Non-U.S. Citizen JD Students and the Job Search Process

OVERVIEW

JD students who are not U.S. citizens or permanent residents of the U.S. face unique challenges in the job search process. The purpose of this brochure is to share information with our non-U.S. citizen JD students relating to employment in the U.S., including visa information, hiring opportunities and obstacles, advice for navigating the job search process, and contact information for alumni mentors.

Yale University hosts more than 5,000 international students and scholars representing more than 120 countries. The Office of International Students & Scholars (OISS) is responsible for the general welfare of international students at Yale and serves as the resource on immigration matters for the Yale community. OISS has developed a separate section of its website devoted to addressing immigration changes under the new administration. International students should check in with OISS after arriving at Yale and consult the OISS website on a regular basis. Ms. Mihwa Lee (mihwa.lee@yale.edu) serves as the OISS advisor for international students and scholars from the law school.

In addition to meeting with OISS, we encourage all students to meet with a CDO counselor starting in November of their first year to map out a job search strategy.

VISA TYPES AND EMPLOYMENT

Typically, non-U.S. citizen JD students are eligible for short-term U.S. work authorization through Optional Practical Training (OPT) and/or Curricular Practical Training (CPT). Most candidates seeking to remain in the U.S. longer term apply for a H-1B Temporary Worker visa. These options are described below.

Optional Practical Training (OPT)

Students who hold an F-1 visa are generally eligible for this temporary employment authorization giving them an opportunity to gain practical experience for up to 12 months either during their course of studies or after. The total OPT time can be used in increments; students can use some of it during the summer and/or during the semester and save the remainder for after graduation. Students seeking to use OPT for post-graduate experience must apply between 90 days prior to the end of school and 60 days after graduation. OPT is not employer specific, but the applicant must intend to work or volunteer in a professional development opportunity directly related to the major field of study. The first step in applying for OPT is to meet with a representative from OISS. JD students who studied previously in the U.S. in a STEM field may be eligible for additional OPT time. Review the OPT information on the OISS website which includes a link to their Online Workshop. For your information, the section of the request form titled “Part II (to be completed by student’s academic advisor and/or dean)” will be completed by the Law School’s Registrar’s Office.

1 In sharing this overview, CDO does not purport to offer legal advice. Non-U.S. citizen JD students interested in working in the U.S. should consult with the Office of International Students and Scholars and, if necessary, an immigration attorney. Nothing provided in this document should be used as a substitute for the advice of competent counsel.
Curricular Practical Training (CPT)

CPT is an employment option available to F-1 students when the practical training employment is considered to be an integral part of the curriculum or academic program for all law school students. According to immigration regulations, this employment may be an internship, cooperative education job, a practicum, or any other work experience that is either required for your degree (as defined in the course catalog) or for which academic credit is awarded whether for compensation or not. CPT is authorized by OISS and does not require approval from the U.S. Citizenship and Immigration Services (USCIS). Most international students seeking work in the U.S. during the summer apply for CPT in order to preserve their full 12 months of OPT for after graduation. For summer employment, students should commence the following application process early in the spring semester, as soon as they know their employer.

1. Review the CPT information on the OISS website and print the CPT Request Form.
2. Complete Part I of the form and submit the form to Judith Calvert, Assistant Dean and Registrar at YLS. If you have more than one summer employer, submit a separate CPT Form, with Part I completed, for each individual employer. Include the name(s) and location(s) of your employer(s) and the start and end dates for each position.
3. Ask Assistant Dean Calvert to enroll you in the fall semester Legal Practicum course.

Once those steps have been completed, the Registrar’s Office will complete Part II of the CPT Form and return the completed form and appropriate accompanying documentation to you, which you must then deliver to the OISS.

J-1 Academic Training

J-1 students may use Academic Training work permission for either summer work or to remain in the U.S. and work after graduation. If the J visa is sponsored by an agency such as Fulbright, the student must first get permission from the agency.

