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**Immigration Regulations as Frame of Reference: Trade-off Between  
Precarious Employment and Precarious Legal Status Among US  
Student-Migrant-Workers**

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# **Immigration Regulations as Frame of Reference: Trade-off Between Precarious Employment and Precarious Legal Status Among US Student-Migrant-Workers**

## **Abstract**

Although ‘student-migrant-workers’ is increasingly recognised as an important subcategory of temporary, high-skilled and ‘backdoor’ migrants, research on this group and their participation in the labour market, especially their entering precarious employment, remains limited. Using in-depth interview data with participants in the US F-1 OPT program, a type of post-graduation work permit, this study explores why many student visa holders enter temporary agency work, a precarious employment form. Findings suggest that student-migrant-workers make employment choices within the frame of reference of immigration regulations, weighing their labour market disadvantages against these regulations’ restrictions and offered opportunities. Despite the inherent employment precariousness of temporary agency work, student-migrant-workers find them a viable solution for managing their precarious legal status and the unfavourable labour market position. The employment has the potential to facilitate maintaining their legal residence, extending work authorisations and transitioning to a ‘front door’ entry.

## **Introduction**

International students are becoming important contributors to their host countries’ labour forces. While it is true that they remain largely a mobile, temporary group that does not necessarily lead to participation in the host country’s labour market, many countries have facilitated their participation by offering pre- and post-graduation work permits. International students widely use these permits to actively seek employment opportunities. In the United States, for example, between 2004 and 2016, nearly 1.5 million international students obtained work authorisation through the post-graduation OPT program (Ruiz and Budiman 2018), with 225,621 authorised in 2022 alone, and nearly a quarter finding employment in their graduation state (Beine, Peri, and Raux 2023).

Recent studies have begun to focus on this long-neglected migrant group, terming them ‘student-migrant-workers’ (Maury 2020; Neilson 2009; Robertson 2011), highlighting their

unique social and legal position at the intersection of ‘student’, ‘migrant’ and ‘worker’. These workers have been found to enter various precarious work (Maury 2020) and experience the dual precariousness of the labour market and residency status (Vosko 2023). Despite the increase in student-migrant-workers and their trending entry into precarious employment, focused research remains sparse.

There is limited research on immigrants’ willingness or ‘subjective reasons’ to engage in precarious employment (Alberti 2014, 868). Traditionally, a concept of ‘dual frame of reference’ (comparing employment conditions in the home and host country) has been used to explain migrants entering the secondary labour market and accepting lower pay and poorer working conditions (Piore 1979). However, immigration regulation has been found to become a new frame of reference for migrants, especially for those who have not obtained permanent residency (Könönen 2019). Immigration regulations create a ‘juridical division of labour’ by restricting residence duration, welfare benefits and labour market mobility for different entry categories, thus creating a hierarchy within immigrant labour (Könönen 2019). This largely informs migrants’ employment and casting strategies (Jacobs 2019).

However, understanding how immigration regulations function as a frame of reference for migrant employment still has limitations. First, existing research primarily focuses on the restrictive aspects of immigration policies, with less attention paid to the opportunities these policies offer and their effects on migrants. The opportunity aspects are evident in the incentives built into the immigration policies, such as the chance to gain permanent residence (González 2022; Shachar and Hirschl 2013); also in migrants’ own aspirations for a more stable stay and eventually settle permanently in the host country. Secondly, while immigration policies play a crucial, sometimes determining role in influencing migrants’ employment decisions, it is essential to consider these policies in conjunction with the migrants’ labour market positions and migrant infrastructure’s roles.

My research suggests that student-migrant-workers make their employment decisions based on both the restrictive and opportunity aspects of immigration policies, as well as their standing in the job market. For certain immigrant groups, specific kinds of precarious jobs may serve as effective solutions to navigate strict immigration rules and difficult labour market conditions (e.g. lack of local work experience, discrimination against legal and ethnic identities,

and lengthy recruitment processes in the labour market). This study reveals that for many student-migrant-workers on F-1 OPT, temporary agency work at small migrantniche staffing agencies specialising in high-tech occupations has emerged as an alternative to standard employment. These agencies have the willingness and knowledge with the potential to support their maintaining, renewing, and transitioning between legal statuses.

In this paper, I present empirical evidence and a novel theoretical perspective based on Kononen's 'immigration regulations as a frame of reference for immigrant employment.' This updated theoretical perspective integrates the restrictive and opportunity aspects of immigration policy with migrants' labour market positions as parts of the reference frame. The data were gathered through interviews with 42 holders of F-1 OPT, a temporary post-graduation work permit for international students in the United States. The interviewed students have been engaged in temporary agency work (TAW), a form of non-standard employment where they are hired by staffing agencies to perform work at third-party companies, without any contractual relationship with these companies. Specifically, most interviewees were employed by small staffing agencies that operate in high-skill niche markets (e.g., IT staffing). Additionally, 10 agency staff members who worked in various capacities in temporary agencies, including founders, managers, and recruiters, were interviewed.

This study contributes to the broader discourse on how higher education internationalisation, immigration regulation, and precarious employment intersect. It supports and expands upon Könönen's (2019) framework by showcasing how the restrictive and opportunity aspects of immigration regulations alongside migrants' labour market positions critically guide their employment decisions. Precarious employment choices can be seen as migrants' trade-offs or compromises for navigating restrictive immigration policies and pursuing opportunities for a more stable and even permanent stay amidst a subordinated labour market position. Empirically, this study shines a spotlight on a group often overlooked in migration studies: student-migrant-workers with post-graduation work permits. By focusing on this group, the study addresses a gap in understanding how the dual statuses of students and migrants intersect to disadvantage their labour market positions. Moreover, the study offers firsthand insights into the challenges faced by student-migrant workers in the US, including the legal and social vulnerabilities they embody and their involvement in TAW.

