INSIDE THE MINDS

Working with Government Agencies in Immigration Law

Leading Lawyers on Understanding Developments in Enforcement and Compliance, Navigating the Regulatory Framework, and Achieving a Successful Outcome for Your Client

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Fitting Square Pegs into Round Holes: Best Practices of an Immigration Lawyer

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Immigration law is a patchwork of laws and government agencies that are never static. Change is the only constant. Yet, despite all the change, the basic tools available to legally immigrate to the United States remain rather limited. Often, the practitioner's challenge is to fit the square peg (of the client's facts and immigration goals) into a round hole (i.e., one of the limited, tightly defined categories for lawful immigration).

This chapter briefly reviews our system of immigration laws and agencies and offers some practice pointers for the novice (and reminders for the experienced) immigration advocate.

All Immigration Law Emanates from the INA

One federal statute provides the source of all U.S. immigration law: the Immigration and Nationality Act of June 27, 1952, as amended, 8 U.S.C. §1101 et seq. (INA). Before this statute, our immigration laws were scattered about our jurisprudence. The INA now defines in one place all visa categories, legal restrictions and requirements, procedures, criminal and other legal violations, and contains numerous legal twists and turns relating to immigration. Every lawyer—especially an "immigration lawyer"—must go back to this original source faithfully. Over-reliance on secondary sources, or on one's memory, can be fatal.

The full text of the INA, with amendments, is available on the Web site of U.S. Citizenship and Immigration Services (USCIS). Go to www.uscis.gov.

Amendments to the INA, naturally, are enacted by Congress, then accepted or vetoed by the president. The issue of immigration and whether we love, hate, or are neutral toward immigrants who will always want to come to our country is a continuing and controversial one. Due to the political nature of immigration, the INA is amended frequently, sometimes several times within a year.

As a whole, the INA makes no more logical sense than the Internal Revenue Code (IRC). Whenever initial rules are set by statute, exceptions and modifications are created later, by dint of political lobbying, justified by "public policy."

We Make It Hard to Come to the U.S. Legally

We make it hard for foreigners to come to the U.S. legally—whether on a temporary or a permanent basis. Foreign nationals seeking to come to the U.S. on a *temporary* basis must qualify for one of the "nonimmigrant" visa categories ("nonimmigrant" because the allowed purpose of these categories is for the alien to stay here temporarily and not to "immigrate" or stay here permanently). In general, the INA presumes that all aliens are immigrants who want to come to the U.S. permanently. Therefore, if an alien (defined as, basically, any person who is not a U.S. citizen) seeks only *temporary* entry, the Act places the burden of proof on that individual to prove he or she is *not* an intending immigrant.

The most commonly used nonimmigrant categories are B-1 (business visitor), B-2 (visitor for pleasure), E-1 or E-2 (treaty trader or investor), F-1 (student), H-1B and H-2B (temporary worker), J-1 (trainee), L-1 (intracompany transferee), and TN ("Treaty NAFTA" professional). (The H-1B and the L-1 categories happen to be immune to the presumption of immigrant intent just discussed.) Except for the TN classification, each of these nonimmigrant categories takes its name from the subsection of INA §101(a)(15) that creates it.

The INA limits the purpose of each category, the allowable activities (such as employment), the length of time an alien may spend in the U.S., and sometimes (as in the case of H-1B and H-2B temporary workers) the number of aliens who can be admitted in the category each federal fiscal year.[1] Many aliens want to work in the U.S., but we restrict the ability of most nonimmigrants to work. The USCIS has published a useful *Employer Information Bulletin* which lists all of the available nonimmigrant categories and also explains which of these are authorized for employment in the U.S. and under what conditions. See *Employer Information Bulletin 1*, published March 16, 2005, in Appendix A.

[1] This is referred to as the H-1B or H-2B "cap," currently set at 65,000 for H-1B and 66,000 for H-2B. Free Trade Visas for Chile and Singapore are subtracted from the H-1B cap, resulting in 58,200 visas for all other countries. However, there is a 20,000 H-1B cap "exemption" each fiscal year for aliens holding a U.S. Master's or higher degree. See INA §§214(g)(1)(A); 214(g)(5)(C).

Likewise, foreign nationals coming to the U.S. on a *permanent* basis must qualify for lawful permanent residence (a/k/a a "green card") in one of the "immigrant" visa categories. All of these categories are inherently authorized to work. There are family-based categories leading to green cards, and there are employment-based ones.[2] (Refugees and asylees are not green card holders but are permitted to stay in the U.S. and apply for green cards when they become eligible. See INA §§101(a)(42), 207, 208, 209, 212(d)(5), 241(b)(3) and 244.)

When it comes to family relationships, U.S. immigration law favors the close family nucleus and so designates the wife, parents, or minor children of a U.S. citizen as "immediate relatives" who can immigrate immediately; all other foreign relatives are "preference immigrants" subject to an annual visa quota and per-country limitation that create years-long waiting periods to immigrate legally.[3]

There is no "immediate relative" equivalent for employment-based immigration. Here, everyone is a "preference immigrant" and all categories are subject to an annual visa quota and per-country limitation. The basic categories are EB-1 ("EB" stands for "employment-based") for aliens of extraordinary ability, multinational executives and managers, and outstanding professors and researchers; EB-2 for aliens of exceptional ability or for professional jobs requiring advanced degrees; and EB-3 for jobs requiring a Bachelor's degree or at least two years of skilled experience.

In order to protect the jobs of U.S. workers, most EB categories are subject to a "labor certification" requirement whereby the employer must first recruit for a qualified U.S. worker before it can sponsor an alien for

[2] The INA also creates an annual immigrant visa "diversity immigrant" or "lottery" program limited to 50,000 visas selected at random for applicants from countries with low rates of immigration to the US. See INA §203(C).

[3] Section 201 of the INA sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320. Section 203 of the INA prescribes preference classes for allotment of immigrant visas. For detailed information, go to http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html.

immigrant status (aka lawful permanent residence or a "green card.")[4] This is now done through the "PERM" system of the U.S. Department of Labor ("DOL"). A detailed description, prepared by DOL, of the PERM labor certification process will be found at Appendix B.

The categories exempt from the onerous labor certification requirement are EB-1 and EB-2 when the alien's work is in the U.S. "national interest." Additionally, DOL has pre-certified professional (i.e., registered) nurses and physical therapists as shortage occupations under Schedule A, Group I.[5] They do not require a recruitment process.

There is a petition requirement for each of the immigrant family-based and employment-based categories. The requirement of filing a petition to bring workers into the U.S. evolved out of a legislative desire to exercise control over immigration that might negatively affect the American labor market. Restriction of immigration to protect the American labor market is a relatively recent concern of Congress.

When a petition is required, the sponsor or "petitioner" must file the petition with the USCIS, together with supporting evidence, to qualify the alien beneficiary according to the requirements of the particular immigration category. The family-based petition is the I-130; the employment-based petition is, generally, the I-140. There is also a petition requirement for several of the nonimmigrant categories, including the popular H-1B temporary worker category. The form used is the I-129. Copies of the instructions for the foregoing petition forms are provided at Appendix C-E. Fillable petition forms can be found on the USCIS Web site, www.uscis.gov, under "Immigration Forms."

Frequently, an alien misunderstands the difference between the visa stamp in their passport and the little white card they are given upon being admitted to the U.S. There is a critical legal distinction between having a *visa* and having a *status* in a particular nonimmigrant or immigrant category. An alien applies for a visa at a U.S. consulate abroad but does not have the corresponding status until he or she is actually admitted to the U.S. The visa

[4] See Section 212(a)(5)(A) & (p) of the INA.
[5] See 20 C.F.R. §656.15(c).

simply permits the alien to travel to the U.S. and seek entry in that status. It does not guarantee that the status will be granted upon arrival. As pointed out below, different governmental agencies make these determinations.

The "N" in INA stands for "nationality" or "naturalization." After a lawful permanent resident alien has resided in and been physically present in the U.S. for a certain length of time, he or she can apply to become a naturalized U.S. citizen having virtually all of the same rights as a native-born citizen.

A Host of Different Federal Agencies Administer Immigration Laws

Immigration law distinguishes itself, for good or for ill, by having so many cooks in the kitchen. A multiplicity of federal immigration agencies carry out two basic functions: (1) the adjudication of immigration "benefits" such as visa applications and petitions; and (2) immigration law "enforcement." When an alien does not have the government's permission to be in the U.S. or violates a criminal law, the INA sets procedures to deport or "remove" the alien. This is one aspect of "enforcement." Another important aspect is tracking down, detaining, and holding these aliens prior to their deportation or "removal."

According to a long line of federal court decisions, the two functions of benefits adjudication and enforcement are exclusively federal.[6] Today, a variety of federal agencies are involved in carrying them out. They include the U.S. Department of Homeland Security (DHS), which in 2003 supplanted the former Immigration and Naturalization Service (INS) and is now the agency with ultimate responsibility for administering and

[6] Immigration is an issue entrenched in U.S. politics since the colonial period. Following the Declaration of Independence, the colonies maintained autonomous power over immigration until the adoption of the US Constitution in 1789, which ceded to Congress states' power to regulate immigration. The Commerce Clause,-Article I, §8, cl. 3, of the Constitution empowers Congress "to regulate commerce with the foreign nations and among the several states." Also relevant are the Naturalization Clause-Art. I, §8, cl. 4; the Migration and Importation Clause-Art. I, §9, cl. 1; and the War Power-Art. I, §8, cl. 11. Drawing on these clauses of the Constitution, a body of federal case law has evolved finding that Congress has plenary authority to regulate immigration with few limitations. See, e.g., *Chae Chan Ping v. U.S.*, 130 U.S. 581, 609 (1889); *.S. v. Curtis-Wright Export Co.,* 299 U.S. 304 (1936); *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382 (1982); *Rodriguez-Silva v. I.N.S.*, 242 F.3d 243 (5th Cir. 2001).

enforcing the laws relating to the immigration and naturalization of aliens. *See* INA §103(a). DHS oversees seven subordinate agencies, Transportation Security Administration ("TSA"), U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), U.S. Customs Enforcement (ICE), the U.S. Secret Service, Federal Emergency Management Agency (FEMA), and the U.S. Coast Guard.

Immigration practitioners deal primarily with USCIS, CBP, and ICE. USCIS is charged with adjudicating immigration benefits, including naturalization, lawful permanent residency, family and employment related immigration, employment authorization, inter-country adoptions, asylum and refugee status, replacement immigration documents, and foreign student status issues.

CBP acts as the gatekeeper for entry into the U.S. by land, sea, or air. It protects our nation's borders from terrorism, human and drug smuggling, illegal migration, and agricultural pests in addition to facilitating the flow of legitimate travel and trade. ICE is the largest investigative and enforcement arm of DHS. It is the federal immigration police force. ICE identifies, locates, and apprehends illegal aliens within our borders and, to that end, carries out a variety of enforcement activities, including much-publicized raids of employer worksites. More broadly, ICE is responsible for identifying, investigating, and dismantling vulnerabilities regarding the nation's border, economic, transportation, and infrastructure security.

In addition to DHS, three other cabinet-level departments have significant roles in immigration enforcement and adjudication of immigration benefits. First, the U.S. Department of Labor (DOL) has authority to investigate Form I-9 employment verification compliance by U.S. employers. (ICE has such authority as well.) U.S. employers must complete a Form I-9 for all employees hired after November 6, 1984. See INA §274A(b). The purpose of the form is to verify the individual's identity and authorization to be employed in the U.S. either as a U.S. citizen or as otherwise permitted under the INA.

DOL also has a benefits adjudication role in employment-based immigration. Through the PERM labor certification process, it protects

the jobs of U.S. workers when a U.S. employer seeks to employ an alien on a permanent basis.

Second, the U.S. Department of Justice (DOJ) houses two agencies having enforcement functions. The first is the Executive Office of Immigration Review (EOIR), an office having jurisdiction over the "removal" (formerly known as deportation) of aliens from the U.S. The second is the Office of Special Counsel for Immigration Related Unfair Employment Practices, which is part of DOJ's Civil Rights Division. This office is responsible for enforcing the anti-discrimination provisions of the INA, 8 U.S.C. § 1324b, which protect U.S. citizens and certain work-authorized individuals from employment discrimination based upon citizenship or immigration status discrimination. (The INA protects all work-authorized individuals from national origin discrimination, unfair documentary practices relating to the employment eligibility verification process, and retaliation.)

The third cabinet-level department having a role in immigration benefits adjudication and enforcement is the U.S. Department of State (DOS). An alien seeking to enter the U.S. from abroad generally must first obtain a visa, either a nonimmigrant visa for temporary stay, or an immigrant visa for permanent residence. The alien applies for the visa at the U.S. consulate in his or her country of residence. DOS and its Consular Affairs division oversee the issuance of visas at U.S. consulates abroad, making sure that U.S. immigration law is followed as to the particular type of visa sought and the grounds for approving or denying the visa application. In addition, DOS and U.S. consulates participate in enforcement activities, such as investigating fraudulent visa applications and by aliens who are now in the U.S. Finally, because the annual number of immigrant visas for preference immigrants is severely limited, DOS issues a monthly "Visa Bulletin" showing the waiting periods in each of the family-based and employment-based categories.

Immigration–The Eternal Political Football

U.S. immigration law has always been about benefits adjudication and immigration enforcement. Until approximately 1986, benefits adjudication generally took priority over enforcement activities. However, starting with the enactment of the Immigration Reform and Control Act of 1986

("IRCA")—which for the first time made it illegal for employers to employ unauthorized aliens—enforcement has became more of a priority. Unquestionably, the terrorist attacks of September 11, 2001 and the growing undocumented Hispanic and Latino population in the U.S. have now made enforcement the government's top immigration priority.