H-1B Visa

A common way for graduates to remain in the U.S. after the OPT period is for an employer to sponsor them for an H-1B visa. Visit the Department of Homeland Security’s website and the OISS website for details on the H-1B Program. The H-1B visa is aimed at workers coming temporarily to the U.S. to work in a specialty occupation defined as one that requires “theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor’s or higher degree, or its equivalent, as a minimum requirement.” The H-1B is employer specific and cannot be subsidized by the applicant or another party. The visa lasts for a maximum of six years. Some difficulties with the H-1B process are that it can be costly (up to $10,000 if a law firm is involved); it can be relatively slow (one to six months, though the process can be expedited for an additional fee); it requires an administrative commitment from the employer to complete the paperwork; and for private sector jobs there is a legislatively mandated cap which means it is not guaranteed to be successful.

The typical process for the H-1B visa is the following:
1. The employer/sponsoring organization determines the appropriate wage for the position by request to the Department of Labor (DOL) or through an online wage library.
2. Once the wage is obtained, the sponsoring organization files a Labor Certification Application (LCA). LCA stating, in part, that the employment of this individual will not adversely affect the conditions of other U.S. resident employees in similar positions and attesting that they will offer H-1B visa holders the same benefits as their other workers.

3. The sponsoring organization posts notices for 10 days.

4. The H-1B petitions are assembled and filed with the appropriate USCIS office along with the certified LCA by DOL.

It is important to keep in mind that although the H-1B is a common option for international lawyers, it may not be the only option. Please contact OISS to discuss your particular situation.

**Nonimmigrant NAFTA Professional (TN) Visa**

The North American Free Trade Agreement (NAFTA) created special economic and trade relationships for the United States, Canada and Mexico. The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the U.S. to engage in business activities at a professional level. Among the types of professionals who are eligible to seek admission as TN nonimmigrants are accountants, engineers, lawyers, pharmacists, scientists, and teachers.

In order to apply, the candidate must: be a citizen of Mexico or Canada; have secured a full-time or part-time position with a U.S. employer (note that self-employment does not qualify); have the credentials to practice the profession in question; and demonstrate the intention to return to their home country upon expiration of the visa. The visa status can be valid for an initial three year period. It can be renewed in three year increments indefinitely. Visit the OISS website for more information.

**LEGAL EMPLOYMENT SETTING DIFFERENCES**

Employers vary in their ability and willingness to support non-U.S. citizens in securing U.S. work authorization. One useful tool for learning about whether employers have applied for H1-B visas or Green Cards for employees in the past is the Employer Database in myvisajobs.com. Type an employer name into the “employer” field to view the employer’s H1-B and Green Card applications from 2013-2017.

**Large Companies and Large Law Firms**

Many large companies and large law firms have the resources to support visa sponsorship and are familiar with the process. These companies often have robust international practices for which an international attorney will add great value. They generally are pleased to hire non-U.S. citizen JD students for the summer and after graduation. Having said that, prospective employers will not likely view the need to apply for work authorization on behalf of a candidate as a selling point, and thus, candidates may not wish to affirmatively bring up their immigration status during the initial interview process. If asked, students should respond directly and honestly, explaining the path to work authorization. If the issue does not arise during the interview process, students should discuss their status after obtaining an offer but prior to acceptance to be sure that the employer and student are on the same page with regard to visa requirements and expectations. While many companies will support employees in obtaining H-1B visas, not all will approach supporting more permanent authorization (i.e., green cards) in the same manner. Also, some law firms with international offices may prefer to hire a non-U.S. citizen JD student to work in their U.S. office during the candidate’s OPT period and then transition the candidate to one of the firm’s international offices.
Myvisajobs.com contains lots of useful information regarding employers seeking visas, including a list of the top 100 H1-B Visa sponsors for lawyers in fiscal year 2016. The list shows that in 2016, Skadden Arps filed the most (56) Labor Condition Applications with the Department of Labor. This filing commences the Visa application process. Click on Skadden’s name to view further details about their filings since 2013, including a list of the geographic locations and occupations for which they filed applications.

If you are participating in the Fall Interview Program and are a non-U.S. citizen JD student, you should review the list mentioned above to get a sense of which firms engage in the visa process more often. You should also focus on firms with international offices. That way, if for some reason you are unable to obtain the necessary visa, you may be given the option to transfer to one of the firm’s international offices. Finally, you may want to bid and interview more broadly than you might otherwise because of your international status.

**Small Companies and Nonprofit Employers**

Small organizations and nonprofits should not have any concerns about hiring non-U.S. citizen JD students for summer internships given the availability of CPT and OPT that come at no cost to the employer. While some employers are familiar with this, others are not. Upon receipt of an offer, students should inform the employer that they can obtain work authorization for the summer based on their student immigration status.