### *Student-Migrant-Workers*

International students involved in host countries' labour market have been termed 'student immigrants' (Baas 2016) and 'international student workers' (Nyland et al. 2009). Neilson (2009) coined the term "student-migrant-worker" to capture the unique roles these individuals occupy as students, migrants, and workers, and whose legitimacy is established by the global multiplication of labour.

For clarity, I define 'student-migrant-worker' as 'a migrant who possesses both a student visa and a work permit.' This definition encompasses both the period before and after graduation. It acknowledges the legal permission in many countries for student visa holders to engage in employment both during their studies and under a post-graduation work permit. <sup>1</sup>While current research on 'student-migrant-workers' (e.g., Maury 2020) primarily focuses on the employment experience during the study phase, the period following graduation remains relatively underexplored in academic discourse.

Post-graduation work permits for international students are now common tools designed to boost a country's attractiveness as a study destination (Tran et al. 2022). These programs are understood as part of a broader strategy that turns higher education into a sorting mechanism for prospective permanent residents. This approach establishes a 'three-step immigration' process where international students graduate from a qualifying institution, enter the labour market on a post-graduation work permit, and possibly achieve upward mobility, permanent residency and citizenship (Brunner 2021, Brunner, Streitwieser and Bhandari 2023). Famous examples include Canada's Post-Graduation Work Permit (PGWP), the UK's Post-Study Work Permit (PSW), Australia's Graduate Skilled Visa (subclass 485), and the US's F-1 Optional Practical Training (OPT). These initiatives position international students as local economy stimulators and potential contributors to the domestic skilled labour forces, not merely 'cash, competition, or charity' (Stein and De Andreotti 2016) but as 'labour' (Coustere et al. 2023).

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<sup>1</sup> It is important to note that in the post-graduation phase, although migrants are granted work permits and their main activities shift from studying to working, they still hold 'student visas' (not work visas) and thus must continue to comply with the associated requirements. Therefore, including both the study and post-graduation work permit phases in the definition of 'student-migrant-worker' considers the legal continuity in their migrant category.

Student-migrant-workers represent a distinct group of the ‘backdoor’ entry visa holders. The ‘doors of entry’ conceptual tool effectively categorises different types of temporary migrants into ‘front doors,’ ‘side doors,’ and ‘back doors’, depending on the entry conditions and the route to permanent residency (Vosko 2023). Entry through the ‘front door’ means ‘relatively stable (albeit non-permanent) residency status in the short term and straightforward pathways to permanent residency’ (Vosko 2023). In contrast, entry through the ‘back door’ means a non-work-purpose visa and does not inherently provide a pathway to permanent residence. Students and working holidaymakers (Bowman and Bair 2017, Vosko 2023), though might possess work permits, are considered typical ‘backdoor’ entrants. Research indicates that these ‘back-door’ visas’ holders often face greater insecurity regarding their employment and residency status than other visa categories (Vosko 2023).

Despite the significant presence of student-migrant-workers and their potential integration into the host country’s labour market, they are frequently underrepresented in migration studies or broadly categorised under generic labels such as ‘highly skilled migrants.’ This oversight persists largely because student visa holders are often viewed as a fluid/ temporary category without automatic access to or certain prospects for employment or settlement. However, the landscape is changing since international students are increasingly accessing the local labour market and becoming ‘important feeders for labour migration’ in many OECD countries: individuals with post-study permits have long-term employment rates comparable to those of labour migrants and significantly higher than those of the migrants overall (Kamm, Liebig and Boffi 2022). It is well-documented that in the United States, international students enter the labour market in large numbers and have the potential to obtain longer-term work visas and even permanent residence. In 2022 alone, more than 200,000 international students were authorised to work on OPT, and nearly 50,000 found employment upon graduation (Beine, Peri, and Raux, 2023). A remarkable 77.2% of the recipients of the well-known ‘front door’ work visa H-1B<sup>2</sup> were former F-1 international students (U.S. Citizenship and Immigration Services 2023),

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<sup>2</sup> The H-1B visa is a predominant pathway for skilled workers seeking employment-based (EB) green cards in the United States. In Fiscal Year 2023, H-1B visa holders constituted a significant proportion, 64.3%, of PERM applications for green cards. Therefore, it is a prominent ‘front-door’ visa, a major stepping stone towards permanent residency.

highlighting a strong correlation between international students and H-1B visa holders, who are the predominant group petitioning employment-based green card (Shih 2016).

### *Precarious employment and temporary agency work*

Precarious employment, characterised by ‘uncertainty, low income, and limited social benefits and statutory entitlements,’ (Vosko 2011), is increasingly common among migrant workers, including those in high-skilled, high-wage industries (Zhang, Nardon and Sears 2022). Student-migrant-workers are as susceptible as their migrant counterparts to precarious jobs. For example, they have been found to do unpaid internships or minimally paid jobs during their studies (Maury 2020, Oke et al. 2023), and those with post-graduation work permits frequently find themselves in industries marked by high levels of uncertainty and instability and experience occupational downgrading (Vosko 2023). Commonly, student-migrant-workers encounter erratic work hours, minimal vacation time, and increased exploitation risks (Marson, Ferris and Dirisu 2022).

Temporary agency work (TAW) is a typical non-standard employment form (International Labor Organization ILO). This model is often described as a ‘triangular employment relationship,’ whereby the workers sign a formal employment contract with the staffing agency, not the company where they provide work for; the company pays the agency, which in turn is responsible for the worker’s wages, benefits, employment taxes and social security (Bidwell and Fernandez-Mateo 2008). The proliferation of TAW is largely propelled by the ‘flexible firm’ business model, employment externalisation, and workplace fissuring (Weil 2014). Firms today largely outsource non-core positions (e.g., IT, HR, janitorial services)’s labour supply to authorised staffing firms (Weil 2014). Contemporary TAW arrangements may feature more complex structures due to extended subcontracting of labour supply, with a job order passed down multiple tiers, and several intermediaries step between the client and the agency (Rho 2018). In this case, large staffing firms obtain direct job orders that are then subcontracted to smaller agencies through different tiers of labour market intermediaries, each taking a share of the profits (Barrientos 2013, Xiang 2007). The smaller agencies are operating at the industry’s lower end, often focus on niche markets like specific occupations and immigrant labour.