Since Congress so far has failed to enact comprehensive immigration reform legislation, which would include greater enforcement measures as well as provisions aimed at legalizing illegal aliens, DHS and ICE have decided to aggressively enforce existing laws against employers who knowingly hire or contract for the labor of unauthorized aliens. They have ratcheted up enforcement activities against U.S. employers, aliens, and others to a level heretofore never seen. They are doing this in order to restore the government's credibility in the eyes of the public, many of whom view the federal government as having done nothing to staunch the flow of terrorists and undocumented workers into our country.[7]

[7] There are reports of as many as 13 million illegal aliens in the US. Homeland Security Secretary Michael Chertoff's stated in a February 22, 2008 press briefing: "Congress didn't give us comprehensive immigration reform, so we are going to do what we can with the tools that we have, and frankly we have made progress in doing quite a bit…" ICE, in particular, has taken on a large role. In its Fiscal Year 2007 Annual Report, ICE refers to its efforts as "the ongoing effort to re-invent immigration enforcement for the 21st century." ICE has focused its efforts on two main tracks related to immigration enforcement. The first involves enforcement activities against employers, which ICE characterizes as "job magnets" for attracting illegal workers. These actions include conducting lengthy investigations with the use of informants, raiding worksites, conducting I-9 audits, and imposing harsher monetary and criminal penalties on employers whose hiring practices are found to have violated the immigration laws. In 2007, ICE secured criminal fines, restitutions, and civil judgments in worksite enforcement investigations in excess of $30 million. ICE made 863 criminal arrests and 4,077 administrative arrests. Just five years ago, in 2002, ICE made only 25 criminal arrests and 485 administrative arrests. See Fiscal Year 2007 Annual Report, ICE.

The second track involves ICE's increased activity to remove aliens who are in the U.S. unlawfully. In 2007, ICE removed a record 276,912 illegal aliens. Additionally, DHS has "deputized" local law enforcement to help enforce U.S. immigration law. Section 287(g) of the INA permits the Attorney General to enter into a written agreement with an officer or employee of the state or subdivision to perform the functions of an immigration officer. While INA 287(g) agreements are a welcome indication of the government's earnestness in addressing the issue of illegal immigration, on the flip side, there is the issue of whether this is truly a wise decision to use the state and local law enforcement agencies in this manner, especially in light of the common understanding that the police, who are primarily concerned with the safety and welfare of the citizenry, might be better utilized in keeping the public safe from crime.

Furthermore, because of the widespread perception that Congress has done nothing to stop illegal immigration, several states and local government entities have passed and tried to enforce their own immigration-related laws. These laws are being challenged in the courts on the ground that only Congress and the federal government have authority over immigration matters.

Meanwhile, amid all the protest over *illegal* immigration, few people understand that immigrating to the U.S. *legally* is, more often than not, an expensive (costing thousands of dollars) and lengthy (taking several years) process. The process is "expensive" because user "filing fees" subsidize the ever-escalating costs of governmental adjudications of benefits. The process is "lengthy" because user fees do not adequately fund the needed services, creating processing delays, and because the demand each year for immigrant visas to the U.S. exceeds the annual supply, which has not been increased since 1990. On top of the governmental processing delays, this has created a years-long wait for many immigrants who have followed the rules but are now being punished because the number of visas doled out each year has not nearly kept up with the growth in the U.S. economy, population, and employment.

Best Practices for Muddling Through Immigration Law

Sometimes practicing immigration law is like trying to fit a square peg into a round hole. That's because the INA allows only certain categories of aliens to immigrate to the U.S. on a permanent basis or to visit, study, or work on a temporary basis. Likewise, the INA provides limited relief from removal. What if the client does not clearly fit into one of these categories—one of the round holes?

Nothing in the law prohibits creative lawyering to achieve the client's objectives. Precisely because the options under the INA can be so limited, a good attorney will find new or unusual ways to use them. The client deserves it. For example, our firm obtained an O-1 nonimmigrant "artist" visa for a highly skilled roofer who worked on historic cathedrals and other structures. A roofer who is an artist? An immigration attorney must think outside the box!

Here are a few suggested best practices for good immigration advocacy.

Be Extremely Well Prepared. Because of the myriad of agencies involved, diverse and arcane immigration options that may be available, the complexity of the documentation required, the serious consequences to an alien's employment or immigration status should even minor errors occur, a good immigration attorney will dedicate a large portion of his or her practice solely to immigration cases, will be experienced in all areas of immigration law, and will have up-to-the-minute information about legal developments.

Immigration law is an unusual legal specialty in that it derives from so many different legal sources and changes so rapidly. The many different founts of immigration law include not just the different *agencies* charged with benefits adjudication and immigration enforcement, but also the various *kinds* of legal authority available. As to the latter, the primary legal authority is, of course, the INA, which, as previously discussed, Congress amends often because immigration is a public policy issue constantly changing over time.

Frequently, though, the INA does not clearly answer an immigration lawyer's case-specific question. One must then turn to other sources of law. These include agency regulations (final, interim, or proposed), court decisions, agency administrative decisions (precedent and non-precedent), agency interpretive memoranda, and public statements of position by the agency. Most of the agencies involved with immigration law publish relevant regulations and other information on their Web sites.
See, e.g., www.uscis.gov; www.ice.gov; www.cbp.gov;
www.foreignlaborcert.doleta.gov; www.state.gov.

In the best of all possible worlds, an agency's regulations would answer a lawyer's case-specific question. Not so with immigration law. After Congress amends the INA, it usually takes the affected agencies, especially USCIS, *years* to draft and implement interpretive regulations.

In the interim, USCIS issues internal policy memoranda that set forth its interpretations of the INA as to particular situations. USCIS also engages in "Q&A" sessions with organizations such as the American Immigration

Lawyers Association (AILA) where it responds to both general and to fact-specific questions.

Therefore, in order to effectively advise his or her clients on fact-specific matters, an immigration practitioner must have immediate knowledge of and access to all of the foregoing types of information.

Moreover, a lawyer's knowledge must be up-to-the-minute because many alien clients are techno-savvy and wired into Internet Web sites, blogs, chat rooms, etc. that provide them with breaking news of legal and other significant changes in U.S. immigration law. For example, it is not uncommon for an immigration client to check the USCIS Web site for the status of his or her case and other information multiple times a day. They will surf Web sites and blogs of countless other immigration attorneys and organizations. The last thing you want as an immigration lawyer is for your client to call you about some change in law or policy of which you are unaware!

Use Three Indispensable Tools. Three tools are indispensable to the practice of immigration law. The first is immediate notice of and access to significant developments in immigration law or policy. There is no better source for this than membership in the American Immigration Lawyer's Association (AILA). AILA's webmaster will provide the subscribed practitioner with daily e-mail updates on law and policy, as well as real-time reports as important events occur.

In addition, AILA's private *InfoNet* message board provides a rich source for discussing both general law or policy changes and client-specific questions. Finally, AILA offers an online library of regulations, policy memos, case summaries, etc., that is sufficient for the practitioner to address many types of problems. For an additional charge, one can purchase a subscription to *AILA-Link*, a deeper online library whereby one can search multiple immigration resources in seconds—the INA, agency regulations, agency memoranda, analytical treatises, case decisions, and more.

The second indispensable tool is Kurzban's *Immigration Law Sourcebook*, published by the American Immigration Law Foundation and updated

every year. This gem of a book summarizes the law and provides legal citations for every area of immigration practice, including removal of aliens, refugees and asylees, nonimmigrant visas, permanent residence status, employment-based immigration and labor certification, immigration enforcement against employers, and naturalization and citizenship. An excellent compass to primary and secondary authority for answering client questions, it is by far the most dog-eared book on my shelf. I confess that I use it almost every day.

The final indispensable tool is intangible. It is building a good working relationship with federal personnel who adjudicate benefits cases or enforce immigration laws. Immigration agencies have discretion in many situations, and by having a good relationship with the agency involved, a lawyer can influence the discretionary outcome. As Aristotle said long ago, it is about having *ethos* or credibility. Particularly as to enforcement matters, an immigration attorney should try to work *with* the agency, not *against* it, all the while advocating interpretations of fact and law beneficial to the client. The "pit-bull attack" method of lawyering used by some advocates may occasionally work, but it can undercut your *ethos* or credibility with the agency in the long run.

There is one more reason to have a good working relationship: immigration agencies have a lot of information not readily available to attorneys. This includes anything from important telephone numbers to information about internal policies and procedures. After all, knowledge is power.

Enforcement and some forms of benefits adjudication are localized and it is possible to get to know your local USCIS or ICE agents and officials on an individual basis. This can be accomplished through AILA and membership in your local AILA chapter.

Many forms of benefits adjudication, however, are not local. In these cases, the petitions and applications must be filed with one of four giant USCIS "Service Centers," which are impenetrable to the public. It is not possible, therefore, to develop an individual working relationship with anyone at a USCIS Service Center.

But there is a good alternative: develop an individual working relationship with your local U.S. Representative's or Senator's office and, in particular, with the staffer in that office who is responsible for immigration case work. This person has access to USCIS and other immigration agencies that no one else has, even immigration attorneys. They can help you get case status information, expedite a USCIS decision in emergency situations, and convey information to USCIS about errors made or other significant issues in a case. In many cases over my years of practice, the work of the legislative caseworker has spelled the difference between success and failure.

Be Both Educator and Advocate. Perhaps more than with other forms of lawyering, an immigration attorney must be a teacher. We must educate the governmental agency on the facts of our client's case and on the law to be applied.

For instance, in representing a client who is seeking employment-based immigration benefits, either lawful permanent residency or a nonimmigrant visa, an immigration attorney must be able to present details about the individual's employment in a fashion that the immigration officer can understand. Oftentimes the foreign national is seeking employment in a very specialized field such as information technology or scientific research. The immigration officer reviewing his or her application for benefits must be able to understand what the individual actually *does* to make the determination as to whether or not he or she qualifies for the benefit sought. Too often, the attorney writing the supposedly persuasive letter or brief does not themselves know what they are writing about!

Thus, an immigration attorney must understand the dynamics of the alien's work and be able to explain it in layman's terms. In many ways, it is like presenting a complex case to a jury except it is all done on paper.

The immigration lawyer's job does not stop there. He or she must also educate the agency on the applicable law. While many agents of the government have a legal background, more do not. Also, as mentioned earlier, the sources of immigration law are multitudinous. One must never assume that the person deciding your client's case knows the applicable law. It is not like dealing with a judge in a court of law, who is a lawyer by

training and legally knowledgeable. The decision maker in an immigration benefits case may very well be a non-lawyer. In an enforcement case, such as removal, it may be an immigration judge who is a lawyer, but is so over-worked and under-staffed that you can still point them in the right direction.

Finally, an immigration attorney always must be an advocate—that is, must present a cogent argument as to why your client is entitled to the particular immigration benefit or relief. While law in the client's favor is certainly important, there is a clear value to the art of persuasion. In fact, it is at least 50 percent about persuasion and 50 percent about the law. Immigration officers, agents, attorneys, and judges are humans affected by passion and emotions. Appealing language in describing a foreign national's work or a sympathetic depiction of an asylum applicant's account of persecution suffered in his or her home country can be determinative in convincing an adjudicator that the foreign national is entitled to relief based upon the facts of his or her case as they pertain to the law.

Explain the Attorney's Role to the Client. Many aliens have never used an attorney before and do not understand how immigration attorneys function as advocates for their cause, not just preparers of paperwork. While an alien can call USCIS or visit a local office, the fact is government representatives are not advocates for the rights of immigrants—that is not their job. They often miss things or give out information that is not legally correct or perhaps not complete. They are not expected to analyze an alien's individual situation and inform him or her as to what all of the options may be.

Some developed countries do not make use of immigration counsel (e.g., Japan, where travel agents often take on that role). "Notarios," which are unlicensed operations, are known for extorting unreasonable fees from foreign nationals, lying to immigration authorities, and placing the foreign national in an unfavorable position.

Nationals of such countries are not familiar with the role that an immigration attorney plays in the United States. They do not realize that, in order to receive proper evaluation of their rights under U.S. immigration law, they should consult an attorney.

Thus, one of your first jobs is to explain to the client what you do, as well as what you cannot do. Competent immigration counsel can advise as to the best legal strategy to accomplish the client's immigration objectives, advocate for the client's cause, and assure that the case is prepared and processed with a minimum of mistakes. What an immigration attorney cannot do, however, is guarantee how long a case will take to be processed or guarantee that it will be approved.

In any case, counsel's role is clearly much more than "filling out forms." The client needs to know and appreciate this fact.

Be Able to Advise the Client as to Criminal Issues. Non-citizens who plead guilty or are found guilty of having committed certain crimes can face huge immigration consequences. The immigration laws are rather quirky in this regard. For instance, there may be negative implications for a non-citizen who has been convicted of using a fraudulent driver's license or shoplifting, while there may be no negative immigration consequences for a non-citizen who has committed child abandonment or battery.

Competent immigration counsel should be able to advise clients as to the immigration consequences of violating criminal laws. In assessing the immigration consequences for a non-citizen who has committed a crime, three primary issues arise. The first is whether the non-citizen may be rendered what is called "inadmissible," which essentially means ineligible for entry into the U.S. or for lawful permanent resident status. The second issue is whether the non-citizen may be removed from the U.S. based on his or her conviction. The third issue is whether the non-citizen is precluded from naturalization.

These issues are distinct and must be addressed separately in any instance where a non-citizen has committed a crime. For instance, a non-citizen may be eligible for lawful permanent resident status but removable (i.e., deportable) from the U.S. or vice versa. There are also instances where lawful permanent residents are eligible for naturalization but subject to removal from the U.S. or barred from reentry should they depart as a result of their criminal conviction(s).

The immigration attorney must compare the immigration laws (meaning statutory and case law) that define offenses that render a non-citizen inadmissible, removable, and precluded from naturalizing with the state, local or federal statute under which the individual has been convicted. The attorney must analyze the language of the state, local or federal statute at hand to determine if the non-citizen's offense falls under the offenses that would render him or her inadmissible, removable or barred from naturalization under the immigration laws.