Resource-strained small companies and nonprofits typically have two concerns when considering non-U.S. citizen JD candidates for post-graduate employment: whether it is cost-effective to hire a candidate who may only be authorized to work in the U.S. short term; and the potential costs associated with enabling the candidate to remain in the U.S. long term. In conversations with CDO, nonprofits have generally not been opposed to the idea of hiring non-U.S. citizen JD students. When there is hesitation, it stems from not knowing the process for hiring an international student, either as an OPT candidate or otherwise, and the cost. An organization with scarce resources must decide cautiously where to spend its money and visa application fees may not be part of the calculus. However, we encourage candidates to contact organizations directly and have frank and open conversations about employment opportunities.

Given the ability to secure OPT for 12 months of work in the U.S. post-graduation, one-year public interest fellowships are generally not problematic for non-U.S. citizen JD students. However, two-year post-graduate fellowships present a unique problem. The fellowship organization would have to be willing and able to apply for a visa to cover the rest of the fellowship term. In conversations with CDO, many organizations, though hesitant, have not dismissed this idea outright. They have indicated that they would have to weigh the financial position of the organization, the candidate’s contribution to the organizational mission, and the practical ability to go through a long-term visa application process given staffing. They have indicated that they would encourage candidates to have open conversations with them regarding this issue – even before the end of their law school career, which makes sense, given that building relationships with organizations is an intrinsic part of the fellowship process.

**Federal Government**

a. Overview
Unfortunately for non-U.S. citizen JD students, the federal government gives strong priority to hiring U.S. citizens and nationals, although agencies may hire international students under some very limited circumstances. Click here for detailed information about the employment of international students by federal agencies.

There are two obstacles to overcome for international students who wish to work for any federal agency or as a law clerk to a federal judge. First, candidates must be able to obtain authorization to work under U.S. immigration laws. This requirement relates to the prior discussion about work authorization options including CPT, OPT and H-1B.

Second, the federal Appropriations Act bans agencies, in most cases, from paying international students with appropriated funds. In 2009, Congress amended the Appropriations Act to limit more strictly the categories of qualifying internationals. According to the Act, appropriated funds may not be used to pay compensation to international student employees with duty stations in the continental United States, unless they qualify for one of the following exceptions:

- Persons who owe permanent allegiance to the United States (for example, natives of American Samoa and Swains Island).
- Persons admitted as refugees under 8 U.S.C. 1157 or granted asylum under 8 U.S.C. 1158 and have filed a declaration of intention to become lawful permanent residents and then citizens when eligible.
- Translators employed temporarily.
- People employed up to 60 days on an emergency basis in the field service.
- Nonresident aliens employed as wildland firefighters for not more than 120 days by the Department of the Interior or the U.S. Department of Agriculture, U.S. Forest Service, pursuant to an agreement with another country.
- Persons who were officers or employees of the U.S. Government on December 16, 2009.

Thus, the Appropriations Act in its current form significantly limits the federal government from paying international students. Although federal agencies have discretion to accept volunteers who have proper work authorization, most will not. Agencies often provide information about their hiring policies on their websites. When in doubt, students should confer directly with the federal agency to understand their particular hiring criteria.

b. Federal Judicial Clerkships

Non-U.S. citizen JD students interested in clerking for a federal judge may qualify through one of the Appropriation Act exceptions above, or they have the option to clerk in a chamber outside the continental U.S. (e.g., Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, Guam or the Northern Mariana Islands). Otherwise, the only option is to clerk as an unpaid volunteer. If any person is hired in violation of these restrictions, the Administrative Office of the U.S. Courts is required, by statute, to remove such person from the payroll immediately and any appropriated funds paid may be recouped. Candidates should notify the chambers in which they are seeking employment of their citizenship status to permit the judge to ascertain eligibility for consideration. Although there is no “preclearance” for clerkship candidates, further information can be obtained by contacting Robert Deyling in the General Counsel’s Office of the Administrative Office of the U.S. Courts at 202-502-1100. Information about citizenship requirements for employment in the judiciary can be found here.
c. U.S. Department of Justice

The largest and the most popular federal employer among YLS students is the Department of Justice. The DOJ Honors Program currently accepts applications only from U.S. citizens and individuals who owe permanent allegiance to the U.S. For experienced attorney hiring, only U.S. citizens are eligible for employment with the Executive Office for Immigration Review, the U.S. Trustee’s Office, and the Federal Bureau of Investigation. Positions at United States Attorneys’ Offices are restricted to U.S. citizens and individuals who owe permanent allegiance to the U.S. International students may apply for employment with other organizations, but should be advised that appointments of international students are extremely rare; such appointments would be possible only if necessary to accomplish the Department’s mission and would be subject to strict security requirements.