While TAW deviates from standard employment relationships, it is not inevitably precarious. However, research indicates that workers hired by lower-tier agencies often face



significant precariousness, with considerably lower compensation and benefits than those hired by the higher-tiers (Vosko 2000). Migrants frequently find employment in these lower-tier niches (Ontiveros 2017, Savinar 2022), which constitute a part of a ‘migration infrastructure’ that informs, facilitates and conditions the migration process (Xiang and Lindquist 2014). However, existing case studies also highlight potential practices these agencies employ that exacerbate migrants’ precarious conditions, such as imposing debt, restricting labour mobility, and charging additional fees for housing and training (Shamir 2017). In this paper, I examine the experiences of student-migrant-workers hired by these lower-tier staffing agencies that specialise in high-tech occupations and immigrant niches (also referred to as ‘consulting firms’ or ‘body shops’ in literature). The central question to ask is why many student-migrant-workers engage in this type of TAW despite the inherent precariousness associated with it.

#### *Immigration Policy as a Control System and Employment Reference System*

Immigration policy is an effective control mechanism that largely influences the migrants’ employment (Anderson 2010). Specifically, immigration policy functions as a ‘mould constructing certain types of workers’ (Anderson 2010:312) by categorising statuses, defining allowable employment relations, and creating institutionalised uncertainty (Anderson 2010). This policy differentiates citizens and non-citizens to produce ‘categorical inequality’ (Massey, 2007), which governs non-citizens through highly ‘differentiated legal distinctions’ (Ellermann 2020). Non-citizens often endure a ‘precarious legal status’ (Goldring 2022), which institutionally engenders precarious conditions for their entry and residence.

Non-citizenship is not a homogeneous group but includes a diverse spectrum of legal statuses (Tonkiss and Bloom 2018), from lawful permanent residents (also called LPR or green card holders) to individuals with temporary residence permits: temporary workers, refugees and asylum seekers, students, tourists, and unauthorised entrants. Immigration policies critically shape their experiences by differentially regulating aspects such as labour market mobility, employer portability, the validity of work permits, spouses’ access to the labour market, and possible routes to permanent residency (Weinar and Klekowski von Koppenfels 2020).

The deterministic impact of restrictive immigration policies on migrants’ employment is well-documented. First, immigration policies often enforce occupation and employment

restrictions, linking a visa to a specific job. For example, in the US, H-1B visas are reserved for specialised occupations requiring advanced education and skills, while H-2A visas are for agricultural workers. Second, immigration policies shape migrants' employer requirements; certain visas necessitate a formal employment relationship with a sponsoring employer. Thirdly, these policies set the terms for how long migrants can stay and the circumstances under which they might be deported. These are the restrictive elements of immigration policies that shape the legal status of non-permanent migrants as being temporary, dependent, and deportable.

Könönen (2019) argues that restrictive immigration regulations provide a key frame of reference for migrants' employment decisions, particularly for those without permanent residency. However, much of the existing discussion, including Könönen's framework, predominantly focus on the restrictive or disciplinary aspects of immigration policies, with less emphasis on 'opportunity.' This opportunity aspect is not only intentionally crafted by policy designers but also aligns with migrants' aspirations and desires. The policy designers have deliberately integrated competitive and selective migration regimes (Shachar and Hirschl 2013) to incentivise the global 'best and brightest', as they are offering dual-intent visa holders a clear route to permanent residency. Non-dual-intent visa holders may not have a direct pathway to permanent residency, but there are still ways to transition to a dual-intent one. And sometimes, policies encouraged such transition. For example, there is an 'advanced degree exemption' for F-1 holders who have earned a US master's degree or higher to transition to the dual-intent H-1B visas, allocating at least 20,000 slots specifically for these individuals. Migrants themselves have been also found actively seeking longer stays and even permanent residency in the hosting country, navigating a process from 'risky to secure legality' by switching between visa statuses (González 2022; Jacobs 2019). Thus, incorporating 'opportunity' is essential to fully understand how immigration policies serve as a reference frame for employment decisions.

Moreover, the frame of reference does not operate in a vacuum, and the intersections of social contexts with migrants' social locations must be considered. According to Vosko (2011), the precariousness of employment conditions is heavily influenced by workers' social contexts and locations, including their labour market status tied to occupation and industry, as well as personal attributes like gender, ethnicity, and country of origin.

The study contributes to demonstrate how the restrictive and opportunity aspects of immigration policies and migrants' position in the labour market affect migrants' employment decisions. Additionally, it contributes to the knowledge of how specific groups like student-migrant-workers—skilled, temporary, and entering through ‘back-door’—use these policies to guide their employment options.

### *F1-OPT Visas: A Closer Look*

The F-1 visa, the primary legal basis for international students to study in the United States. Despite not being a work visa, the F-1 allows work authorisation through Curricular Practical Training (CPT) before graduation and OPT after graduation. Students will be issued Employment Authorization Documents (EADs) necessary for working legally in the US.

From 2004 to 2016, nearly 1.5 million international graduates obtained work authorisation through OPT, with 225,621 authorised in 2022 alone, including 119,833 under the STEM OPT extension (ICE 2023b). That year, the number of authorised F-1 OPT holders even surpassed initial approvals for the more well-known H-1B visa (206,002). Centre for Immigration Studies has referred to it as ‘probably the nation’s second-largest foreign worker program, after H-1B.’ (North 2022).