The classification of the offense as a misdemeanor or felony under the state, local or federal statute is entirely irrelevant. A key issue is whether a conviction for the offense requires intent. Crimes which have an intent element, or involve *malum per se*, are deemed to constitute what is called "crimes involving moral turpitude" which can carry negative immigration consequences. See *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992). In addition, the INA provides a list of offenses that are classified as "aggravated felonies" for immigration purposes. See INA §101(a)(43)(A). Examples of aggravated felonies include murder, rape, sexual abuse of a child, certain fraud and theft offenses, and drug trafficking. A non-citizen who has been deemed to have committed aggravated felonies is barred from most forms of relief and thus an aggravated felony is considered a "scarlet letter" for non-citizens. Unlike other offenses, non-citizens are generally ineligible for waivers of their immigration violations if they are found to have committed aggravated felonies.

A non-citizen who has committed an offense under the immigration laws is not necessarily permanently ineligible for immigration benefits or subject to removal from the U.S. There are waivers available that work to provide exceptions for the non-citizen. For instance, a non-citizen who is seeking admission into the country or status as a lawful permanent resident and has committed an offense that would render him or her inadmissible may fall under an exception known as the "petty offense" exception. Under the petty offense exception, a non-citizen may be admitted to the U.S. or permitted to obtain lawful permanent resident status if his or her offense is one for which the maximum penalty did not exceed imprisonment for one year and the non-citizen was not sentenced to a term of imprisonment for more than six months. *See* INA §212(a)(2)(A). Waivers of inadmissibility and removability are also available in instances where the non-citizen is able

to demonstrate hardships to certain U.S. citizen or lawful permanent resident relatives.

Before pleading guilty to any criminal offense, a non-citizen should consult with an immigration attorney. In certain situations, it may be beneficial for the non-citizen to serve some jail time in lieu of being convicted of an offense that will have immigration consequences. State and federal prosecutors and judges sometimes care about the hardships caused by the immigration consequences of minor convictions, other times they do not care. Nevertheless, it is always best to make these arguments.

Be Ready to Help in the Event of an ICE Raid

Since the focus is now on worksite enforcement, what happens during a U.S. Immigration and Customs Enforcement (ICE) raid and how does one come about? How can a raid be avoided? Initially, ICE conducts pre-raid investigations using traditional criminal investigative techniques such as informants, cooperating witnesses, body wiretaps, statements from former or current employees (frequently human resource representatives and supervisory personnel), data from other governmental agencies (e.g., Social Security Administration, DOL), and evidence gained thru I-9 audits.

Normally, investigations are conducted over the course of many months. Agents might pose as prospective customers and request a tour of premises. ICE may also arrest one illegal alien, and in exchange for offering "deferred status" (a temporary right to stay in the U.S.) and a work permit, get the person to provide information as to other undocumented workers and the extent of the employer's involvement in knowingly hiring and employing illegal workers.

ICE also has administrative subpoena authority and will use it to obtain all "no-match" letters sent to an employer by the Social Security Administration (SSA). SSA issues a no-match letter when its information for an employee does not match the information reported by the employer. Such letters can be used as evidence that the employer knowingly employed unauthorized aliens in violation of the law.

Prior to raiding an employer, ICE will obtain a criminal search warrant from a court. The warrant will describe the premises to be searched (beforehand ICE will have surveyed premises, noting entrances and exits) and the items to be searched or seized, such as payroll records, employee personnel files, SSA correspondence indicating irregular SSNs, I-9 forms, and so forth.

At the time of the raid, ICE may use strong tactics to catch the company off guard. Typically in these circumstances, armed ICE agents surround the premises and seal off exits and escape routes, and a supervising agent will serve the warrant on the receptionist or a company representative. ICE will sometimes demand that company operations be shut down, not allow anyone to leave, and corral employees in a single area and then question them individually. ICE agents may also go through the company's files, cabinets, computer equipment, etc., and seize documents and equipment..

When confronted with a raid, an employer should immediately call legal counsel and ask them to be present. The employer should fax a copy of the warrant to the attorney for review. An attorney can determine whether the warrant may be defective. Failing that, the attorney can stress that the employer wishes to cooperate and can try to persuade ICE to limit the scope of its search. The attorney will also counsel the employer on how to document ICE's raid activities and how to respond to ICE's questions.

How can an employer avoid an ICE raid in the first place? Here are some basic things an employer can do. First, the employer should designate specific, trained employees to be responsible for I-9 compliance. Second, the employer should conduct an internal I-9 "audit," either internally or through the assistance of an external auditor such as a lawyer, to ensure that I-9 forms have been properly completed for all current employees and all employees who quit or were terminated within the past three years. Third, the employer should establish a written, non-discriminatory IRCA compliance policy that addresses how it will respond to SSA "no-match letters" and other situations where it has, under the law, a duty to request additional information or documentation from an employee in order to establish the individual's employment authorization. The employer must be prepared to terminate employees who are unable to demonstrate their authorization to work.

Conclusion

This chapter has briefly surveyed the complex terrain of immigration law, barely scratching the surface. It has offered some pointers and reminders to the immigration practitioner. Whoever you are, battle-tested veteran or neophyte, never give up the fight—or the art of fitting square pegs into round holes!

A graduate of Duke University, magna cum laude, and the Ohio State University Moritz College of Law, Donald C. Slowik has more than twenty years of experience in labor and employment law, more than seventeen years of immigration law experience, and more than a decade of experience as a Harvard-trained mediator. Mr. Slowik, a managing member at Slowick & Robinson LLC, is a frequent lecturer on employment law and immigration law and is the author of several articles that have appeared in Ohio Lawyer *magazine and elsewhere.*

Mr. Slowik is a contributor to the American Management Association's The ePolicy Handbook. *He counsels and represents employers and individuals on a wide variety of employment and labor matters. He also counsels his clients on non-competition, trade secret, patent, trademark, and copyright questions, as well as general business issues.*

His employment litigation experience includes cases involving claims of sexual harassment and sex discrimination, age discrimination, national origin discrimination, public-policy tort, whistle-blower protection, and breach of non-competition agreements, among many others. Mr. Slowik advises private and public-sector clients on all areas of employment and labor law, including all discrimination laws, non-competition agreements, written employment policies, and employee terminations. He serves as chief negotiator in labor contract negotiations.

Mr. Slowik also counsels and represents employers and individuals on a wide range of employment-based and family-based immigration matters. His employment-based immigration experience includes obtaining required governmental approvals for foreign investors; for temporary foreign workers in virtually every available category; and for aliens who qualify as immigrant EB-1 extraordinary aliens, outstanding researchers or professors, or multinational transferees, EB-2 exceptional or advance degreed aliens whose work is in the national interest, and EB-3 professional and skilled worker aliens. Mr. Slowik is well-versed with the alien labor certification process in Ohio and numerous

other states. He has successfully represented businesses during "I-9 audits" by the Immigration and Naturalization Service (now known as U.S. Citizenship and Immigration Services).

As a Harvard-trained mediator, Mr. Slowik has engaged in the private mediation of employment and business cases since 2002. He is a longstanding member of the American Immigration Lawyers Association, the American Bar Association, and the Ohio State Bar Association (OSBA), and is a past chair of the OSBA's Committee on Dispute Resolution.

APPENDIX A

USCIS EMPLOYER INFORMATION BULLETIN

OFFICE OF BUSINESS LIAISON

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Employer Information Bulletin 1

Nonimmigrant Classification Employment Eligibility and Reference Guide

March 16, 2005

EBISS: (800) 357-2099
NCSC: (800) 357-5283
TDD: (800) 767-1833
Fax: (202) 272-1865
Order Forms: (800) 870-3676
Website: www.uscis.gov

The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

Work Authorization Relating to Nonimmigrant Classification

Employment Eligibility Terms

- **Eligible for Employment Authorization Document (EAD) incident to status** Employment of the alien is authorized without restriction as to location or type of employment as a condition of the alien's specific immigration status. The alien must submit Form I-765[8] to the USCIS to obtain an EAD (Form I-688B or I-766) evidencing employment authorization.

- **Employer Specific**
  The alien may only be employed by the specific employer and subject to the restrictions indicated as a condition of his or her admission or immigration status by the USCIS. The alien is not issued a separate EAD by the USCIS.

- **Must apply for employment authorization**
  Alien must submit Form I-765 to the USCIS for adjudication. If approved, the USCIS will issue an EAD valid for a specific period.

- **Not eligible for employment** by a United States employer.

[8] Form I-765 is available at <http://www.immigration.gov/graphics/formsfee/forms/I-765.htm>(last revised June 12, 2003).

CLASS[9]	CLASSIFICATION	EMPLOYMENT
A-1	Ambassador, public minister, career, diplomatic or consular officer, and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements[10] are eligible for EAD incident to status; other dependents must apply for employment authorization.
A-2	Other foreign government official or employee and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements are eligible for EAD incident to status; other dependents must apply for employment authorization.
A-3	Personal employee of A-1, A-2, and immediate family.	Employer-specific; Dependents are not eligible for employment.
B-1	Temporary Visitor for Business	Not eligible for employment, except servants of holders of B, E, F, H, I, J, L, NAFTA visas or a U. S. citizen residing in a foreign country and certain employees of airlines not eligible for E-1 status. Such servants must apply for employment authorization.
B-2	Temporary Visitor for Pleasure	Not eligible for employment

[9] This bulletin only covers nonimmigrant classes A through V. Other categories of aliens eligible for employment authorization (*e.g.* legal permanent residents, aliens granted withholding of removal, temporary protected status, asylees/refugees, and certain aliens with pending petitions) are included in Bulletin 108, "Employment Authorization of Aliens."

[10] See U.S. Dept. of State, Office of Protocol, *Release: Foreign Consular Offices in the United States,* available at <http://www.state.gov/s/cpr/rls/fco/c5698.htm> (last revised September 21, 2001).

C-1	Alien in transit directly through U.S.	Not eligible for employment
C-2	Alien in transit to United Nations Headquarters.	Employer-specific
C-3	Foreign government official, immediate family, or personal employee in transit.	Employer-specific
C-4	Transit without visa (see also TWOV)	Not eligible for employment
D-1	Crewmember	Employer-specific
D-2	Crewmember departing by means other than arriving vessel.	Employer-specific
E-1	Treaty Trader and employees, spouse, and children.	Employer-specific; Spouses in same classification are eligible for EAD incident to status; children are not eligible for employment, except unmarried dependent children of E-1 employees of the Coordination Council for North American Affairs who may apply for employment authorization.
E-2	Treaty Investor and employees, spouse, and children.	Employer-specific; Spouses in same classification are eligible for EAD incident to status; children are not eligible for employment.
F-1	Academic Student (except Border Commuters from Canada or Mexico, see below)	Eligible for on campus employment and curricular practical training incident to status (no separate EAD necessary). Must apply for employment authorization for optional practical training or to work off-campus.

F-1/F-3	Border Commuter Academic Students from Canada and Mexico	Must apply for employment authorization for curricular practical training or post-completion optional practical training.
F-2	Spouse or child of F-1	Not eligible for employment.
G-1	Principal resident representative of recognized foreign member government to international organization, staff, and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.
G-2	Other representative of recognized foreign member government to international organization, and immediate family.	Employer-specific; Dependents are not eligible for employment.
G-3	Representative of non-recognized or non- member government to international organization, and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.
G-4	International organization officer or employee, and immediate family.	Employer-specific; Dependents must apply for employment authorization.
G-5	Attendant, servant, or personal employee of G-1, G-2, G-3, G-4, and immediate family.	Employer-specific; Dependents are not eligible for employment.
H-1b	Alien in Specialty Occupation (profession)	Employer-specific
H-1c	Registered Nurse serving in underserved area	Employer-specific
H-2a	Temporary worker performing Agricultural Services unavailable in the United States (Petition filed on or after 06/01/87).	Employer-specific
H-2b	Trainee	Employer-specific

H-3	Spouse or child of H-1, H-2, or H-3	Employer-specific
H-4	Information Media Representatives and immediate family.	Not eligible for employment
I	Exchange Visitor	Employer-specific; dependents are not eligible for employment.
J-1	Spouse or child of J-1	Employer-specific
J-2	Fiancé (e)	Must apply for employment authorization.
K-1	Minor child of K-1	Eligible for EAD incident to status
K-2	Spouse of US citizen	Eligible for EAD incident to status
K-3	Child of K-3	Eligible for EAD incident to status
K-4	Intracompany Transferee (manager or executive)	Eligible for EAD incident to status
L-1A	Intracompany Transferee (specialized knowledge alien)	Employer-specific
L-1B	Spouse or child of L-1	Employer-specific
L-2		Spouses of L-1 s are eligible for EAD incident to status; children are not eligible for employment.
M-1	Non-academic student (except Border Commuters from Canada or Mexico, see below)	Must apply for employment authorization for post-completion optional practical training.
M-1/M-3	Border Commuter Non-Academic Students from Canada and Mexico	Must apply for employment authorization for post-completion optional practical training.

M-2	Spouse or child of M-1	Not eligible for employment.
N-8	Parent of an SK-3 Special Immigrant	Eligible for EAD incident to status
N-9	Child of N-8, SK-1, SK-2 or SK-4 Special Immigrant	Eligible for EAD incident to status
NATO-1	Principal Permanent Representative of Member State to NATO, official staff, and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.
NATO-2	Other Representative of Member State to NATO and immediate family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the Protocol on the Status of International Military Headquarters; Members of such a Force if issued visas and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.
NATO-3	Official clerical staff accompanying representative of member state to NATO and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.
NATO-4	NATO official other than those qualified as NATO-1 and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.

NATO-5	NATO expert other than those qualified as NATO-4 employed in NATO missions and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.
NATO-6	Member of civilian component accompanying a force entering in accordance with NATO Status- of-Forces Agreement or attached to Allied Headquarters under "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.
NATO-7	Personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6, and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.