Candidates for DOJ positions are also subject to a U.S. residency requirement. Candidates who have lived outside the United States for two of the past five years may have difficulty being approved for appointments by the Department Security Staff. In assessing whether a candidate has lived outside the U.S. for a two-year period, the time is calculated on the basis of cumulative time spent living outside the U.S. over a five-year period.

Visit the DOJ website for more information.

d. U.S. Department of State

YLS students and alumni are drawn to the complex and timely issues dealt with within the State Department. The Department offers more than 30 career paths, including in the Foreign Service and Civil Service. U.S. citizenship is required for competitive opportunities within the civil service of the State Department. Only U.S. citizens are considered for appointment as attorney-advisers in the Office of the Legal Adviser.

e. Federal Defender Offices Operating as Community Defender Offices

Employees of Community Defender Organizations are not considered federal employees. Thus, the federal Appropriations Act ban on paying international candidates with appropriated funds does not

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2 Under Executive Order 11935, citizenship is requires for all competitive civil service opportunities, not just State Dept. International candidates can only be hired in "excepted" positions (fortunately, lawyer jobs fall in that category).

3 Title VII, Section 704 of the 2016 Act provides that “no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States,” unless the individual is a United States citizen or lawful permanent resident seeking citizenship, or meets certain other exceptions. 129 Stat. 2242, 2473-74 (emphasis added). Community Defender Organization staff are not government officers or employees, but rather are employed by “a nonprofit defense counsel service” that may “receive payments under [the CJA].” 18 U.S.C. § 3006A(g)(2)(B); see also Nat’l Ass’n of Crim. Def. Lawyers, Federal Indigent Defense 2015: The Independence Imperative 14 (2015) (“None of the employees [at a CDO] are government employees.”); Fed. Judicial Ctr., Deskbook for Chief Judges of U.S. District Courts § V.D.2 (3d ed. 2003) (“[CDO] personnel are not federal judicial branch employees.”); Office of Legal Counsel, U.S. Dep’t of Justice, Memorandum Opinion for the Director of the Executive Office for United States Attorneys, 1 Op. Off. Legal Counsel 110, 110 n.1 (1977) (“Employees of a Community Defender Organization are not Federal employees.”); cf. In Re
apply to Federal Defender offices that operate as Community Defender Organizations. Visit this site for a useful directory of Federal Defender and Community Defender offices.

f. Dual Citizenship

Individuals who hold dual citizenship are not precluded from applying for positions in the federal government. Dual citizenship may raise questions about foreign preference or loyalty and will need to be resolved favorably before a security clearance can be granted. These cases are addressed on an individual basis. Review this list of criteria used by the State Department to determine whether dual citizenship poses a security risk as well as the mitigating factors which would decrease these security risks.

CDO is aware of situations where dual citizen candidates for summer internships with the Department of Justice were asked to sign a form or write a letter stating that they would relinquish their non-U.S. citizenship if requested to do so. Please consult CDO if requested to sign or write such a letter.

**State and Local Government**

State and local governments operate on a case-by-case basis. Decisions are based on agency need, financial considerations and qualifications of the candidate. We encourage interested candidates to contact offices and agencies of interest to inquire about opportunities for employment.

State court citizenship requirements depend on the individual state’s laws. International students should check directly with the state court(s) in which they are interested.

