

# IMMIGRATION OPTIONS AFTER OPT/AT FOR F and J Students

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# Our Road Map for Today

Background on the F-1

The anatomy of the H-1B

The actual change of status

OPT (Cap Gap)

Options if you don't win the H-1B Lottery

Other relevant information

Beyond the H-1B



# F-1 Student Visa

- Short term nonimmigrant visa
- Must remain enrolled and attending classes
- Can only accept employment with authorization
- F-1 status terminates upon the completion of your course of study unless you are able to extend it with a new I-20 for a new program (Master's, Ph.D. etc.). Or by receiving post-completion OPT.

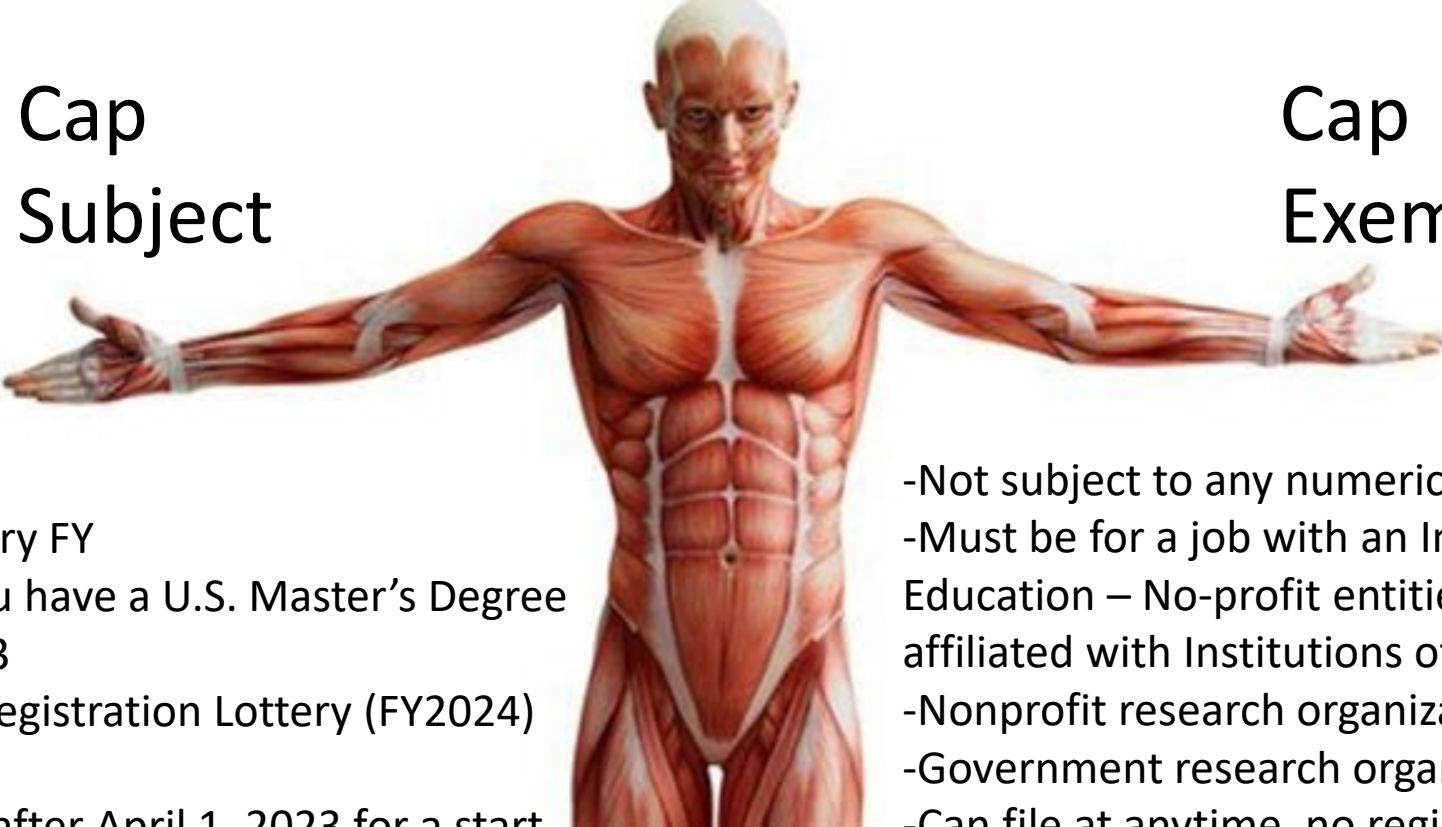


# The Anatomy of the H-1B



- Non-Immigrant Visa for Temporary Workers
- Sponsored by the Employer (a job offer is required)
- Must pay the employee the prevailing wage
- For a job or position that qualifies as a “specialty occupation”
- Employee control and remote work site locations
- Valid for 6 years (issued in two 3 year increments)
- #1 rule for H-1Bs (No job, No visa).
- Portable
- Need actual H-1B visa stamp in your passport for international travel.
- Dual Intent Visa
- J-1s subject to 212(e) will need a waiver prior to COS to H-1B.

# The Anatomy of the H-1B: Not all H-1Bs are Created Equal



## Cap Subject

- 65K visas allotted every FY
- 25K additionally if you have a U.S. Master's Degree
- Quota met for FY2023
- Subject to the H-1B Registration Lottery (FY2024) 3/1-3/22, 2023
- Notified of Selection after April 1, 2023 for a start date October 1, 2023 (FY2024).

## Cap Exempt

- Not subject to any numerical quota
- Must be for a job with an Institution of Higher Education – No-profit entities which are related to or affiliated with Institutions of Higher Ed.
- Nonprofit research organizations
- Government research organizations
- Can file at anytime, no registration lottery to win, no new FY to wait on.

# The Actual Change of Status F-1/J-1 to H-1B

- Cap Subject
- You would want to have your employer or prospective employer complete the registration between March 1 and March 20.
- Sometime between March 20 and April 1, the random computer generated lottery will pick 65K H-1B registrants and 25K H-1B registrants with a U.S. Master's Degree.
- Notified by USCIS if your registration is selected and your employer's attorney can proceed in completing the H-1B petition on your behalf.
- The H-1B can be filed after April 1, 2023 for an employment start date of October 1, 2023.