O-1	Alien with Extraordinary Ability in sciences, arts, education, business, or athletics	Employer-specific
O-2	Aliens accompanying/assisting O-1 performers or athletes.	Employer-specific
O-3	Spouse or child of O-1 or O-2	Not eligible for employment under this category
P-1	Individual or Team Athletes, and Group Entertainers.	Employer-specific
P-2	Individual/Group Artist/ Entertainer under Reciprocal Exchange Program.	Employer-specific

P-3	Artist or Entertainer in Culturally Unique Program.	Employer-specific
P-4	Spouse or child of P-1, P-2, or P-3	Not eligible for employment under this category
Q-1	International Cultural Exchange Visitor	Employer-specific
Q-2	Irish Peace Process Cultural and Training Program (Walsh visas)	Employer-specific
Q-3	Spouse or child of Q-2	Not eligible for employment
R-1	Religious Worker	Employer-specific
R-2	Spouse or child of R-1	Not eligible for employment
S-5	Witness or informant regarding criminal organization.	Must apply for employment authorization.
S-6	Witness or informant regarding terrorism	Must apply for employment authorization.
S-7	Spouse, children, or parent of S-5 or S-6	Must apply for employment authorization.
T-1	Victim of a severe form of trafficking in persons.	Eligible for EAD incident to status
T-2	Spouse of trafficking victim	Must apply for employment authorization.
T-3	Child of trafficking victim	Must apply for employment authorization.
T-4	Parent of trafficking victim under 21	Must apply for employment authorization.
TN-1	Canadian NAFTA Professional	Employer-specific
TN-2	Mexican NAFTA Professional	Employer-specific

TD	Spouse or child of TN-1 or TN-2	Not eligible for employment
TWOV	Transit without a visa (Passenger or crew admitted temporarily) (see also C-4)	Not eligible for employment
U-1	Victim of certain criminal activity	Eligible for EAD incident to status
U-2	Spouse of U-1 victim	Must apply for employment authorization.
U-3	Child of U-1 victim	Must apply for employment authorization.
U-4	Parent of U-1 victim under 21	Must apply for employment authorization.
V-1	Spouse of Lawful Permanent Resident who is the principal beneficiary of a family-based petition.	Eligible for EAD incident to status
V-2	Child of Lawful Permanent Resident who is the principal beneficiary of a family-based petition.	Eligible for EAD incident to status
V-3	Derivative child of a V-1 or V-2	Eligible for EAD incident to status

Nonimmigrant Classification Reference Guide

How to use this Information Sheet:

The letters symbolizing nonimmigrant classification, which match the symbols for status granted by **the Department of Homeland Security, U.S. Citizenship and Immigration Services** and visas issued by the State Department (at U.S. Consulates abroad), are followed by brief descriptions of categories. Cites listed under the heading "Law" refers to corresponding provisions of the Immigration and Nationality Act (INA). In addition to the statutory cites listed, INA sections 212 (inadmissibility), 214 (admission of nonimmigrants), 237 (General classes of deportable aliens), 245 (adjustment of status), and 248 (change/extension of nonimmigrant status) govern other general issues relevant to nonimmigrants. Applicable provisions from the Code of Federal Regulations (C.F.R.) can be found in two places. Provisions that relate uniquely to given status categories are found under the "Regulation" heading next to the corresponding status symbols, descriptions, and provisions of law. General regulatory provisions governing nonimmigrants, relating to such matters as requirements for admission to and employment in the U.S., change or adjustment of status, and issuance of visas from U.S. Consulates, which apply to more than one or all nonimmigrant categories, appear at the end of this information bulletin. Cites specifically related to employment authorization are in bold. **(For information on Hiring Temporary Employees from Outside the United States, request Employer Information Bulletin 2.)**

VISA STATUS	CLASSIFICATION DESCRIPTION	LAW IN A SECTIONS	REGULATION
A	Foreign Government Officials (General)	101(a)(15)(A) 263	8 C.F.R. § 211.1(c) 8 C.F.R. § 214.2(a) 8 C.F.R. § 215.7 8 C.F.R. § 223.2(c)(3) **8 C.F.R. § 274a.12(b)(1-2)** **8 C.F.R. § 274a.12(c)(1)** 22 C.F.R. § 41.21-.24 22 C.F.R. § 41.26-.27 22 C.F.R. § 41.102(b)(3) 22 C.F.R. § 46.7
A-1	Ambassador, public minister, career, diplomatic or consular officer, and immediate family	101(a)(15)(A)(i)	**8 C.F.R. § 274a.12(b)(1)** **8 C.F.R. § 274a.12(c)(1)**
A-2	Other foreign government official or employee and immediate family	101(a)(15)(A)(ii)	

A-3	Personal employee of A-1 or A-2, and immediate family	101(a)(15)(A)(iii)	**8 C.F.R. § 274a.12(b)(2)** 8 C.F.R. § 214.2(a)(9)

B	Temporary visitor for or Pleasure (General)	101(a)(15)(B) 217	8 C.F.R. § 214.2(b) 8 C.F.R. § 221.1 22 C.F.R. § 41.2 22 C.F.R. § 41.3 1-33
B-1	Temporary visitor for business		**8 C.F.R. § 274a.12(c)(17)**
B-2	Temporary visitor for pleasure		

C	Alien in Transit (General)	101(a)(15)(C) 248(1)	8 C.F.R. § 214.2(c) 8 C.F.R. § 248.2(b) **8 C.F.R. § 274a.12(b)(3)** 22 C.F.R. §
C-1	Alien in Transit directly through U.S.		8 C.F.R. § 214.2(c)(1)
C-2	Alien in transit to United Nations Headquarters		**8 C.F.R. § 274a.12(b)(3)**

C-3	Foreign government official, immediate family, or personal employee, in transit	212(d)(8)	**8 C.F.R. § 274a.12(b)(3)** 22 C.F.R. § 41.21 22 C.F.R. § 41.23 22 C.F.R. § 41.26-.27

D	Crewmember	101(a)(15)(D)	8 C.F.R. § 214.2(d)
D-1	Crewmember (Sea or Air)	214(f) 248(1)	8 C.F.R. § 248.2(b) 8 C.F.R. § 252
D-2	Crewmember departing by means other than arriving vessel	252 258	22 C.F.R. § 41.41-.42

E	Treaty Traders/Treaty Investors (General)	101(a)(15)(E)	8 C.F.R. § 211.1(c)
E-1	Treaty trader, and employees, spouse, and children	101(a)(15)(E)(i) **214(e)(6)**	8 C.F.R. § 214.2(e) 8 C.F.R. § 223.2(c)(3)
E-2	Treaty investor, and children	101(a)(15)(E)(ii) **214(e)(6)**	**C.F.R. §** 22 C.F.R. § 41.51

F	Academic Students (General)	101(a)(15)(F) 214(m)	8 C.F.R. § **8 C.F.R. §** **8 C.F.R. §** 22 C.F.R. §
F-1	Academic student (except Border Commuters from Canada or Mexico, see below)	101(a)(15)(F)(i) 2 14(m)	**8 C.F.R. § 274a.12(b)(6)** **8 C.F.R. § 274a.12(c)(3)**

F-1/F-3	Border Commuter Academic Student from Canada and Mexico	101(a)(15)(F)(iii)	8 C.F.R. § 214.2(f)(18)
F-2	Spouse or child of F-1	101(a)(15)(F)(ii)	8 C.F.R. § 214.2(f)(15)

G	Foreign Government Officials to International Organizations	101(a)(15)(G) 263	8 C.F.R. § 211.1(c) 8 C.F.R. § 214.2(g) 8 C.F.R. § 215.7 8 C.F.R. § 223.2(c)(3) **8 C.F.R. § 274a.12(b)(7)** **8 C.F.R. § 274a.12(b)(8)** **8 C.F.R. § 274a.12(c)(4)** 22 C.F.R. § 41.21 22 C.F.R. § 41.24 22 C.F.R. § 41.26-.27 22 C.F.R. § 41.102(b)(3) 22 C.F.R. § 46.7
G-1	Principal resident representative of recognized	101(a)(15)(G)(i)	8 C.F.R. § 214.2(g)(5)

	foreign member government to international organization, staff, and immediate family.		**8 C.F.R. § 274a.12(b)(7)** **8 C.F.R. § 274a.12(c)(4)**
G-2	Other representative of recognized foreign member government to international organization, and immediate family.	101(a)(15)(G)(ii)	8 C.F.R. § 214.2(g)(9) **8 C.F.R. § 274a.12(b)(7)**
G-3	Representative of non-recognized or nonmember foreign government to international organization, and immediate family.	101(a)(15)(G)(iii)	8 C.F.R. § 214.2(g)(5) **8 C.F.R. § 274a.12(b)(7)** **8 C.F.R. § 274a.12(c)(4)**

G-4	International organization officer or employee, and immediate family.	101(a)(15)(G)(iv)	
G-5	Personal employee of G-1, G-2, G-3, G-4, and immediate family.	101(a)(15)(G)(v)	8 C.F.R. § 214.2(g)(9) **8 C.F.R. § 274a.12(b)(8)**

H	Temporary Workers (General)	101(a)(15)(H) 212(m), (n) 214(c), (g), (h), (i), (m) 218	8 C.F.R. § 214.2(h) **8 C.F.R. § 274a.12(b)(9)** 22 C.F.R. § 41.53
H-1B	Alien in Specialty Occupation (profession)	101(a)(15)(H)(i)(b) 212(n)	8 C.F.R. § 214.2(h)(4) **8 C.F.R. § 274a.12(b)(9)**

		214(c)(5)(A) 214(c)(9) 214(g), (h), (i), (m)	
H-1C	Registered Nurse Serving in underserved area	101(a)(15)(H)(i)(c) 212(m) 214(h)	8 C.F.R. § 214.2(h)(3) **8 C.F.R. § 274a.12(b)(9)**
H-2A	Temporary worker performing Agricultural Services unavailable in the United States (Petition filed on or after 06/01/87).	101(a)(15)(H)(ii)(a) 214(c)(1) 218	8 C.F.R. § 214.2(h)(5) **8 C.F.R. § 274a.12(b)(9)**
H-2B	Temporary worker performing other services unavailable in the United States (petition filed on or after 06/01/87).	101(a)(15)(H)(ii)(b) 214(c)(5)(A) 214(g)	8 C.F.R. § 214.2(h)(6) **8 C.F.R. § 274a.12(b)(9)**
H-3	Trainee	101(a)(15)(H)(iii)	8 C.F.R. § **8 C.F.R. § 274a.12(b)(9)**
H-4	Spouse or child of H-1, H-2, or H-3	101(a)(15)(H)	8 C.F.R. § 214.2(h)(9)(iv)
I	Information Media Representatives, spouse, and children.	101(a)(15)(I)	8 C.F.R. § 214.2(i) **8 C.F.R. § 274a.12(b)(10)**

J	Exchange Visitors (General)	101(a)(15)(J) 212(e) 212(j) 214(l) 248(2-3)	8 C.F.R. § **8 C.F.R. § 274a.12(b)(11)** **8 C.F.R. § 274a.12(c)(5)** 22 C.F.R. § 41.53(f) 22 C.F.R. § 41.54(g) 22 C.F.R. § 41.62-63 22 C.F.R. § 62
J-1	Exchange visitor	212(e) 214(l)	**8 C.F.R. § 274a.12(b)(11)**
J-2	Spouse or Child of J-1		**8 C.F.R. § 274a.12(c)(5)**

K	Fiancé (e) of a U.S. Citizen (General)	101(a)(15)(K)	8 C.F.R. § 212.2(c) 8 C.F.R. § 214.2(k) 8 C.F.R. § 248.2(b) **8 C.F.R. § 274a.12(a)(6)** **8 C.F.R. § 274a.12(a)(9)**

			22 C.F.R. § 41.81 22 C.F.R. § 41.108
K-1	Fiancé (e) of a U.S. Citizen	101(a)(15)(K)(i) 214(d)	**8 C.F.R. § 274a.12(a)(6)**
K-2	Minor child of K-1	101(a)(15)(K)(iii) 214(d)	
K-3	Spouse of a U.S. Citizen (LIFE Act)	101(a)(15)(K)(ii) 214(p)	**8 C.F.R. § 274a.12(a)(9)**
K-4	Child of K-3 (LIFE Act)	101(a)(15)(K)(iii) 214(p)	

L	Intracompany Transferees (General)	101(a)(15)(L) 214(c)(1) 214(c)(2)(E) 214(h)	8 C.F.R. § 214.2(l) **8 C.F.R. § 274a.12(b)(12)** 22 C.F.R. § 41.54
L-1A	Intracompany transferee (Executive, managerial)		**8 C.F.R. § 274a.12(b)(12)**
L-1B	Intracompany transferee (specialized knowledge		**8 C.F.R. § 274a.12(b)(12)**

	alien)		

M	Non-academic Students	101(a)(15)(M)	8 C.F.R. § 214.2(m) **8 C.F.R. § 274a.12(c)(6)** 22 C.F.R. § 41.61
M-1	Vocational or other non-academic student (except Border Commuters from Canada or Mexico, see below)	101(a)(15)(M)(i)	8 C.F.R. § 214.2(m)(14) **8 C.F.R. § 274a.12(c)(6)**
M-1/M-3	Border Commuter Vocational or Non-Academic Student from Canada and Mexico	101(a)(15)(M)(iii)	8 C.F.R. § 214.2(m)(14) 8 C.F.R. § 214.2(m)(19)
M-2	Spouse or child of M-1	101(a)(15)(M)(ii)	8 C.F.R. §
L-2	Spouse or child of L-1	214(c)(2)(E)	8 C.F.R. § 214.2(l)(17)(v)

N	Certain parents and children of Special Immigrants	101(a)(15)(N) 101(a)(27)(I)	8 C.F.R. § 214.2(n) **8 C.F.R. § 274a.12(a)(7)**