**STRATEGIES FOR SECURING EMPLOYMENT**

- **Choose the right timing to discuss your immigration status.** When to raise the issue of your immigration status with employers will depend on the circumstances. For summer internships with nonprofits and private employers, because your immigration status is no barrier to employment and no cost to the employer, you may wish to wait until after the employer has given you an offer and is excited about the prospect of working with you for the summer. On the other hand, because government hiring is very limited, it makes sense to address your immigration status early in the hiring process to understand whether employment is even an option. For full-time positions with large law firms, having the discussion post-offer is fine, but for all other employers it will be better to discuss your situation up front to understand the parameters of your employment as it relates to your immigration status. Of course, if asked, you should always respond directly and honestly to inquiries regarding your immigration status.

- **Be Informed.** An employer may not have information about what the process entails, the cost, their responsibility. It is helpful if you present this information to them so that they have a sense of what they would need to do. For instance, even though an employer is required to pay the filing fee for the H-1B visa, the applicant can pay for the expedited processing fee.

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*Commonwealth’s Motion, 790 F.3d 457 at 468* (holding that a CDO “acts under” a federal officer or agency, but is not itself a federal officer or agency, for purposes of 28 U.S.C. § 1442).
• **Choose Appropriate Organizations.** Most legal services providers typically do not hire international students because of money and time constraints. However, organizations with an international focus, with field offices outside of the United States, or with international employees or clients may be better positioned to work with you on obtaining an appropriate employment visa.

• **Emphasize Your Unique Skills.** Let potential employers know that you have skills which would be of value to their organizations and mission. Do you speak another language? Are you familiar with certain legal procedures?

• **Be Bold.** Sometimes it’s just a question of asking. Potential employers may not realize that it’s a feasible option for them to hire a great international employee!

**YLS IMMIGRATION CONSULTATION ASSISTANCE PROGRAM**

Thanks to a grant from the Oscar M. Ruebhausen Fund, YLS offers second and third-year non-U.S. citizen JD students a consultation with an immigration attorney to determine the options that might be available to pursue work in the U.S. after graduation.

In addition to paying for an initial consultation, YLS will pay immigration paperwork costs (up to $4,500) incurred by the immigration attorney on behalf of current third-year JD students (who are not U.S. citizens and not permanent residents of the U.S.) who receive an offer of employment in the U.S. from a public interest organization. YLS will also reimburse these students for some of the fees (up to $2,500) associated with the filing of immigration documents if the public interest organization is unable to pay for these filing fees themselves.

Please note that while Yale Law School will pay the immigration attorney for these services, the attorney client relationship exists between the student and the attorney, and does not involve YLS.

If you would like to take advantage of this opportunity, please email CDO’s Assistant Dean, Kelly Voight (kelly.voight@yale.edu) to arrange for a meeting. In your email, include a description of the types of employment you are interested in pursuing immediately after graduation, and a statement that you are not currently a U.S. citizen or permanent resident.

**INTERNATIONAL JD ALUMNI MENTORS**

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Prior Employment: Clerk, Southern District of NY  
Citizenship: India

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YALE CONTACTS

Office of International Students and Scholars - Supports all international students at Yale and serves as the primary resource on immigration matters for the Yale community. Contact for YLS is Mihwa Lee (mihwa.lee@yale.edu).

YLS Career Development Office – Provides one-on-one counseling, resources and programming to support the careers of students and alumni. Contact cdo.law@yale.edu.

YLS Office of Student Affairs – Supports academic and student life issues for all students and serves as liaison to all student organizations. Contact law.studentaffairs.edu.

Yale International Students’ Association – YLS student organization with the goal of helping international students to adapt to law school and to provide information about employment and careers.

ADDITIONAL RESOURCES
American Immigration Lawyers Association - Information on immigration decisions, and resources to find an immigration lawyer

YLS Career Connections - YLS Career Connections offers Yale law students the opportunity to seek out graduates who have offered to provide career-related advice. In the “career topics” section, alumni can indicate an interest in “International Students and employment options”.

www.myvisajobs.com - provides information about visas, including an employer directory by which you can see how many visa and green card applications particular employers have made and lists ranking employers by number of applications submitted by different industries and careers.

USA Jobs information on the Employment of International candidates.

Going Global (access using this link and only from a Yale Secure network) - This research tool provides resources for finding employment including visa information, job postings and company profiles. Very useful for students to learn about the culture of international locations when conducting an international job search or working abroad.


United States Citizenship and Immigration Services (USCIS) - Find information about visa application, download forms, get contact information for various USCIS offices and more.

Citizenship Requirements for Employment in the Judiciary (US Courts)

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