F-1 OPT encapsulates temporary immigrant visa elements. Standard terms offer 12 months with a potential 36-month extension for STEM graduates. The program requires employment to relate to the student’s major and does not initially require employer sponsorship, although this becomes mandatory for the STEM OPT extension. For STEM OPT, a ‘bona fide employer-employee relationship’ is required; the employers should be registered with E-verify and complete Form I-983 to ensure alignment with US standards. There is also a risk of illegality for visa holders: exceeding the allowable 90-day unemployment in the first year and an additional 60 days in the STEM extension risks invalidating the work permit and thus losing legal standing.

In addition to these restrictions, F-1 OPT offers certain opportunities. For one thing, OPT allows for work authorisation extensions. Although initially limited to 12 months, students in STEM majors can apply for a STEM OPT extension and continue to work in the US for up to 36 months. On the other hand, while the F-1 visa is not ‘dual-intent’, i.e., allowing the intention to immigrate, it offers the possibility of transitioning from the ‘back door’ to the ‘front door.’ F-1

holders can apply for dual-intent high-skilled work visa H-1B while working and employment-based permanent residency in the future (Nitzschke 2016). Recent data demonstrates that the path from F-1 to H-1B and eventually permanent residency is very frequent (Ruiz and Gramlich 2019). In 2022, three-quarters (77.2%) of H-1B petitioners held an F-1 visa (USCIS 2023), highlighting the substantial overlap between these international students and high-skilled labour migrants. Additionally, legislation encourages the transition between F-1 student visas and the H-1B program, in that each year, 20,000 H-1B visas are specifically reserved for foreign students who have earned a master’s degree from a US university.

However, visa extensions and transition come with conditions. To extend to STEM OPT, a ‘bona fide employer-employee’ relationship must be proven, and the student must be a STEM major. Transitioning to the H-1B visa also requires an employer sponsorship. Employers must file a Labor Condition Application on behalf of the H-1B applicant and report the applicant’s employment details. These requirements restrict eligibility for OPT STEM extensions and H-1B petitions to ‘paid employment’ and exclude self-employment, such as being individual contractors. While the F-1 OPT program imposes certain restrictive conditions, it also subtly facilitates access to more stable legal statuses and even permanent residency, depending on the applicants’ ability to navigate complex regulations and find appropriate employment.

### *Respondent Demographics*

This study is based on 42 in-depth interviews with F-1 OPT visa holders conducted from June 2022 to August 2023. All participants were engaged in TAW and hired by small staffing firms. Table 1 provides demographic details of the F-1 OPT holders interviewed.

**Table 1: Characteristics of Interviewee (current and former F-1 OPT holders)**

<b>Characteristics</b>	<b>No. of Interviewees (N=42)</b>
<b>Age Bracket</b>	
24-26	4
27-29	25
30-32	13
<b>Educational Levels</b>	
Master’s Degree	39

Bachelor's Degree	3
<b>Sex</b>	
Male	30
Female	12
<b>Engagement in Agency Work</b>	
First employment is agency work	32
Current employment is agency work	28
<b>Country of Origin</b>	
China	38
India	2
Vietnam	1
South Korea	1

All interviewed student-migrant-workers were Asian. This corresponds with the dominant (70.4%) racial group among international students on F-1 visas in the US. The majority of interviewees were Chinese, aligning with the data that China is the leading source of international students, comprising 46% of all F-1 visa holders in 2022. One in ten international students authorised for OPT was Chinese. This ranks China after India and before South Korea, Taiwan, and Canada of OPT participants (ICE 2023a). This demographic selection is representative, considering the significant number of Chinese students applying for post-graduation OPT work permits<sup>3</sup>.

This study employed online recruitment strategies to engage participants, focusing on the relatively hidden population of F-1 OPT holders involved in TAWs. Due to this group's rather hidden and hard-to-reach nature, a non-probability sampling method was used. Purposive and snowball sampling techniques were combined, targeting individuals with both characteristics: (1) those with current or previous TAW experience in the US and (2) those who are or were F-1 OPT holders.

The well-known professional networking website LinkedIn was the main channel for recruiting participants. In addition, the 1Point3Acre platform, which caters primarily to Chinese immigrants for discussion and experience sharing, played an important role in recruiting

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<sup>3</sup> China ranks as a major country of origin for applicants of H-1Bs and employment-based (EB) green cards. It is second only to India in the number of H-1B applications and follows both the Philippines and India in the number of EB green card applications. In addition, although direct data linking F-1 OPT to H-1B and then to employment-based green cards is lacking, the significant overlap between F-1 and H-1B visa holders, as well as between H-1B holders and green card recipients, highlights the active participation of F-1 students (especially those who are Chinese) in the labour market and their pursuit of permanent residency.

participants. Direct messages were sent to potential participants through these online platforms and communities frequented by student-migrant-workers. Complementing these methods, a snowball sampling method was also employed that allowed initial participants to recommend those who also met the criteria.

Given the wide geographic spread of participants and participants' preference for remote interviews, voicing concerns over the confidentiality of in-person interviews, most interviews were conducted remotely through video and telephone. However, in-person interviews were also arranged where feasible and with the participants' consent.

All participants possessed a master's degree, and were between 24 and 32 years old. Predominantly, these student-migrant-workers were in various industries, including traditional sectors such as healthcare, finance, retail, and supermarkets. Additionally, many were employed in IT-driven sectors such as e-commerce and software development. The time they had spent working in agency roles varied; some had just begun, with a minimum of a quarter-month's experience, while others had up to three years of agency work under their belts. Notably, at the time of the research, two-thirds of the interviewees were still actively involved in TAW.