		101(a)(27)(L)	
N-8	Parent of an SK-3 Special Immigrant	101(a)(15)(N)(i) 101(a)(27)(I)(i) 101(a)(27)(L)	
N-9	Child of N-8, SK-1, SK-2 or SK-4 Special Immigrant	101(a)(15)(N)(ii) 101(a)(27)(I)(ii)-(iv)	

NATO	NATO Representatives, Officials, and Employees (General)	101(a)(15)(G) 101(a)(27)(L) Art. 1, 4 UST 1794 Art. 3, 4 UST 1796 Art. 3, 5 UST 877 Art. 12-21, 5 UST 1094-1100	8 C.F.R. § 214.2(s) 22 CFR § 41.25 **8 C.F.R. § 274a.12(b)(17) 8 C.F.R. § 274a.12(b)(18) 8 C.F.R. § 274a.12(c)(7)**

NATO-1	Principal Permanent Representative of Member State to NATO, (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff, Secretary General, Assistant Secretary General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank; or Immediate Family.	Art 12, 5 UST 1094 Art. 20, 5 UST 1098	**8 C.F.R. § 274a.12(b)(17) 8 C.F.R. § 274a.12(c)(7)**
NATO-2	Other Representative of Member State to NATO (including any of Subsidiary Bodies) including Representatives, its Advisers and Technical Experts of Delegations, Members of Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the Protocol on the Status of International Military Headquarters; Members of such a Force if issued visas, or immediate family.	Art. 13, 5 UST 1094 Art. 1, 4 UST 1794	

NATO-3	Official clerical staff of representative of member state to NATO/subsidiary body or immediate family.	Art. 14, 5 UST 1096	
NATO-4	NATO officials other than those qualified as NATO-1 or immediate family members.	Art. 18, 5 UST 1098	
NATO-5	NATO experts other than those qualified as NATO-4 employed in NATO missions and immediate family.	Art. 21, 5 UST 1100	
NATO-6	Members of civilian component accompanying a force entering in accordance with NATO Status- of-Forces Agreement or attached to Allied Headquarters under "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty; and immediate family.	Art. 1, 4 UST 1794 Art. 3, 5 UST 877	

NAT O-7	Attendant, Servant, or Personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO- 5, NATO-6, and immediate family.	Art. 12-20, 5 UST 1094-1098	**8 C.F.R. § 274a.12(b)(18) 8 C.F.R. § 274a.12(c)(7)**
O	Aliens with Extraordinary Ability (General)	101(a)(15)(O) 214(a)(2)(A) 214(c)(1), (3), (6) 214(c)(5)(B)	8 C.F.R. § 214.2(o) **8 C.F.R. § 274a.12(b)(13)** 22 C.F.R. § 41.55
O-1	Aliens with extraordinary ability in sciences, arts, education, business, or athletics	101(a)(15)(O)(i) 214(c)(6)	8 C.F.R. § 214.2(o)(1) 8 C.F.R. § 214.2(o)(2) 8 C.F.R. § **8 C.F.R. §**
O-2	Alien accompanying/assisting O-1 performers or athletes	101(a)(15)(O)(ii) 214(c)(6)	8 C.F.R. § 214.2(o)(4) **8 C.F.R. § 274a.12(b)(13)**
O-3	Spouse or child of O-1 or O-2	101(a)(15)(O)(iii)	8 C.F.R. § 214.2(o)(6)(iv)

P	Athletes, Artists, and Entertainers (General)	101(a)(15)(P) 214(a)(2)(B) 214(c)(1), (4) 214(c)(5)(B)	8 C.F.R. § 214.2(p) **8 C.F.R. § 274a.12(b)(14)** 22 C.F.R. § 41.56
P-1	Individual or Team Athletes; Group Entertainer	101(a)(15)(P)(i) 214(c)(6)	8 C.F.R. § 214.2(p)(4) **8 C.F.R. § 274a.12(b)(14)**
P-2	Individual/Group Artist or Entertainer in Reciprocal Exchange Program	101(a)(15)(P)(ii)	8 C.F.R. § 214.2(p)(5) **8 C.F.R. § 274a.12(b)(14)**
P-3	Artist or Entertainer in Culturally Unique Program.	101(a)(15)(P)(iii) 214(c)(6)	8 C.F.R. § 214.2(p)(6) **8 C.F.R. § 274a.12(b)(14)**
P-4	Spouse or child of P-1, P-2, or P-3	101(a)(15)(P)(iv)	8 C.F.R. § 214.2(p)(8)(iii)(D)
Q-1	International Cultural Exchange Visitor	101(a)(15)(Q)(i)	8 C.F.R. § 214.2(q) **8 C.F.R. § 274a.12(b)(15)**

			22 C.F.R. § 41.57
Q-2	Irish Peace Process Cultural and Training Program (Walsh Visas)	101(a)(15)(Q)(ii)(l)	**8 C.F.R. § 274a.12(c)(23)** 8 C.F.R. § 214.2(q)(15) 8 C.F.R. § 214.2(q)(15)(vii)(A)
Q-3	Spouse or child of Q-2	101(a)(15)(Q)(ii)(ll)	8 C.F.R. § 214.2(q)(15) 8 C.F.R. § 214.2(q)(15)(vii)(B)
R	Religious Workers (General)	101(a)(15)(R)	8 C.F.R. § 214.2(r)
R-1	Religious Worker		**8 C.F.R. § 274a.12(b)(16)** 22 C.F.R. § 41.58
R-2	Spouse or child of R-1		8 C.F.R. § 214.2(r)(8)

S	Witness or Informant (General)	101(a)(15)(S) 212(d)(1) 214(k) 248(1)	8 C.F.R. § 214.2(t) 8 C.F.R. § 248.2(b) **8 C.F.R. § 274a.12(c)(21)** 22 C.F.R. § 41.83
S-5	Witness or informant regarding Criminal Organization	101(a)(15)(S)(i)	**8 C.F.R. § 274a.12(c)(21)** 8 C.F.R. § 214.2(t)(10)
S-6	Witness or informant regarding Terrorism	101(a)(15)(S)(ii)	
S-7	Spouse, child, or parent of S-5 or S-6	101(a)(15)(S)(ii)	8 C.F.R. § 214.2(t)(3) **8 C.F.R. § 274a.12(c)(21)**

T	Victim of trafficking in persons & immediate family.	101(a)(15)(T) 212(d)(13) 214(n)	8 C.F.R. § 214.11 22 C.F.R. § 41.84 **8 C.F.R. § 274a.12(a)(16)** **8 C.F.R. § 274a.12(c)(25)**

T-1	Victim of a severe form of trafficking in persons	101(a)(15)(T)(i) 214(n)	**8 C.F.R. § 274a.12(a)(16)**
T-2	Spouse of trafficking victim	101(a)(15)(T)(ii)	**8 C.F.R. § 274a.12(c)(25)**
T-3	Child of trafficking victim		
T-4	Parent of trafficking victim under 21		

TN/ TD/ NA FTA	North American Free Trade Agreement	214(e), (j)	8 C. F.R. § 214.2(b)(4) 8 C.F.R. § 214.6 8 C.F.R 274a.12(b)(19) 22 C.F.R § 41.59
TN-1	Canadian NAFTA Professional		
TN-2	Mexican NAFTA Professional		
TD	Spouse or child of TN-1 or TN-2		8 C.F.R. § 214.6(j)
TN/ TD/ NA FTA	North American Free Trade Agreement	214(e), (j)	8 C. F.R. § 214.2(b)(4) 8 C.F.R. § 214.6 **8 C.F.R 274a.12(b)(19)** 22 C.F.R § 41.59
TN-1	Canadian NAFTA Professional		

TW OV	Transit without a visa (Passenger or crew admitted temporarily)	212(d)(3)	8 C.F.R. § 212. 1(f) 8 C.F.R. § 248.2(a) 22 C.F.R. § 41.21

U-1	Victim of certain criminal activity	101(a)(15)(U) 212(d)(13) 214 (o)	22 C.F.R. § 41.12
U-2	Spouse of U-1 victim		
U-3	Child of U-1 victim		
U-4	Parent of U-1 victim under 21		

V	Immediate Family of Legal Permanent Resident	101(a)(15)(V)	8 C.F.R. § 214.2(v)
V-1	Spouse of a Legal Permanent Resident who is the principal beneficiary of a family-based petition	214(h) 214(o)	8 C.F.R § 214.15 **8 C.F.R. § 274a.12(a)(15)**
V-2	Child of a Legal Permanent Resident who is the principal beneficiary of a family-based petition		**8 C.F.R. §** **274a.12(a)(15)(h)**
V-3	Derivative Child of a V-1 or V-2.		22 C.F.R. § 41.86

REFERENCES TO GENERAL REGULATORY PROVISIONS GOVERNING NON-IMMIGRANTS[4]	
8 C.F.R.	
§ 212.1	**Documentary Requirements for Non-Immigrants**
§ 214.1	**Requirements for Admission, Extension, and Maintenance of Status**
§ 214.2	**Special Requirements for Admission, Extension, and Maintenance of Status**
§ 217	**Visa Waiver Pilot Program**
§ 221	**Admission of Visitors or Students**
§ 235	**Inspection by Immigration Officers; Expedited Removal**
§ 240	**Removal Proceedings**
§ 245	**Adjustment of Status to that of a Person Admitted for Permanent Residence**
§ 248	**Change or Extension of Nonimmigrant Classification (Change of Status)**
§ 274a	**Control of Employment of Aliens**
§ 274a.12(b)	**Aliens Authorized for Employment with a Specific Employer Incident to Status**
20 C.F.R.	
§ 655	**Temporary Employment of Aliens in the United States**
22 C.F.R.	
§ 22.1	**Schedule of Fees for Consular Services**
§ 41.11	**Entitlement to nonimmigrant status**
§ 41.12	**Classification symbols & corresponding INA Section**

[4] This list includes certain key regulations that concern immigrants, nonimmigrants, and other aliens. However, it is not an exclusive list of all regulations that may affect such persons. Please see generally Titles 8, 20, and 22

§ 41.101	**Application for Nonimmigrant Visa**
§ 41.102	**Personal appearance of applicant.**
§ 41.103	**Filing an application and form OF-156.**
§ 41.104	**Passport requirements**
§ 41.105	**Supporting documents and fingerprinting**
§ 41.106	**Processing**
§ 41.107	**Visa fees**
§ 41.108	**Medical Examination**
§ 41.111	**Issuance of Nonimmigrant Visa**
§ 41.112	**Validity of Visa**
§ 41.113	**Procedures in issuing visas**
§ 41.121	**Refusal of Nonimmigrant Visa**
§ 41.122	**Revocation of Nonimmigrant Visa**
28 C.F.R.	
§ 44	**Unfair Immigration-Related Employment Practices**

APPENDIX B

DESCRIPTION OF PERM LABOR CERTIFICATION PROCESS

Permanent Labor Certification

A permanent labor certification issued by the Department of Labor (DOL) allows an employer to hire a foreign worker to work permanently in the United States. In most instances, before the U.S. employer can submit an immigration petition to the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS), the the employer must obtain an approved labor certification request from the DOL's Employment and Training Administration (ETA). The DOL must certify to the USCIS that there are no qualified U.S. workers able, willing, qualified and available to accept the job at the prevailing wage for that occupation in the area of intended employment and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

To improve the operations of the permanent labor certification program, ETA published a final regulation on December 27, 2004, which required the implementation of a new re-engineered permanent labor certification program by March 28, 2005. This new electronic program has improved services to our various stakeholders.

As of March 28, 2005, ETA Form 750 applications were no longer accepted under the regulation in effect prior to March 28, 2005, and instead new ETA Form 9089 applications had to be filed under PERM at the appropriate National Processing Center. Applications filed under the regulation in effect prior to March 28, 2005, have continued to be processed at the appropriate Backlog Elimination Center under the rule in effect at the time of filing. Only if an employer chose to withdraw an earlier application and refile the application for the identical job opportunity under the refile provisions of PERM was a previously filed ETA Form 750 application filing date considered under the PERM regulation. For more information regarding applications filed prior to March 28, 2005, access our backlog FAQ's.

The DOL processes Applications for Permanent Employment Certification, ETA Form 9089. The date the labor certification application is filed is known as the filing date and is used by USCIS and the Department of State as the priority date. After the labor certification application is approved by the DOL, it should be submitted to the USCIS service center with a From 1-140, Immigrant Petition for Alien Worker. You may access the State Department Visa Bulletin to learn which priority dates are currently being processed.

Qualifying Criteria

- Applications filed on or after March 28, 2005, must file using the new PERM process and adhere to the new PERM Regulations;
- The employer must hire the foreign worker as a full-time employee.
- There must be a bona fide job opening available to U.S. workers.
- Job requirements must adhere to what is customarily required for the occupation in the U.S. and may not be tailored to the foreign worker's qualifications. In addition, the employer shall document that the job opportunity has been and is being described without unduly restrictive job requirements, unless adequately documented as arising from business necessity.
- The employer must pay at least the prevailing wage for the occupation in the area of intended employment.

Process for Filing

1. Application. The employer must complete an Application for Permanent Employment Certification (ETA Form 9089). The application will describe in detail the job duties, educational requirements, training, experience, and other special capabilities the employee must possess to do the work, and a statement of the prospective immigrant's qualifications.

2. Signature requirement. Applications submitted by mail must contain the original signature of the employer, alien, and preparer, if applicable, when they are received by the National Processing Center (NPC). Applications filed electronically must, upon receipt of the labor certification issued by ETA, be signed immediately by the employer, alien, and preparer, if applicable, in order to be valid.

3. Prevailing wage. Prior to filing ETA Form 9089, the employer must request a prevailing wage determination from the State Workforce Agency (SWA) having jurisdiction over the proposed area of intended employment. The employer is required to include on the ETA Form 9089 the SWA provided information: the prevailing wage, the prevailing wage tracking number (if applicable), the SOC/O*N ET (OES) code, the occupation title, the skill level, the wage source, the determination date, and the expiration date.

