Opportunities*



**Brendan Delaney**  
Partner, Frank & Delaney,  
Immigration Law, LLC

**Joerg Schlatterer**  
Graduate and Postdoctoral  
Scholars Office, ACS

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ACS  
Chemistry for Life®

Navigating My Research Career

# US Immigration & VISA Opportunities



Featuring **Brendan Delaney**  
Partner at Frank & Delaney Immigration Law, LLC

***BRENDAN DELANEY, ESQ.***  
***FRANK & DELANEY, IMMIGRATION LAW, LLC***

3 Bethesda Metro Center, Suite 505, Bethesda, Maryland 20814

(P) 301.656.2102 or (F) 301.656.4728

Brendan.delaney@fdimmigration.com

[www.fdimmigration.com](http://www.fdimmigration.com)



13

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With regards to someone's particular situation, an attorney should be consulted with respect to your personal case.



14



Navigating My Research Career

# US Immigration & VISA Opportunities



## WHAT WE WILL COVER

- What is in front of You?
- Why do foreign researchers still need help
- Life (and visas) gets in the way
- It's a big issue out there
- Navigating the visa process
- What to do and how to help (yourself)
- Be prepared



15

## Audience Challenge Question

ANSWER THE QUESTION ON BLUE SCREEN IN ONE MOMENT



**Approximately, what percentage of postdocs in the United States are foreign nationals?**

- About one tenth
- About a quarter
- About half
- About three-quarters



16



## INTERNATIONAL POSTDOCS



- More than 50% are foreign nationals
- Further down their career path
- Different Issues



## 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.....

### **Your University will have an international office.**

- Are you aware of it?
- What about the Career Office?
- The Postdoc Office should be PROACTIVE



## BEING PROACTIVE



Organize Seminars &  
Programs



Reach out to, and interact with,  
the International office



## VISA ISSUES AND QUESTIONS

**ACADEMIA VERSUS INDUSTRY:**



- J-1 or H-1B?
- Transferring a J-1?
- Can I do an O-1A?
- Temporary or permanent?



## Audience Challenge Question

ANSWER THE QUESTION ON BLUE SCREEN IN ONE MOMENT



**Who in the audience already has or has plans to apply for the following Visa Statuses?**

- H-1B
- J-1
- F1 (or OPT)
- None of the above



21

## J-1s



- Don't have to deal with USCIS
- Easy to Administer & Transferable (within academia)
- J-2 Employment
- Tax treaties
- 212(E)



<https://j1visa.state.gov>



22

## H-1B VISAS



- Cap Exempt vs. Cap Subject
- 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



<https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models>



23

## O-1 VISA



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



<https://www.uscis.gov/working-united-states/temporary-workers/o-1-visa-individuals-extraordinary-ability-or-achievement>



24

# WHAT (OTHER) ISSUES ARE INTERNATIONAL RESEARCHERS FACING?



# YOUR RESEARCH CAREER

**SOCIAL AND CULTURAL DIFFERENCES THAT YOU NEED TO NAVIGATE**



Are international researchers as assimilated as their US counterparts?



## ADDED PRESSURES AND RESPONSIBILITIES



Do you feel constrained with regards to their visa situation?



## VISAS: DON'T BE AFRAID TO LOOK AT ALTERNATIVES



- Do you know your employer policies?
- Is institutional or company sponsorship a possibility?
- As highly qualified individuals you have options
- Are you aware of self-sponsored green cards?
- There are now multiple career options outside of academia...



## PETITIONING FOR A GREEN CARD



... you're not necessarily alone



29

## IS THIS SOMETHING I CAN CONSIDER



- What is it? – a “self” sponsored application
- What does it entail? – meeting the regulatory standard
- Am I qualified? – you need strong professional credentials (the importance of your work is **NOT** enough)
- Do I need to be in the USA to pursue this option?
- What can I do? – prepare yourself and be ready!
- **Get a full and frank evaluation!**



30

## EMPLOYER SPONSORED Vs. 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 must show at least 3 full time employees and Position is “Permanent” (includes tenure, tenure track, at-will, etc.)





## OUTSTANDING PROFESSOR OR RESEARCHER



1. YOU NEED AN "EMPLOYER" TO SPONSOR YOU
2. KNOW "WHO" AUTHORIZES THE PROCESS!
3. DO YOU MEET AT LEAST TWO CRITERIA
4. ARE YOU RECOGNIZED INTERNATIONALLY AS OUTSTANDING?
  - 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



## 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 vs. subjective criteria

NOT all criteria pertain to the sciences!



## EB1A CRITERIA:

### IT'S THE "PLAIN LANGUAGE" OF THE CRITERIA



- 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



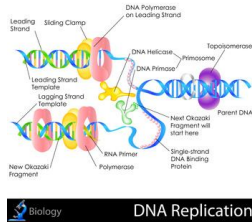
## PART TWO OF THE TEST THE KAZARIAN MEMO



- 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:

- 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



## NEW TEST:

### MATTER OF DHANASAR



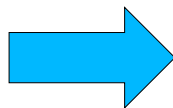
1. Substantial Merit and National Importance
2. The Foreign National is well positioned to advance the proposed endeavor
3. It would be beneficial to the US to waive the requirements of a job offer and LC



## IT USED TO BE IMPACT AND INFLUENCE ON THE FIELD!



- And it was: Citation...Citation...Citation...
- Now: Cover Articles & Editorial highlights. Standards of publication/journal rankings
- Have others utilized/implemented your findings/grants/funding/your work!