The interview protocol was semi-structured, featuring mainly open-ended questions. Initially, participants discussed their educational backgrounds and transition from international students to migrant workers. The conversation then shifted to their employment choices, exploring the challenges they encountered in their job searches and the factors that led them to opt for TAW. The third set of questions focused on how F-1 OPT visa conditions influenced their employment decisions, assessing the impact of both restrictions and opportunities. In the final part of the interview, I sought to capture participants' perspectives on TAW, encouraging them to discuss how they view agency employment compared to other job types and their reasons for these views. The interviews also engaged participants in detailed discussions about their specific experiences, the hurdles they faced, and any significant incidents as they navigated the complexities of visa constraints and job opportunities. The protocol for interviewing agency work practitioners included questions on how agencies perceive and articulate the advantages and drawbacks of TAW, their strategies for promoting TAW as a feasible employment option, and their use of immigration policy dynamics to attract student-migrant-workers.

All participants were fully informed about the purpose of the study as well as their right to withdraw at any time without penalty, and assured that their data would be kept confidential and that they would remain anonymous. Consent for their participation and for the interview to be recorded was obtained prior to the interviews. Anonymity was achieved by removing and altering personal identifiers. Confidentiality was further ensured by the secure storage of data. Access to this data was strictly limited to the research team. The study received approval from an institutional review board and an ethics committee. In the article, pseudonyms have been consistently employed to maintain the anonymity of the interviewees.

The interview data were transcribed and analysed thematically. This allowed for the identification of recurring themes. Qualitative analysis of the interview transcripts was conducted using a thematic analysis approach aided by the qualitative data analysis software program NVivo 12. After transcribing the recordings of the interviews, transcripts were read multiple times to identify critical responses. Initial codes were generated inductively, allowing patterns and themes to emerge directly from the participants' words rather than preconceived categories being imposed. NVivo 12 facilitated the organisation and reorganisation of these codes and themes.

## **Findings**

### *Intersection of restrictive Aspects of immigration policies and Labour Market Position*

A primary theme from the interviews was the restrictiveness of immigration policies and how they intersect with the labour market positioning of student-migrant-workers, influencing their employment decisions. Restriction elements include temporary residency, employment dependency, and the risk of deportation—factors that intertwine and exacerbate the challenges faced by this population. The nexus of temporariness and dependency is evident as workers must secure employment within a designated time frame (e.g., 90 days of allowed unemployment). This temporariness is also closely connected to potential deportability, placing student-migrant-workers in jeopardy of losing lawful presence if they cannot find employment within a proscribed time.

The allowable unemployment period under OPT is short, and the Department of Homeland Security strictly enforces these limits to sort out the underperformers in the job market. Many interviewees perceive these limits as a ticking clock towards potential deportation.

The anxiety over exhausting their entitlement to unemployment and jeopardising their legal status was a common stressor for participants. Tao, an electrical engineering master's graduate, shared her experience of the stress associated with this unemployment countdown:

Even though OPT is a work permit for a whole year, it doesn't mean you can spend that whole time looking for a job or being unemployed. You've only got a three-month window after your start date to land a job. If you don't find something within those three months, you could lose your legal status in the US and might have to leave the country. Basically, you're racing against time.

The account illuminates how policy structures, ostensibly designed to integrate international graduates into the workforce, can inadvertently cause instability and insecurity.

Moreover, interviewees' multiple labour market disadvantages significantly impair their ability to secure employment within the initial 90-day allowable unemployment period. Firstly, the interviewees' 'student' feature, i.e., lack of work experience, places them at a disadvantage in the labour market. Ran, who holds a master's degree in computer science, indicated that companies tend to want candidates with a certain amount of work experience: 'Most companies want people with at least six months of experience... Basically, the more experience you have, the better your chances and the faster things move.' Work experience is reported to be a crucial requirement for most high-tech positions in the US labour market. Employers are reluctant to hire entry-level applicants straight out of school, but rather, they prefer applicants who can immediately contribute without requiring additional training time (Cappelli 2012). This requirement disproportionately impacts recent international students who are less likely to have held a job during their studies than their domestic counterparts (Coustere et al. 2023). Lacking work experience is a key barrier to international students' securing employment (Gribble, Rahimi and Blackmore 2017). Specifically, In the US, international students often lack full-time work experience before graduation due to visa restrictions, such as a maximum of 20 hours of work per week. Moreover, those who engage in 12 months or more of full-time CPT pre-graduation become ineligible for OPT, which reduces their willingness to work before graduating.

Second, interviewees' 'migrant' features, characterised by the intersection of their citizenship status, cultural and ethnic attributes, and country of origin, heighten the challenges



faced when entering the US labour market. Migrant features imply, first and foremost, being non-citizens and visa-dependent. Many interviewees believe that employers prefer citizens or are hesitant to hire temporary migrants. For example, Justin, who has a master's degree in software engineering and engaged in TAW for 14 months, said:

You know how it is these days; companies mostly want to hire people with permanent residences. And here you are, a fresh grad, an international student with zero work experience, and you're expecting an H1B sponsorship? It's like, we're running a business, not a charity.

This account echoes previous research suggesting that employers' preferences for applicants who hold permanent residency or citizenship significantly hurdle labour market access for those with short-term work permits (Tran et al. 2020). Employers are either unclear about student visas, hesitant to recruit students on such visas (Tran et al. 2020), or tend to view the process of recruiting international graduates as 'expensive, lengthy, complicated' and even risky (Gribble, Rahimi and Blackmore 2017).

Migrant features also imply cultural and ethnic 'otherness,' such as possessing a non-English-sounding name and being a non-native English speaker. Previous research has found widespread 'translingual name discrimination' (also called 'name policing') (Dovchin and Dryden 2022) in the labour market in which resumes with non-English-sounding names are much less likely to receive callbacks and more likely to be rejected than those with English-sounding names (Oreopoulos 2011). There is also 'translingual English discrimination,' where non-native English speakers pay 'ethnic penalties' that they may be excluded in their initial job screening when competing with locals (Dovchin and Dryden 2022, Li and Campbell 2009). Some interviewees suggested that their limited English proficiency may have influenced interview results. For example, Amber, who has a master's degree in information systems, said: 'I think maybe [the rejection] was because of my English ... As a foreigner, that might be an issue as well. So it's difficult for people like me to find a job.'