4. Pre-Filing Recruitment Steps. All employers filing the ETA Form 9089 (except for those applications involving college or university teachers selected pursuant to a competitive recruitment and selection process, Schedule A occupations, and sheepherders) **must** attest, in addition to a number of other conditions of employment, to having conducted recruitment prior to filing the application.

The employer must recruit under the standards for professional occupations set forth in 20 CFR 656.17(e)(1) if the occupation involved is on the list of occupations, published in Appendix A to the preamble of the final PERM regulation. For all other occupations not normally requiring a bachelor's or higher degree, employers can simply recruit under the requirements for nonprofessional occupations at 20 CFR 656.17(e)(2). Although the occupation involved in a labor certification application may be a nonprofessional occupation, the regulations do not prohibit employers from conducting more recruitment than is specified for such occupations.
The employer must prepare a recruitment report in which it categorizes the lawful job-related reasons for rejection of U.S. applicants and provides the number of U.S. applicants rejected in each category. The recruitment report does not have to identify the individual U.S. workers who applied for the job opportunity.

For more information and specifics regarding pre-filing recruitment requirements for al types of occupations read the FAQs.

5. Audits/requests for information: Supporting documentation need not be filed with the ETA Form 9089, but the employer must provide the required supporting documentation if the employer's application is selected for audit or if the Certifying Officer otherwise requests it.

6. Retention of records. The employer is required to retain all supporting documentation for five years from the date of filing the ETA Form 9089. For example, the SWA prevailing wage determination documentation is not submitted with the application, but it must be retained for a period of five years from the date of filing the application by the employer.

7. Refiling. If a job order has not been placed pursuant to the regulations in effect prior to March 28, 2005, an employer may refile by withdrawing the original ETA Form 750 application and submitting, within 210 days of withdrawing, an ETA Form 9089 application for an identical job opportunity which complies with all requirements of the new PERM regulation.

8. Online filing. The employer has the option of filing an application electronically (using web-based forms and instructions) or by mail. However, the Department of Labor recommends that employers file electronically. Not only is electronic filing, by its nature, faster, but it will also ensure the employer has provided all required information, as an electronic application can not be submitted if the required fields are not completed. Additionally, when completing the ETA Form 9089 online, the preparer is provided prompts to assist in ensuring accurate data entry.

The employer can access a customer-friendly web site (www.plc.doleta.gov) and, after registering and establishing an account, electronically fill out and submit an Application for Permanent Employment Certification, ETA Form 9089.

Registration. To better assist employers with processing the Application for Permanent Employment Certification, the electronic Online Permanent System requires employers to set up individual accounts. An employer must set up a profile by selecting the appropriate profile option in the Online System. By completing an Employer Profile, you will be able to:

- Save time by pre-populating your general information.
- View the status of your labor certification applications online.
- Update your profile information online.
- Track newly submitted labor certification applications.

- Email saved labor certification applications to others within the company.
- Add new users to your account.
- Withdraw labor certification applications no longer needed.

9. Filing by mail. National Processing Centers have been established in Atlanta and Chicago. Employers submit paper applications to the processing center with responsibility for the state or territory where the job opportunity is located.

The address and contact information for each National Processing Center and the states and the territories within their jurisdictions are provided on our Contact Information page.

10. Approvals. If the appropriate National Processing Center approves the application, the ETA Form 9089 is "certified" (stamped) by the Certifying Officer and returned to the employer/employer representative who submitted the application.

We have added FAQs concerning the Permanent regulation that went into effect on March 28, 2005. For more information and details regarding filing read the FAQs.

The USCIS Petition

After approval of the labor certification, the employer must file an "Immigrant Petition for an Alien Worker" with the U.S. Citizenship and Immigration Services (USCIS), Form 1-140. The employer then attaches the certified ETA Form 9089 to a completed USCIS Form 1-140, along with the appropriate fees, and submits the package to the appropriate USCIS Service Center. The petition is filed by the employer on behalf of the foreign worker and must include the approved labor certification and other USCIS specified documentation.

Schedule A Occupations

Schedule A is a list of occupations, set forth at 20 CFR 656.15, for which the Department has determined there are not sufficient U.S. workers who

are able, willing, qualified and available. In addition, Schedule A establishes that the employment of aliens in such occupations will not adversely affect the wages and working conditions of U.S. workers similarly employed.

The occupations listed under Schedule A include: Group I

1. Physical Therapists - who possess all the qualifications necessary to take the physical therapist licensing examination in the state in which they propose to practice physical therapy; and

2. Professional Nurses - the alien (i) has a Commission on Graduates in Foreign Nursing Schools (CGFNS) Certificate, (ii) the alien has passed the National Council Licensure Examination for Registered Nurses (NCLEX—RN) exam, or (iii) the alien holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment.

3. Sciences or arts (except performing arts) - Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation.

4. Performing arts - Aliens of exceptional ability in the performing arts whose work during the past 12 months did require, and whose intended work in the United States will require, exceptional ability.

An employer shall apply for a labor certification for a Schedule A occupation by filing an ETA Form 9089, in duplicate with the appropriate USCIS Center, NOT with the Department of Labor or a SWA.

Forms & Instructions

ETA Form 9089
Instructions for ETA Form 9089 Permanent Online System

Program Regulations & FAQs

20 CFR 656
Fraud Rule(20 CFR part 656; 72 Fed. Reg. 29704)
FAQ's - Round 1 FAQ's - Round 2 FAQ's - Round 3 FAQ's - Round 4
FAQ's - Round 5 FAQ's - Round 6 FAQ's - Round 7 FAQ's - Round 8
FAQ's - Round 9 FAQ's - Round 10 PERM Fraud Rule FAQs

Employment and Training Administration
U.S Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

APPENDIX C

I-130 INSTRUCTIONS

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB #1615-0012; Expires 01/31/11
Instructions for I-130, Petition for Alien Relative

Instructions

Please read these instructions carefully to properly complete this form. If you need more space to complete an answer, use a separate sheet(s) of paper. Write your name and Alien Registration Number (A #), if any, at the top of each sheet of paper and indicate the part and number of the item to which the answer refers. If you do not follow the instructions, U.S. Citizenship and Immigration Services (USCIS) may have to return your petition, which may delay final action. The filing addresses provided on this form reflect the most current information as of the date this form was last printed. If you are filing Form I-130 more than 30 days after the latest edition date shown in the lower right-hand corner, please visit our website online at **www.uscis.gov** before you file, and check the Immigration Forms page to confirm the correct filing address and version currently in use. Check the edition date located in the lower right-hand corner of the form. If the edition date on your Form I-130 matches the edition date listed for Form I-130 on the online Immigration Forms page, your version is current and will be accepted by USCIS. If the edition date on the online version is later, download a copy and use the online version. If you do not have Internet access, call the National Customer Service Center at 1-800-375-5283 to verify the current filing address and edition date. **Improperly filed forms will be rejected, and the fee returned, with instructions to resubmit the entire filing using the current form instructions.**

What Is the Purpose of This Form?

A citizen or lawful permanent resident of the United States may file this form with U.S. Citizenship and Immigration Services (USCIS) to establish the existence of a relationship to certain alien relatives who wish to immigrate to the United States.

Who May File Form I-130?

1. If you are a U.S.citizen you must file a separate Form I-130 for each eligible relative. You may file a Form I-130 for:

A. Your husband or wife;
B. Your unmarried child under age 21;
C. Your unmarried son or daughter age 21 or older;
D. Your married son or daughter of any age;
E. Your brother(s) or sister(s) (you must be age 21 or older);
F. Your mother or father (you must be age 21 or older).

2. If you are a lawful permanent resident of United States, you may file this form for:

A. Your husband or wife;
B. Your unmarried child under age 21;
C. Your unmarried son or daughter age 21 or older.

NOTE:

1. There is no visa category for married children of permanent residents. If an unmarried son or daughter of a permanent resident marries before the permanent resident becomes a U.S. citizen, any petition filed for that son or daughter will be automatically revoked.

2. If your relative qualifies under paragraph 1(C), **1(D),** or **1(E)** above, separate petitions are not required for his or her husband or wife or unmarried children under 21 years of age.

3. If your relative qualifies under paragraph **2(B)** or **2(C)** above, separate petitions are not required for his or her unmarried children under 21 years of age.

4. The persons described in number 2 and 3 of the above **NOTE** will be able to apply for an immigrant visa along with your relative.

Who May Not File This Form I-130?

You may not file for a person in the following categories:

1. An adoptive parent or adopted child, if the adoption took place after the child's 16th birthday, or if the child has not been in the legal custody and living with the parent(s) for at least two years.
2. A natural parent, if the U.S. citizen son or daughter gained permanent residence through adoption.
3. A stepparent or stepchild, if the marriage that created the relationship took place after the child's 18th birthday.
4. A husband or wife, if you and your spouse were not both physically present at the marriage ceremony, and the marriage was not consummated.
5. A husband or wife, if you gained lawful permanent resident status by virtue of a prior marriage to a U. S. citizen or lawful permanent resident, unless:

   A. A period of five years has elapsed since you became a lawful permanent resident; or

   B. You can establish by clear and convincing evidence that the prior marriage through which you gained your immigrant status was not entered into for the purpose of evading any provision of the immigration laws; or

   C. Your prior marriage through which you gained your immigrant status was terminated by the death of your former spouse.

6. A husband or wife, if you married your husband or wife while your husband or wife was the subject of an exclusion, deportation, removal, or rescission proceeding regarding his or her right to be admitted into or to remain in the United States, or while a decision in any of these proceedings was before any court on judicial review, unless:

   You prove by clear and convincing evidence that the marriage is legally valid where it took place, **and** that you and your husband or wife married in good faith and not for the purpose of procuring the admission of your

husband or wife as an immigrant, **and** that no fee or any other consideration (other than appropriate attorney fees) was given for your filing of this petition **OR**

Your husband or wife has lived outside the United States, after the marriage, for a period of at least two years.

7. A husband or wife, if it has been legally determined that such an alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8. A grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or in-law.

General Instructions

Step 1. Fill Out Form I-130

1. Type or print legibly in black ink.
2. If extra space is needed to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.
3. Answer all questions fully and accurately. State that an item is not applicable with "N/A." If the answer is none, write "none."

Translations. Any foreign language document must be accompanied by a full English translation that the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate the foreign language into English.

Copies. If these instructions state that a copy of a document may be filed with this petition, submit a copy. If you choose to send the original, USCIS may keep that original for our records. If USCIS requires the original, it will be requested.

What Documents Do You Need to Show That You Are a U.S. Citizen?

1. If you were born in the United States, a copy of your birth certificate, issued by a civil registrar, vital statistics office, or other civil authority.
2. A copy of your naturalization certificate or certificate of citizenship issued by USCIS or the former INS.

3. A copy of Form FS-240, Report of Birth Abroad of a Citizen of the United States, issued by a U.S. Embassy or consulate.
4. A copy of your unexpired U.S. passport; or
5. An original statement from a U.S. consular officer verifying that you are a U.S. citizen with a valid passport.
6. If you do not have any of the above documents and you were born in the United States, see instructions under**, "What If a Document Is Not Available?"**

What Documents Do You Need to Show That You Are a Permanent Resident?

If you are a permanent resident, you must file your petition with a copy of the front and back of your permanent resident card. If you have not yet received your card, submit copies of your passport biographic page and the page showing admission as a permanent resident, or other evidence of permanent resident status issued by USCIS or the former INS.

What Documents Do You Need to Prove Family Relationship?

You have to prove that there is a family relationship between you and your relative. If you are filing for:

1. A husband or wife, submit the following documentation:

A. A copy of your marriage certificate.

B. If either you or your spouse were previously married, submit copies of documents showing that all prior marriages were legally terminated.

C. A passport-style color photo of yourself and a passport-style color photo of your husband or wife, taken within 30 days of the date of this petition. The photos must have a white background and be glossy unretouched and not mounted. The dimensions of the full frontal facial image should be about 1 inch from the chin to top of the hair. Using pencil or felt pen, lightly print the name (and Alien Registration Number, if known) on the back of each photograph.

D. A completed and signed Form G-325A, Biographic Information, for you and a Form G-325A for your husband or wife. Except for your name and signature you do not have to repeat on Form G-325A the information given on your Form I-130 petition.

NOTE: In addition to the required documentation listed above, you should submit one or more of the following types of documentation that may evidence that bona fides of your marriage:

E. Documentation showing joint ownership or property; or

F. A lease showing joint tenancy of a common residence; or

G. Documentation showing co-mingling of financial resources; or

H. Birth certificate(s) of child(ren) born to you, the petitioner, and your spouse together; or

I. Affidavits sworn to or affirmed by third parties having personal knowledge of the bona fides of the marital relationship. (Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit, his or her relationship to the petitioner of beneficiary, if any, and complete information and details explaining how the person acquired his or her knowledge of your marriage); or

J. Any other relevant documentation to establish that there is an ongoing marital union.

NOTE: If you married your husband or wife while your husband or wife was the subject of an exclusion, deportation, removal, or rescission proceeding (including judicial review of the decision in one of these proceedings), this evidence must be sufficient to establish the bona fides or your marriage by clear and convincing evidence.

2. **A child and you are the mother:** Submit a copy of the child's birth certificate showing your name and the name of your child.

3. **A child and you are the father:** Submit a copy of the child's birth certificate showing both parents' names and your marriage certificate.

4. **A child born out of wedlock and you are the father:** If the child was not legitimated before reaching 18 years old, you must file your petition with copies of evidence that a bona fide parent-child relationship existed between the father and the child before the child reached 21 years. This may include evidence that the father lived with the child, supported him or her, or otherwise showed continuing parental interest in the child's welfare.

5. **A brother or sister:** Submit a copy of your birth certificate and a copy of your brother's or sister's birth certificate showing that you have at least one common parent. If you and your brother or sister have a common father but different mothers, submit copies of the marriage certificates of the father to each mother and copies of documents showing that any prior marriages of either your father or mothers were legally terminated. If you and your brother or sister are related through adoption or through a stepparent, or if you have a common father and either of you were not legitimated before your 18th birthday, see also **8** and **9** below.