# How can I increase my chances of getting an H-1B

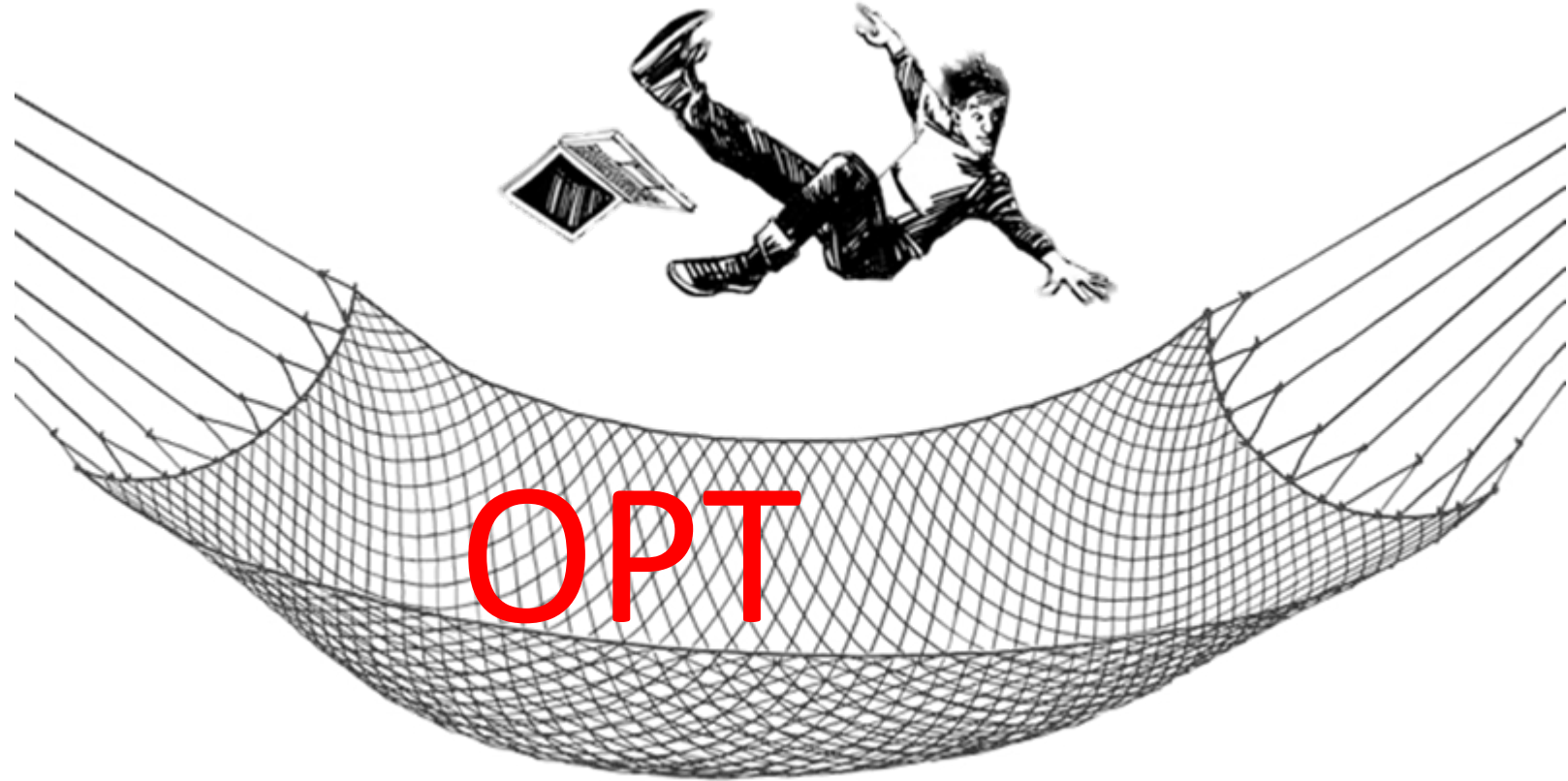


- Job Offer
- OPT
- Master's Degree
- Specialty -  
Occupation

# Using OPT to manage and mitigate the risks associated with potential H-1B Sponsorship



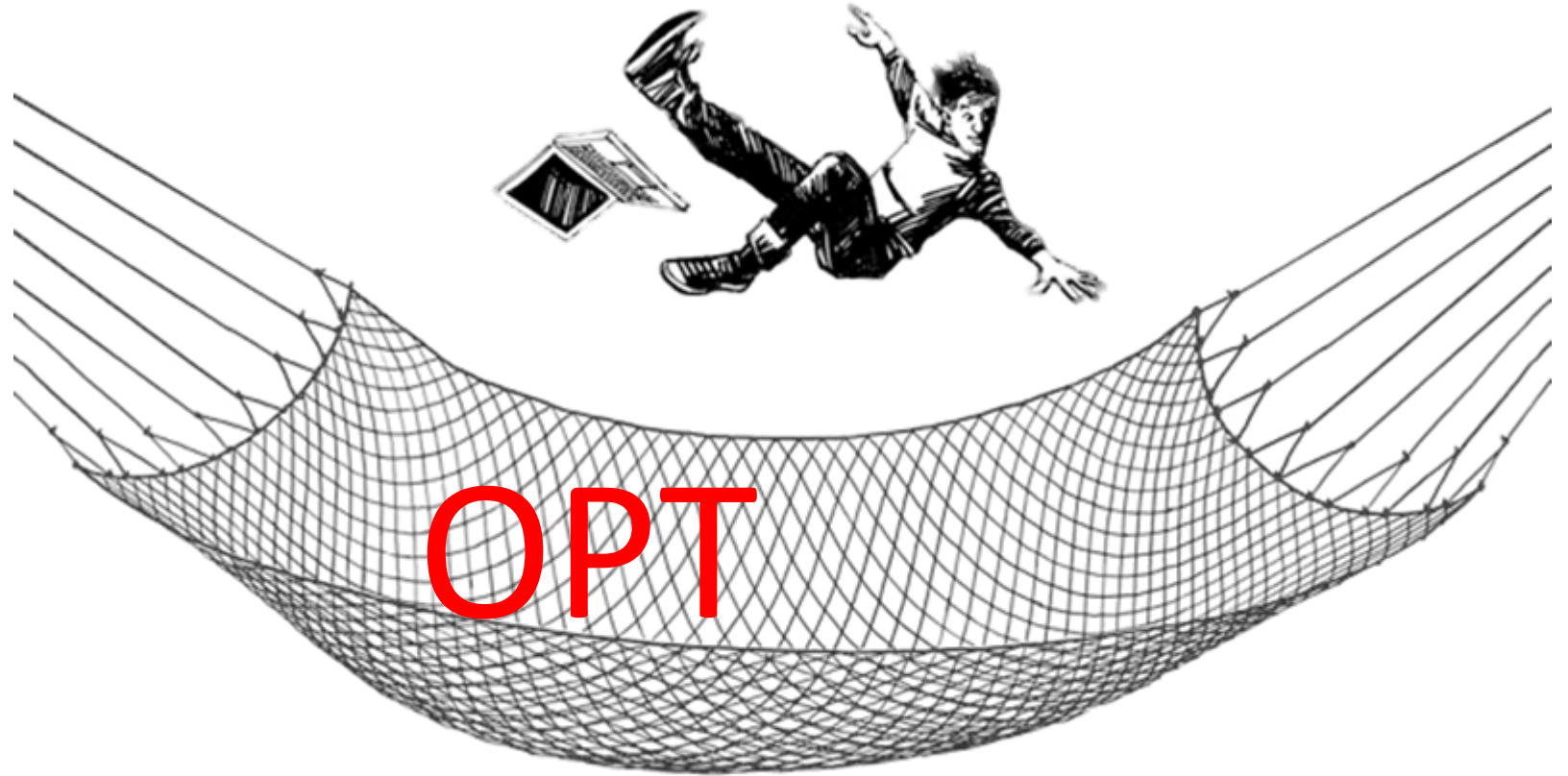
THE H-1B  
LOTTERY®



OPT



What if my H-1B is selected and I file in April, but my F-1/OPT status expires before October 1<sup>st</sup>?



What if my H-1B is selected and I file in April, but my I-94 expires before October 1st and my OPT expires in August?



SPECIAL RULE FOR THIS SCENARIO

**MIND THE GAP**

# The Cap Gap

- Although F-1 nonimmigrant students with degrees in science, technology, engineering, or mathematics (STEM) may apply for a 24-month extension of their post-completion OPT employment authorization, USCIS policies regarding the cap-gap extension remain the same. **An F-1 student who is the beneficiary of a cap-subject H-1B petition and request for change of status that is filed on time may have their F-1 status and any current employment authorization extended until the first day of the new fiscal year.**
- The “cap-gap” period starts when an F-1 student’s status and employment authorization expires and, unless terminated, ends on Oct. 1, the required start date of the H-1B cap-subject petition filed on their behalf if seeking cap-gap authorization.
- Cap-gap occurs because an employer may not file, and USCIS may not accept, a cap subject H-1B petition submitted more than six months in advance of the date of actual need for the beneficiary’s services or training. As a result, the earliest date that an employer can file an H-1B cap-subject petition is April 1 for the following fiscal year, which starts Oct. 1. If USCIS approves the H-1B petition and the accompanying change of status request, the earliest date that the student may start the approved H-1B employment is Oct. 1, but the beneficiary’s OPT employment authorization may expire before the H-1B start date.
- J-1 visa holders in AT are NOT eligible for the Cap Gap. Only applies to OPT.

What if I don't win the lottery? What are my options?



# Options for if you are not selected in the H-1B Lottery

Wait for round 2

STEM OPT? Extend it. Try again next year.

Extend AT?

Continue on for an advanced degree (Master's or Ph.D.). Stay in F-1 and try again next year.

Seek employment with a cap exempt employer.

Change to an alternate status if possible? O-1?

Return to your home country.

H-1B Consular Processing



# Other relevant H-1B information

How to speak to potential employers about H-1B sponsorship?

They will often need to be educated on the process to employ you?