Furthermore, there is potential xenophobia related to a specific country of origin mediated by contexts of international geopolitics. Chinese interviewees suggest that their nationality may negatively impact their job prospects in the US due to security- and policy-driven screening

mechanisms embedded within online application processes. For example, Bing, a master's in electrical engineering, recalled:

I think my being Chinese also affects whether I can successfully find a job here. I recently began to encounter a question when I do my online career application that asks if I am a citizen of certain countries, which puts China alongside Russia, Cuba, Venezuela, Iran, and North Korea...I wonder if that's why I haven't been able to find a job.

This reflects broader concerns implied in recent research that US-China geopolitical tensions in the post-pandemic era have significantly led to the portrayal of Chinese intellectuals in the US as threats to national interests (Xie et al. 2023). International students are also found to be the agents of geopolitical relations, as media portrayals frequently demonise Chinese international students, further exacerbating their vulnerabilities in the labour market (Xie 2023). These findings suggest that country of origin, as a contextual factor, can exacerbate the labour market challenges faced by student-migrant workers, particularly those from countries with strained relations with the US.

Lastly, the state of the labour market itself adds to the challenges. The allowable unemployment period of only 90 days often appears unreasonable when contrasted with the actual US labour market dynamics. On average, completing a full-time job interview takes about 22.9 days, and even longer for tech jobs (e.g., an IT Specialist's interview process can take 48.1 days) (Chamberlain, 2015). The lengthy hiring process runs counter to the speed required by the 90 unemployment day limit. Hang highlights the challenges posed by the OPT program's unemployment day limit, especially in light of the lengthy job application process:

After you send your resume, don't expect to hear back right away. There's usually a bunch of steps, like phone interviews, online assessments, and several rounds of online interviews to test your coding and soft skills. Only after all that, you might get an onsite interview. But even then, you won't know the results immediately... The fastest ones take over a month, but it can drag out to over two months with others. And if it's super slow, well, there's no telling how long it could take.

Like Hang, many interviewees highlighted the lengthy hiring process, noting that even fast companies take over a month, and slower ones can take two months or more, to decide. Often, students exhaust most of their unemployment window just waiting for application feedback. This

limited time, combined with a competitive job market and the difficulties recent graduates face in job searching, leads many to despair. Lee, a master's degree student in applied analytics, described the emotional toll of his post-graduation job hunt:

I was job hunting for four months, both before and after graduation... with the OPT clock ticking down, I felt totally lost, like a fly on the wall. I just had a really tough time trying to find the work I actually wanted to do.

Under such an emotional toll, many interviewees reported often sidelining their goals of finding secure, full-time employment in favour of finding any employment that would enable them to maintain their visa. As the grace period neared its end, some interviewees, like Hang, felt the pressure to find any job, saying, "With just a month left, I had no interviews and had to think of a backup plan. I was ready to take any job, even if it wasn't what I really wanted, just to maintain my visa status." Nan, who has a master's degree in game design, described a similar experience: "After searching for months and failing so many interviews, I was nearly at my breaking point. But then, getting an offer from an agency felt like a lifeline when I needed it most."

### *Intersection of Conditional Opportunity and Labor Market Position*

A second theme from the interviews highlights the 'opportunities' both designed by immigration policies and desired by migrants and how they intersect with labour market positions to guide employment decisions. Merely considering restrictions does not fully capture why interviewees gravitate towards TAW, as other forms of precarious employment could also be options. Rather, the conditional opportunities to extend and transition legal status and the workers' pursuit of such opportunities often make TAW a second best when standard employment is unattainable.

The F-1 OPT offers opportunities for visa extension and transition. For instance, international students in STEM fields are eligible for a 24-month work authorisation extension and the potential to transition to an H-1B visa. However, to qualify for this extension and transition, F-1 OPT holders must establish a 'bona fide employer-employee relationship,' which excludes any employment that is not full-time, unpaid, or lacks employer-employee contracts.

Interviewees noted that during the first year of OPT, they engaged in various forms of precarious work, including volunteering, internships, and freelancing. However, by the end of that year, all had transitioned into TAW. Unlike other types of precarious employment, TAW often

provides paid employment with an employer, a salary, and a full-time contract, which are elements to meet the ‘bona fide employer-employee relationship’ requirement (though this can be contentious) necessary for visa extensions or securing sponsorship for a longer and dual intent visa. The scarcity of standard employment, particularly in high demand for flexibility and the workplace is increasingly fissuring like IT, exacerbates the challenge of finding jobs that meet visa extension and transition requirements. Yuan, a master’s in statistics, complained: ‘How can you find full-time jobs if there are mostly contractor and freelancer jobs?’

Interviewed students acknowledged the potential opportunities for visa extension and potential transition. Many view student visas not just as a means to work temporarily but as a pathway to long-term work visas or even permanent residency. There is a prevalent fear among them of losing their status and having to return home without fully leveraging the benefits of OPT. For instance, Pei, a computer science graduate, emphasised:

So, studying in the US isn’t just about the degree. It’s more like getting this package deal. You get your degree, but there are also all these add-ons. You’ve got, like, one to three years of OPT, maybe three to six years on an H-1B. And in your mind, there's always that chance of landing a green card... It's almost like, if you don't make the most of your OPT, you're leaving some of the goods on the table.

Pei’s perspective resonates with the common aspiration among many interviewees: studying in the US is often perceived as a ‘package deal’ that provides opportunities for quality education and work experience in the US and the potential for permanent settlement. This corresponds with earlier research showing that despite that F-1 visa rules mandate that applicants declare a nonimmigrant intent, many holders of F-1 student visas aim to settle permanently in the US (Jacobs 2019).