6. **A mother:** Submit a copy of your birth certificate showing your name and your mother's name.

7. **A father:** Submit a copy of your birth certificate showing the names of both parents. Also give a copy of your parents' marriage certificate establishing that your father was married to your mother before you were born, and copies of documents showing that any prior marriages of either your father or mother were legally terminated. If you are filing for a stepparent or adoptive parent, or if you are filing for your father and were not legitimated before your 18th birthday, also see **4, 8,** and **9.**

8. **Stepparent/Stepchild:** If your petition is based on a stepparent-stepchild relationship, you must file your petition with a copy of the marriage certificate of the stepparent to the child's natural parent showing that the marriage occurred before the child's 18th birthday, copies of documents showing that any prior marriages were legally terminated and a copy of the stepchild's birth certificate.

9. **Adoptive parent or adopted child:** If you and the person you are filing for are related by adoption, you must submit a copy of the adoption decree(s) showing that the adoption took place before the child became 16 years old.

If you adopted the sibling of a child you already adopted, you must submit a copy of the adoption decree(s) showing that the adoption of the sibling occurred before that child's 18th birthday.

In either case, you must also submit copies of evidence that each child was in the legal custody of and resided with the parent(s) who adopted him or her for at least two years before or after adoption. Legal custody may only be granted by a court or recognized government entity and is usually granted at the time of the adoption is finalized. However, if legal custody is granted by a court or recognized government agency prior to the adoption, that time may count to fulfill the two-year legal custody requirement.

What If Your Name Has Changed?

If either you or the person you are filing for is using a name other than shown on the relevant documents, you must file your petition with copies of the legal documents that effected the change, such as a marriage certificate, adoption decree or court order.

What If a Document Is Not Available?

In such situation, submit a statement from the appropriate civil authority certifying that the document or documents are not available. You must also submit secondary evidence, including:

A. **Church record:** A copy of a document bearing the seal of the church, showing the baptism, dedication or comparable rite occurred within two months after birth, and showing the date and place of the child's birth, date of the religious ceremony and the names of the child's parents.

B. **School record:** A letter from the authority (preferably the first school attended) showing the date of admission to the school, the child's date of birth or age at that time, place of birth, and names of the parents.

C. **Census record:** State or Federal census record showing the names, place of birth, date of birth, or the age of the person listed.

D. **Affidavits:** Written statements sworn to or affirmed by two persons who were living at the time and who have personal knowledge of the event you are trying to prove. For example, the date and place of birth, marriage or death. The person making the affidavit does not have to be a U.S. citizen. Each affidavit should contain the following information regarding the person making the affidavit: his or her full name, address, date and place of birth, and his or her relationship to you, if any, full information concerning the event, and complete details explaining how the person acquired knowledge of the event.

Where To File?

If you reside in the United States, file the I-130 form at the Lockbox according to following instructions:

If you are the petitioner and you reside in Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, or Wyoming and you are filing only Form I-130, mail the petition to the USCIS Lockbox Facility. The address is as follows:

USCIS
P.O. Box 804625
Chicago, IL 60680-1029

If you are the petitioner and you reside in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia,

U.S. Virgin Islands, West Virginia, or District of Columbia and you are filing only Form I-130, mail the petition to the USCIS Lockbox Facility. The address is as follows:

USCIS
P.O. Box 804616
Chicago, IL 60680-1029

NOTE: If the Form I-130 petition is being filed concurrently with Form I-485, Application to Register Permanent Residence or Adjust Status, submit both forms concurrently to:

U.S. Citizenship and Immigration Services P.O. Box 805887
Chicago, IL 60680-4120

For private couriers (non USPS) deliveries:

U.S. Citizenship and Immigration Services Attn: FBASI
427 S. LaSalle - 3rd Floor
Chicago, IL 60605-1098

Petitioners residing abroad: If you live in Canada, file your petition at the Vermont Service Center. **Exception:** If you are a U.S. citizen residing in Canada, and you are petitioning for your spouse, child, or parent, you may file the petition at the nearest U.S. Embassy or consulate, except for those in Quebec City. If you reside elsewhere outside the United States file, your relative petition at the USCIS office overseas or the U.S. Embassy or consulate having jurisdiction over the area where you live. For further information, contact the nearest U.S. Embassy or consulate.

What Is the Filing Fee?

The filing fee for a Form is **$355.**
Use the following guidelines when you prepare your check or money order for Form I-130:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and
2. Make the check or money order payable to **U.S. Department of Homeland Security,** unless:
   - **A.** If you live in Guam and are filing your petition there, make it payable to **Treasurer, Guam.**
   - **B.** If you live in the U.S. Virgin Islands and are filing your petition there, make it payable to **Commissioner of Finance of the Virgin Islands.**
   - **C.** If you live outside the United States, Guam, or the U.S. Virgin Islands, contact the nearest U.S. Embassy or consulate for instructions on the method of payment.

NOTE: Please spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

How to Check If the Fees Are Correct

The form fee on this form is current as of the edition date appearing in the lower right corner of this page. However, because USCIS fees change periodically, you can verify if the fees are correct by following one of the steps below:

1. Visit our website at **www.uscis.gov,** select "Immigration Forms," and check the appropriate fee;
2. Review the fee schedule included in your form package, if you called us to request the form, or
3. Telephone our National Customer Service Center at 1-800-375-5283 and ask for the fee information.

When Will a Visa Become Available?

When a petition is approved for the husband, wife, parent, or unmarried minor child of a United States citizen, these persons are classified as immmediate relatives. They do not have to wait for a visa number because immediate relatives are not subject to the immigrant visa limit.

For alien relatives in preference categories, a limited number of immigrant visas are issued each year. The visas are processed in the order in which the petitions are properly filed and accepted by USCIS. To be considered properly filed, a petition must be fully completed and signed, and the fee must be paid.
For a monthly report on the dates when immigrant visas are available, call the **U.S. Department of State** at **(202) 663-1541,** or visit: www.travel.state.gov.

Address Changes

If you change your address and you have an application or petition pending with USCIS, you may change your address online at **www.uscis.gov,** click on "Change your address with USCIS," and follow the prompts. Or you may complete and mail Form AR-11, Alien's Change of Address Card, to:

U.S. Citizenship and Immigration Services
Change of Address
P.O. Box 7134
London, KY 40742-7134

For commercial overnight or fast freight services only, mail to:

U.S. Citizenship and Immigration Services
Change of Address
1084-I South Laurel Road
London, KY 40744

Notice to Persons Filing for Spouses, If Married Less Than Two Years

Pursuant to section 216 of the Immigration and Nationality Act, your alien spouse may be granted conditional permanent resident status in the United States as of the date he or she is admitted or adjusted to conditional status by a USCIS officer. Both you and your conditional resident spouse are required to file Form I-751, Joint Petition to Remove Conditional Basis of Alien's Permanent Resident Status, during the 90-day period immediately

before the second anniversary of the date your alien spouse was granted conditional permanent resident status.

Otherwise, the rights, privileges, responsibilities, and duties that apply to all other permanent residents apply equally to a conditional permanent resident. A conditional permanent resident is not limited to the right to apply for naturalization, file petitions on behalf of qualifying relatives, or reside permanently in the United States as an immigrant in accordance with our Nation's immigration laws.

NOTE: Failure to file the Form I-75 1 joint petition to remove the conditional basis of the alien spouse's permanent resident status will result in the termination of his or her permanent resident status and initiation of removal proceedings.

Processing Information

Acceptance. Any I-130 petition that is not properly signed or accompanied by the correct fee will be rejected with a notice that the petition is deficient. You may correct the deficiency and resubmit the petition. However, a rejected petition does not retain a filing date. A petition is not considered properly filed until accepted by USCIS.

Initial Processing. Once the petition has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form or file it without the required initial evidence, you will not establish a basis for eligibility, and USCIS may deny your petition.

Requests for More Information. We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer needed.

Decision. The decision on Form I-130 involves a determination of whether you have established eligibility for the requested benefit. You will be notified of the decision in writing.

USCIS Forms and Information

To order USCIS forms, call our toll-free number at **1-800-870-3676.** You can also get USCIS forms and information on immigration laws, regulations, and procedures by telephoning our National Customer Service Center at **1-800-375-5283** or visiting our internet website at **www.uscis.gov.**

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our internet-based system, **InfoPass.** To access the system, visit our website. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit for which you are filing. Our legal right to ask for this information is in 8 U.S.C. 1255. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 90 minutes per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529. OMB No. 1615-0012. **Do not mail your application to this address.**

Checklist

Did you enclose the correct filing fee for each petition?
Did you submit proof of your U.S. citizenship or lawful permanent residence?
Did you submit supporting evidence?

If you are filing for your husband or wife, did you include:

His or her photograph?
Your completed Form G-325A?
His or her Form G-325A?

APPENDIX D

I-140 INSTRUCTIONS

Department of Homeland Security
U.S. Citizenship and Immigration Services

Instructions for I-140, Immigrant Petition for Alien Worker

Instructions

Please read these instructions carefully to properly complete this form. If you need more space to complete an answer, use a separate sheet(s) of paper. Write your name and Alien Registration Number (A #), if any, at the top of each sheet of paper and indicate the part and number of the item to which the answer refers.

What Is the Purpose of This Form?

This form is used to petition U.S. Citizenship and Immigration Services (USCIS) for an immigrant visa based on employment.

Who May File This Form I-140?

A U.S. employer may file this petition for:

1. An outstanding professor or researcher, with at least three years of experience in teaching or research in the academic area, who is recognized internationally as outstanding:

A. In a tenured or tenure-track position at a university or institution of higher education to teach in the academic area; or

B. In a comparable position at a university or institution of higher education to conduct research in the area; or

C. In a comparable position to conduct research for a private employer that employs at least three persons in full-time research activities and which achieved documented accomplishments in an academic field.

2. An alien who, in the three years preceding the filing of this petition, has been employed for at least one year by a firm or corporation or other legal entity and who seeks to enter the United States to continue to render services to the same employer, or to a subsidiary or affiliate, in a capacity that is managerial or executive.

3.A member of the professions holding an advanced degree or an alien with exceptional ability in the sciences, arts, or business who will substantially benefit the national economy, cultural or educational interests, or welfare of the United States.

4.A skilled worker (requiring at least two years of specialized training or experience in the skill) to perform labor for which qualified workers are not available in the United States.

5. A member of the professions with a baccalaureate degree.

6. An unskilled worker (requiring less than two years of specialized training or experience) to perform labor for which qualified workers are not available in the United States.

In addition, a person may file this petition on his or her own behalf if he or she:

1. Has extraordinary ability in the sciences, arts, education, business, or athletics demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field; or

2. Is a member of the profession holding an advanced degree or is claiming exceptional ability in the sciences, arts, or business, and is seeking an exemption of the requirement of a job offer in the national interest (NIW).

General Instructions.

Step 1. Fill Out the Form I-140

1. Type or print legibly in black ink.
2. If extra space is needed to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.
3. Answer all questions fully and accurately. State that an item is not applicable with "N/A." If the answer is none, write "none."

Step 2. General requirements Initial Evidence.

1. ***If you are filing for an alien of extraordinary ability in the sciences, arts, education, business or athletics:***

You must file your petition with evidence that the alien has sustained national or international acclaim and that the achievements have been recognized in the field of expertise.

A. Evidence of a one-time achievement (i.e., a major, internationally recognized award); or

B. At least three of the following:

1. Receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
2. Membership in associations in the field which require outstanding achievements as judged by recognized national or international experts;
3. Published material about the alien in professional or major trade publications or other major media;
4. Participation on a panel or individually as a judge of the work of others in the field or an allied field;
5. Original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
6. Authorship of scholarly articles in the field, in professional or major trade publications or other major media;
7. Display of the alien's work at artistic exhibitions or showcases;

8. Evidence that the alien has performed in a leading or critical role for organizations or establishments that have distinguished reputations;

9. Evidence that the alien has commanded a high salary or other high remuneration for services;

10. Evidence of commercial successes in the performing arts, as shown by box office receipts or record, casette, compact disk, or video sales.

C. If the above standards do not readily apply to the alien's occupation, you may submit comparable evidence to establish the alien's eligibility; and

D. Evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the alien detailing plans on how he or she intends to continue work in the United States.

2. *A U.S. employer filing for an outstanding professor or researcher must file the petition with:*

A. Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

1. Receipt of major prizes or awards for outstanding achievement in the academic field;

2. Membership in associations in the academic field, which require outstanding achievements of their members;

3. Published material in professional publications written by others about the alien's work in the academic field;

4. Participation on a panel, or individually, as the judge of the work of others in the same or an allied academic field;

5. Original scientific or scholarly research contributions to the academic field; or

6. Authorship of scholarly books or articles, in scholarly journals with international circulation, in the academic field.

B. Evidence the beneficiary has at least three years of experience in teaching and/or research in the academic field; and

C. If you are a university or other institution of higher education, a letter indicating that you intend to employ the beneficiary in a tenured or tenure-track position as a teacher or in a permanent position as a researcher in the academic field; or

D. If you are a private employer, a letter indicating that you intend to employ the beneficiary in a permanent research position in the academic field, and evidence that you employ at least three full-time researchers and have achieved documented accomplishments in the field.

3. *A U.S. employer filing for a multinational executive or manager must file the petition with a statement which demonstrates that:*

A. If the worker is now employed outside the United States, that he or she has been employed outside the United States for at least one year in the past three years in an executive or managerial capacity by the petitioner or by its parent, branch, subsidiary or affiliate; or, if the worker is already employed in the United States, that he or she was employed outside the United States for at least one year in the three years preceding admission as a nonimmigrant in an executive or managerial capacity by the petitioner or by its parent, branch, subsidiary or affiliate;

B. The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed abroad;

C. The prospective United States employer has been doing business for at least one year; and

D. The alien is to be employed in the United States in a managerial or executive capacity. A description of the duties to be performed should be included.