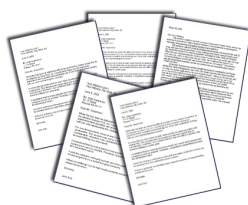
How well positioned are you?



39

## HOW STRONG IS MY CASE?

WHAT DO I NEED TO BRING TO THE TABLE?



ACS Publications  
Most Trusted. Most Cited. Most Read.



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# NETWORK!



## USE YOUR PROFESIONAL RELATIONSHIPS



# TRANSITIONAL AND NON-TRADITIONAL CAREERS



## Science has changed:

This new national interest waiver standard may allow more applicants to be approved who are working away from the bench



Entrepreneur



Industry



Academia



## WHAT DOES RETROGRESSION MEAN?



- Date must be current at time of filing AND at time of approval
- India or China you CANNOT file an I-485 based upon your I-140 Immigrant Petition for Alien Worker.
- BUT...BENEFIT OF AN EB-2 (including an NIW): You can extend your H-1B beyond 6 years & it can allow your H-4 Spouse to obtain an EAD
- This (generally) does not apply individuals from other countries



## RETROGRESSION-BACKLOGS



### **FEBRUARY 2018 (CURRENT) VISA BULLETIN:**

**EB-1** (Extraordinary Ability, Outstanding Professor or Researcher):  
Everyone is CURRENT (India & China should “keep an eye on it”)

**EB2** (NIW & PERM) China and India backlogged: All other countries current (could RETROGRESS later in the year & then become current in October)

**EB-2** (NIW & PERM)  
China: October 1, 2013  
India: December 8, 2008



## 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 they can get to where they want (and need) to be



## SOME HOUSEKEEPING:



- **“Travel Ban” Excludes:** Dual Citizens as long as they do NOT travel on the passport of one of the listed countries
- 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)



FDI



## THE POLITICS OF IT ALL...

WELL, WELL, WELL...



- Looks like we might be in a “wait and see” pattern
- Executive orders are under threat. Questions over H-4 work authorization...
- Wait for actual, real information – don’t buy into the rumors and conjecture; H-1B Bills etc.



FDI

THANK YOU!





**FOR A REVIEW OF YOUR CASE, OR A FREE CONSULTATION  
OF YOUR VISA OR GREEN CARD APPLICATION:**



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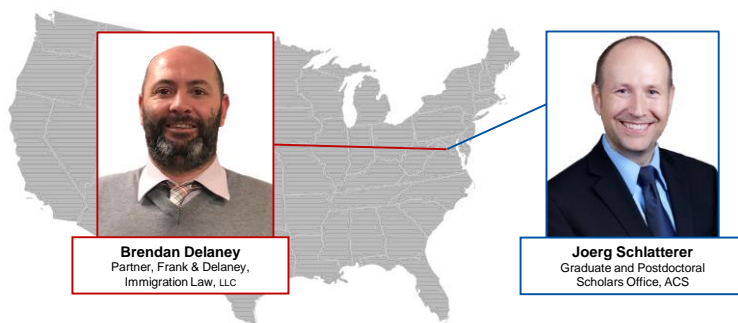
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***Navigating My Research Career: How to Manage  
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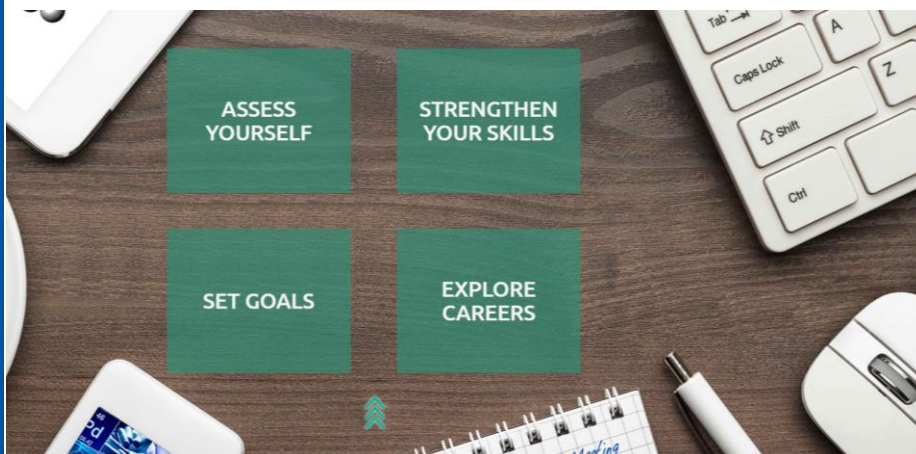


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