However, such opportunities are conditional and not guaranteed. As with many temporary visas, the benefits promised by student visas are not automatically assigned, but are dependent on criteria. For example, while the first year of OPT allows the student to engage in any type of work, beginning in the second year, a ‘bona fide employer-employee relationship’ is mandatory. Employers must complete a Form I-983 certifying that the worker is there to receive training and earn wages. As a result, even if some respondents initially found other types of nonstandard jobs,

they needed to recalibrate their career aspirations to obtain a visa extension. For example, Nan, who graduated with a degree in game design, worked as a volunteer before joining an agency:

The first year (of OPT) is pretty easy-going. Your employer doesn't need to be E-Verify registered. And there's no strict need to have a paid job. You can do pretty much anything... I volunteered at a small NGO for a couple of months after getting my EAD card. That way, I didn't have to use the unemployment period in the first year. But I had to look for full-time before the second year came.

Xiao, an electrical and computer engineering graduate, briefly interned in a lab after graduation: 'I started my OPT by continuing as an intern in my professor's lab. So, I didn't have to use any of my unemployment days during that first year.' David, an animation design graduate interviewee, worked as a freelancer at Fiverr at the beginning:

After I graduated, I freelanced on Fiverr. It really got me through my first year of OPT. But as time passed, I saw how important it was to have a full-time job to move up in my career get my OPT extension and apply for an H-1B visa.

Similarly, the student-immigrant workers' labour market position and migrant features make it challenging to secure jobs that sponsor dual-intent visas within the OPT period. Many local small businesses are reluctant to sponsor H-1B visas for student-immigrant workers. For example, Clair, a computer science graduate, initially secured a full-time position at a small company, but despite a year of employment, the company did not sponsor her H-1B visa.

I graduated in May and started working as a web developer for a small company. They promised to sponsor my H1B visa, but in January, they backed out due to financial issues. I missed the first H1B lottery, and a friend recommended a staffing agency to me. So I seized the opportunity and joined the agency.

### *Entering Lower-tier Staffing Agencies*

The third theme revolves around how staffing agencies steer student-migrant-workers towards TAW and why TAW is preferred in the face of the discriminatory and disadvantageous conditions in the mainstream labour market

It is crucial to recognise that the TAW interviewees engaged in embodied employment precariousness. All interviewees are employed by a specific agency type: small staffing agencies

specialising in high-tech occupations and are migrant niche. These agencies typically receive job orders from larger staffing firms and then deploy workers to client sites. Opportunities for direct client interaction are rare, as orders are typically second- or third-hand and come through upper-tier vendors. Although interviewees acknowledged that agency work offered valuable experience through temporary assignments at several large Fortune 500 companies—opportunities that are harder to have by seeking standard employment—they also highlighted the precarious nature of TAW. Interviewees shared that their wages are below industry standards due to cuts taken by multiple intermediaries, they face irregularities in job assignments, and they have limited control over their work processes. This is because they do not have a direct contractual relationship with the clients and thus have limited negotiation rights on work terms. These are also indicators of employment precariousness (Vosko 2011). The precariousness is also shaped by the agency's business model. On the one hand, the agencies profit significantly from the large difference between what they charge clients and what they pay their employees, and they typically offer conditional benefits, such as paid vacation after a certain amount of billable hours. On the other hand, they may impose additional fees like training, accommodation, and liquidated damages fees. This echoes previous findings from studies on 'body shops,' 'migrant recruiters,' and 'consulting firms' (see, e.g., Ontiveros 2017).

However, despite the precariousness, TAW remains a favoured option. This preference is first and foremost because TAW, different from other precarious employment forms, can fulfil immigration regulations' requirements<sup>4</sup> for visa extension and transitions. As interviewee 32 put it:

You know, agency employees are actually 'full-timers' too. It's just that you're not considered full-time for the client, but you're a full-time employee for the agency. You're on the agency's payroll; they're the ones issuing your W2 [a wage and tax statement] and covering your health insurance. This becomes super important when you're applying for an H1B because you need to show that you're an agency

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<sup>4</sup> USCIS explicitly states that "Staffing and temporary agencies and consulting firms may seek to employ students under the STEM OPT program, but only if they are the entity that provides the practical training experience to the student and they have and maintain a bona fide employer-employee relationship with the student. STEM OPT participants may engage in a training experience at a site other than the employer's principal place of business as long as all of the training obligations are met, including that the employer has and maintains a bona fide employer-employee relationship with the student." (<https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/optional-practical-training-extension-for-stem-students-stem-opt>)

employee. The agency is the one that really controls your work, and you've got to have a letter from the client<sup>5</sup> to prove this compliance. But everything will be ok if you get all the necessary documents.

The agency practitioners interviewed are fully aware of the disadvantaged position of student-migrant-workers in the labor market. Thus, they tailored their business models to achieve a win-win: students can gain experiences and training from TAW, and they can earn profits from 'marketing,' i.e., assigning employees to clients' projects. Agencies are reported to provide various trainings to enhance students' prospects of securing assignments from clients. This includes systematic coding training, real-client projects, and mock interviews designed to improve English communication skills. The owner of the labour agency described their role as follows:

When a student just starts out, it's really tough. That's where we come in. We help them, and sure, we make some money doing it—that's our motivation...For those who can't find a job and get stuck for a while, they get really desperate. That's when they turn to us. We offer systematic coding training...we also offer real-scenario projects that students can write into their resumes...and we offer mock interviews for English communication training... ...And, of course, we sponsor their visa.