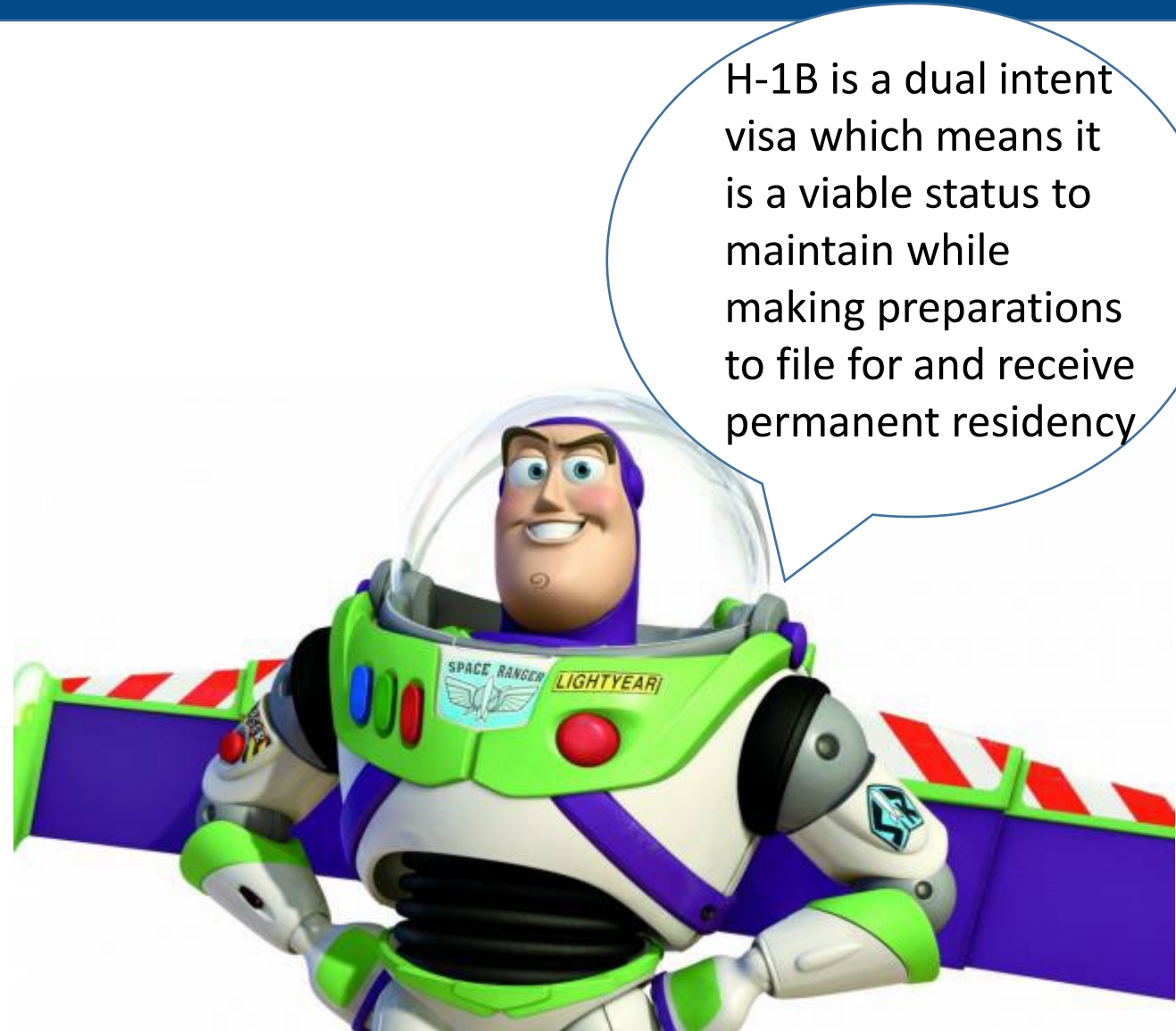
How much will this cost?

Who pays for it and why?

Penalties v. LDs



# H-1B and Beyond-



## Other Employment Options that do not involve a Change of Status to H-1B

- Non-Immigrant Visa Options: O-1 or (other relevant options). Accomplishes the same as the H-1B with respect to additional non-immigrant visa status in the U.S. Many students, and exchange visitors use the O-1, like the H-1B to enjoy an additional 3 years of employment authorization in the U.S. The O-1 is unlike the H-1B in that the O-1 does not require a waiver of 212(e), is not subject to any visa cap and can also be premium processed.
- Note the distinction between COS to O-1 for F-1 and J-1. J-1 COS to O-1 in the U.S. requires a waiver first or Consular processing outside the U.S. if a waiver has not been obtained.
- Immigrant Visa Options: EB-1A, EB-1B, NIW, PERM Labor Certification. In certain circumstances, a student or exchange visitor may be eligible to file or have their employer file an I-140 Immigrant Visa Petition on their behalf or have their employer begin the PERM Labor Certification.
- Additionally, in some cases, the student or the exchange visitor can self-petition, file an I-140 independent of their employer.







QUESTIONS?

CLINE WILLIAMS