The preference for TAW is also influenced by the agencies' demonstrated willingness to hire F-1 OPT students and sponsor them for visa extensions and transitions. Agencies proactively contact recent international graduates through targeted recruitment strategies involving phone calls, emails, and direct messages on platforms like LinkedIn and Handshake. They explicitly mentioned potential benefits such as OPT extensions, H-1B and even green card sponsorship, although these are often conditional on being on an assignment during the H-1B lottery. For example, Ran, an electrical and computer engineering graduate, shares how agencies directly communicate with candidates:

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<sup>5</sup> A client letter usually comprises the following elements:(1) Confirmation of the assignment, detailing the expected duration and conditions under which the assignment may continue. (2) Details of the duties that outline specific responsibilities workers will have. (3) Employment relationship, which clearly states the worker is an employee of the staffing agency and that the client company does not have the authority to reassign him to other projects or locations. (4) Management and Supervision, which clarifies that workers' work will be directed, reviewed, and supervised by a manager from the staffing agency. (5) Work hours that workers are expected to work a standard full-time schedule of 40 hours per week. (6) Salary and benefits: the staff agency is confirmed as the entity responsible for paying workers' salaries, including handling applicable taxes and benefits. (Summarised by a client letter provided by an interviewee)

They'll chat with you over the phone to understand your situation...They're there to guide you through the entire process, give advice, and help you with your timeline plan. These folks typically have a pretty good understanding of the visa policy, often even better than you might, or at the very least, they're not less informed. They'll lay out a timeline for you, and point out where the urgent parts are and what needs to be prioritised.

Moreover, agencies are reported to have the knowledge and abilities to meet the immigration regulation requirements. Interviewees reported that agencies' job advertisements often mention that they are registered E-verify companies, hold a good standing, and have a valid Employer Identification Number, i.e., are compliant with USCIS requirements. They mentioned hiring workers on their payroll as W-2 employees and withholding employer taxes. They also stated that they would file Form I-983 and the Training Plan in the greatest compliance with immigration regulations. The agency's ability to process immigration status reliably was an important attraction for interviewees:

Agencies are a much better bet than companies that don't use E-verify, don't sponsor visas, or even don't hire migrants. They handle OPT extensions and H1-Bs pretty much without hitches. I know some agencies have had issues with H-1B rejections because they didn't get the paperwork right, but my agency takes the H-1B application process seriously. They're very professional about it and even have an immigration attorney on-site to make sure everything's compliant. I got my H-1B last year.

Agencies are reported to be more adept at navigating the legal processes for obtaining OPT extensions and H-1B visas and have a deeper understanding of how to meet policy requirements than the average firm. Kean, who transitioned to TAW after being employed at a small local company for a year, noted that agencies are often migrant-niche and are thus more familiar with visa policies. In contrast, many small local companies are unfamiliar with or reluctant to sponsor temporary visas.

So, about the legal status thing, agencies are definitely more reliable than small businesses. They're mostly staffed with migrants who need to maintain their



status. Agencies have way more experience dealing with H-1B and STEM OPT than those small local firms that might not even know what H-1B is.

## **Discussion and Conclusion**

This study supports and extends the concept of ‘immigration regulations as a reference framework’ and observes the actual employment pathways, and shows how current immigration policies become temporary migrants’ new reference frame for employment. It reveals that student-migrant-workers’ employment ‘choices’ are largely shaped by the rather unconscionable restrictions and opportunity aspects of immigration regulations and their subordinated position in the labour market. This frame of reference is crucial in explaining student-migrant-workers’ entrance into precarious employment: they find themselves making a trade-off: accept precarious employment as a compromise for their precarious legal status and disadvantaged positions in the job market.

The intersection of restrictive policies and subordinated labour market options places student-migrant-workers in a precarious position. They risk falling into illegality if they fail to secure employment within an unreasonable narrow window. Admittedly, policies also create gateways for transitioning from temporary to more stable or even permanent statuses through sorting mechanisms like employer sponsorship. However, these conditional opportunities heavily depend on securing paid, full-time, and employer-dependent employment. Moreover, migrants’ decisions are not made in a vacuum but are influenced by a combination of immigration policies and external sources of vulnerability they experience as a result of their position in the broader policy and labour market system. This includes factors like discriminatory hiring practices against their lack of working experience, non-citizens, non-native speakers, and nationals of certain countries. Furthermore, migrant-niche staffing agencies, as part of a larger migrant and employment infrastructure, emerge as significant players in this frame of reference, bridging between student-migrant-workers and the labour market, and shaping their migration trajectory. They have the willingness and knowledge to navigate the complexities of immigration laws and provide employment opportunities that align with regulatory requirements for maintaining, extending and transitioning status. However, employment agencies also present a risk of precariousness and even exploitation.

A limitation of the study is that the TAW discussed may be confined to a specific subset of student-migrant-workers, particularly those seeking high-skilled/STEM-related positions. It is therefore necessary to emphasise that while TAW is highly effective in specific fields, it may not apply to all types of student-migrant-workers or all career paths. Another limitation is that the study only discusses the students who aspire to obtain a more permanent work visa and even permanent residence. However, it is important to note that not all students share this goal. Thus, the opportunity aspects of immigration policy largely depend on whether students are interested in longer stays and even settling down in the host country.

Future research can explore, firstly, how student-migrant-workers' race and ethnicity intersect with their employment reference framework. Although this paper addresses the impact of participants' countries of origin, it requires a more detailed analysis of racial and ethnic influences. Secondly, future research can investigate how technology platforms and intermediary services like LinkedIn and Handshake influence the temporary migrants' employment pathways and exposure to specific employment. The study's findings highlight the need for policy reforms to enhance the well-being of student-migrant workers. One recommendation is to lengthen the allowable unemployment period, acknowledging the difficulties temporary migrants face in finding full-time jobs. Further studies should also assess the long-term effects of precarious employment on these workers' labour market opportunities, social integration in the host country, and vulnerability to exploitation by staffing agencies.

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