4. *A U.S. employer filing for a member of the professions with an advanced degree or a person with exceptional ability in the sciences, arts or business must file the petition with:*

A. A labor certification (see **General Evidence),** or a request for a waiver of a job offer because the employment is deemed to be in the national interest, with documentation provided to show that the beneficiary's presence in the United States would be in the national interest; and either:

1. An official academic record showing that the alien has a U.S. advanced degree or an equivalent foreign degree, or an official academic record showing that the alien has a U.S. baccalaureate degree or an equivalent foreign degree and letters from current or former employers showing that the alien has at least five years of progressive post- baccalaureate experience in the specialty; or

2. At least three of the following:
   a. An official academic record showing that the alien has a degree, diploma, certificate, or similar award from an institution of learning relating to the area of exceptional ability;

   b. Letters from current or former employers showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

   c. A license to practice the profession or certification for a particular profession or occupation;

   d. Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

   e. Evidence of membership in professional associations; or

   f. Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

3. If the above standards do not readily apply to the alien's occupation, you may submit comparable evidence to establish the alien's eligibility.

5. *A U.S. employer filing for a skilled worker must file the petition with:*

A. A labor certification (see **General Evidence);** and

B. Evidence that the alien meets the educational, training, or experience and any other requirements of the labor certification (the minimum requirement is two years of training or experience).

6. *A U.S. employer filing for a professional must file the petition with:*

A. A labor certification (see **General Evidence);**

B. Evidence that the alien holds a U.S. baccalaureate degree or equivalent foreign degree; and

C. Evidence that a baccalaureate degree is required for entry into the occupation.

7. *A U.S. employer filing for an unskilled worker must file the petition with:*

A. A labor certification (see **General Evidence);** and

B. Evidence that the beneficiary meets any education, training, or experience requirements required in the labor certification.

General Evidence.

1. *Labor certification.*

Petitions for certain classifications must be filed with a certification from the U.S. Department of Labor or with documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program or for an occupation in Group I or II of the Department of Labor's Schedule A.

A certification establishes that there are not sufficient workers who are able, willing, qualified, and available at the time and place where the alien is to be employed and that employment of the alien, if qualified, will not adversely affect the wages and working conditions of similarly employed U.S. workers. Application for certification is made on Form ETA-750 and is filed at the local office of the State Employment Service. If the alien is in a shortage occupation, or for a Schedule A/Group I or II occupation, you may file a fully completed, uncertified Form ETA-750 in duplicate with your petition for determination by the USCIS that the alien belongs to the shortage occupation.

NOTE: When filing for a Schedule A/Group I or II occupation, the petitioner must include evidence of having complied with the Department of Labor regulations at 20 CFR 656.222(b)(2), which require that the position or positions be properly posted for a minimum of ten consecutive days.

2. *Ability to pay wage.*

Petitions which require job offers must be accompanied by evidence that the prospective U.S. employer has the ability to pay the proffered wage. Such evidence shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In a case where the prospective U.S. employer employs 100 or more workers, a statement from a financial officer of the organization which establishes ability to pay the wage may be submitted. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted.

Translations. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Copies. Unless specifically required that an original document be filed with an application or petition, an ordinary legible photocopy may be submitted. Original documents submitted when not required will remain a part of the record, even if the submission was not required.

Where To File?

Updated filing Address Information

The filing addresses provided on this form reflect the most current information as of the date this form was last printed. If you are filing Form I-140 more than 30 days after the latest edition date shown in the lower right-hand corner, please visit us online at **www.uscis.gov** before you file, and check the Forms and Fees page to confirm the correct filing address and version currently in use. Check the edition date located in the lower right-hand corner of the form. If the edition date on your Form I-140 matches the edition date listed for Form I-140 on the online Forms and Fees page, your version is current and will be accepted by USCIS. If the edition date on the online version is later, download a copy and use the online version. If you do not have Internet access, call Customer Service at 1-800-375-5283 to verify the current filing address and edition date. **Improperly filed forms will be rejected, and the fee returned, with instructions to resubmit the entire filing using the current form instructions.**

Where to File

E-Filing Form I-140

Certain Form I-140 filings may be electronically filed (E-Filed) with USCIS. Please view our website at **www.uscis.gov** for a list of who is eligible to e-file this form and instructions.

Premium Processing

If you are requesting Premium Processing Services for Form I-140, you must also file Form I-907, Request for Premium Processing Service. Send the Forms I-140 and I-907 together to the address listed in the Form I-907 filing instructions. **NOTE:** Before you file the I-907/I-140 package, please check the Premium Processing Service page, a link to which can be found on the "Services & Benefits" page, on the USCIS website at **www.uscis.gov** to determine whether you may request Premium Processing for the requested classification.

Premium Processing Service for a Form I-140 that is Pending

If you have already filed Form I-140, and you wish to request Premium Processing Service, file Form I-907 with the Service Center where Form I-140 is pending. See Form I-907 for further instructions. Include a copy of Form I-797, Notice of Action, or a copy of the transfer notice, if applicable, showing the location of the relating petition. To ensure that Form I-907 is matched up with the pending Form I-140, you must completely answer questions 1 through 5 in Part 2 of Form I-907. If this information is not provided, Form I-907 will be rejected.

For Form I-140 filed alone, mail the form to:

USCIS Nebraska Service Center
P.O. Box 87140
Lincoln, NE 68501-7 140

For Form I-140 filed concurrently with Form I-485, Application to Register Permanent Residence or Adjust Status, mail your forms package to:

USCIS Nebraska Service Center
P.O. Box 87485
Lincoln, NE 68501-7485

Texas Service Center Filings

File Form I-140 with the Texas Service Center if the beneficiary will be employed permanently in:

Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, South Carolina, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Tennessee, Texas, Vermont, Virginia, U.S. Virgin Islands or West Virginia.

For Form I-140 filed alone, or concurrently with Form I-485, Application to Register Permanent Residence or Adjust Status, mail your forms package to:

USCIS Texas Service Center
P.O. Box 852135
Mesquite, TX 75185

Note on E-Filing

If you are e-filing this application, it will automatically be routed to the appropriate Service Center, and you will receive a receipt indicating the location to which it was routed. This location may not necessarily be the same center shown in the filing addresses listed above. For e-filed applications, it is very important to review your filing receipt and make specific note of the receiving location. All further communication, including submission of supporting documents, should be directed to the receiving location indicated on your e-filing receipt.

What Is the Filing Fee?

The filing fee for a Form I-140 is **$475.00.**
Use the following guidelines when you prepare your check or money order for the Form I-140 fee:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and
2. Make the check or money order payable to **U.S. Department of Homeland Security,** unless:

   A. If you live in Guam and are filing your petition there, make it payable to **Treasurer, Guam.**

   B. If you live in the U.S. Virgin Islands and are filing your petition there, make it payable to **Commissioner of Finance of the Virgin Islands.**

NOTE: Please spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

Notice to Those Making Payment by Check. If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep a copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times.

How to Check If the Fees Are Correct.
The form fee on this form is current as of the edition date appearing in the lower right corner of this page. However, because USCIS fees change periodically, you can verify if the fees are correct by following one of the steps below:

1. Visit our website at **www.uscis.gov,** select "Immigration Forms" and check the appropriate fee;

2. Review the Fee Schedule included in your form package, if you called us to request the form; or

3. Telephone our National Customer Service Center at **1-800-375-5283** and ask for the fee information.

Address Changes.

If you change your address and you have an application or petition pending with USCIS, you may change your address on-line at **www.uscis.gov,** click on "Change your address with USCIS" and follow the prompts or by completing and mailing Form AR-11, Alien's Change of Address Card, to:

U.S. Citizenship and Immigration Services Change of Address
P.O. Box 7134
London, KY 40742-7134

For commercial overnight or fast freight services only, mail to:

U.S. Citizenship and Immigration Services
Change of Address
1084-I South Laurel Road
London, KY 40744

Processing Information.

Any Form I-140 that is not signed or accompanied by the correct fee, will be rejected with a notice that the Form I-140 is deficient. You may correct the deficiency and resubmit the Form I-140. An application or petition is not considered properly filed until accepted by USCIS.

Initial processing. Once a Form I-140 has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility and we may deny your Form I-140.

Requests for more information or interview. We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.
Decision. The decision on a Form I-140 involves a determination of whether you have established eligibility for the requested benefit. You will be notified of the decision in writing.

Meaning of petition approval. Approval of a petition means you have established that the person you are filling for is eligible for the requested classification.

This is the first step towards permanent residence. However, this does not in itself grant permanent residence or employment authorization. You will be given information about the requirements for the person to receive an immigrant visa or to adjust status after your petition is approved.

Instructions for Industry and Occupation Codes.

NAICS Code. The North American Industry Classification System (NAICS) code can be obtained from the U.S. Department of Commerce, U.S. Census Bureau at (www. census.gov/epcd/www/naics.html). Enter the code from left to right, one digit in each of the six boxes. If you use a code which is less than six digits, enter the code left to right and then add zeros in the remaining unoccupied boxes.

The code sequence 33466 would be entered as:

3	3	4	6	6	0

The code sequence 5133 would be entered as:

5	1	3	3	0	0

SOC Code. The Standard Occupational Classification (SOC) System codes can be obtained from the Department of Labor, U.S. Bureau of Labor Statistics (http://stats.bls.gov/soc/ socguide.htm). Enter the code from left to right, one digit in each of the six boxes. If you use a code which is less than six digits, enter the code left to right and then add zeros in the remaining unoccupied boxes.

The code sequence 19-1021 would be entered as:

1 9 1 0 2 1

The code sequence 15-100 would be entered as:

1 5 1 0 0 0

USCIS Forms and Information.

To order USCIS forms, call our toll-free number at **1-800-870-3676.** You can also get USCIS forms and information on immigration laws, regulations and procedures by telephoning our National Customer

Service Center at **1-800-375-5283** or visiting our internet website at **www.uscis. gov.**

As an altenative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our internet-based system, **InfoPass.** To access the system, visit our website. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Penalties.

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this Form I-140, we will deny the Form I-140 and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

Privacy Act Notice.

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit for which you are filing. Our legal right to ask for this information can be found in the Immigration and Nationality Act, as amended. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your Form I-140.

Paperwork Reduction Act.

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 60 minutes per response, including the time for reviewing instructions, completing and submitting the form. Send comments regarding this burden estimate or any other

aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529. OMB No. 1615-0015. **Do not mail your application to this address.**

APPENDIX E

I-129 INSTRUCTIONS

Department of Homeland Security
U.S. Citizenship and Immigration Services

Instructions for Form I-129, Petition for a Nonimmigrant Worker

NOTE: You may file Form I-129 electronically. Go to our internet website at **www.uscis.gov** and follow the detailed instructions on e-filing.

Instructions

Please read these instructions carefully to properly complete this form. If you need more space to complete an answer, use a separate sheet (s) of paper. Write your name and Alien Registration Number (A #), if any, at the top of each sheet and indicate the number of the item to which the answer refers.

What Is the Purpose of This Form?

This form is used by an employer to petition the U.S. Citizenship and Immigration Services (USCIS) for an alien to come as a nonimmigrant to the United States temporarily to perform services or labor, or to receive training, as an:

1. **H-1B,** specialty occupations; an alien coming to perform services of an exceptional nature relating to a project administered by the U.S. Department of Defense; a fashion model who has national and international acclaim; an alien coming in accordance with a trade agreement with Chile or Singapore.
2. **H-2A,** agricultural worker.
3. **H-2B,** temporary nonagricultural worker.
4. **H-3,** trainee.
5. **L-1,** intracompany transferee.
6. **O-1,** alien of extraordinary ability in arts, science, education,

business or athletics.

7. **O-2,** accompanying alien who is coming to the United States to assist in the artistic or athletic performance of an O-1 artist or athlete.
8. **P-1,** internationally recognized athlete/entertainment group.
9. **P-1S,** essential support personnel for a P-1.
10. **P-2,** artist or entertainer in reciprocal exchange program.
11. **P-2S,** essential support personnel for a P-2.
12. **P-3,** artist/entertainer coming to the United States to perform, teach or coach under a program that is culturally unique.
13. **P-3S,** essential support personnel for a P-3.
14. **Q-1,** alien coming temporarily to participate in an international cultural exchange program.

This form is used also by an employer to request an extension of stay or change of status for the following nonimmigrants:

1. **E-1,** treaty trader.
2. **E-2,** treaty investor.
3. **Free Trade Nonimmigrants, H-1B1s and TNs.**
4. **R-1,** religious worker.

NOTE: A petition is not required to apply for an E-1, E-2 or R-1 nonimmigrant visa or admission as a TN nonimmigrant from Canada or Mexico. A petition is also not required for an H-1B 1 Free Trade Nonimmigrant from Chile or Singapore. These persons may apply directly to a U.S. consulate or embassy abroad.

A petition is required only to apply for a change or extension of stay in such status.

NOTE: The Form I-129 consists of a basic petition, individual supplements relating to specific classifications, and for H-1B petitions, the H-1B Data Collection and Filing Fee Exemption Supplement with its particular instructions (formerly issued separately as Form I-129W).

Multiple locations. A petition for alien(s) to perform services or labor or receive training in more than one location must include an itinerary with the dates and locations where the services or training will take place.

Unnamed aliens. All aliens in a petition for an extension of stay or change of status must be named in the petition. All aliens included in any other petition must be named, except:

1. An H-2A petition for more than one worker may include unnamed aliens if they are unnamed on the labor certification;

2. An H-2B petition for more than one worker may include unnamed aliens in emergent situations where it is established on the petition that unnamed aliens in emergent situations where it is established on the petition that the names cannot be provided due to circumstances that cannot be anticipated or controlled.

Who May File This Form I-129?

General. A U.S. employer may file this form and applicable supplements to classify an alien in any nonimmigrant classification listed in **Part 1** and **Part 2** of these instructions. A foreign employer may file for certain classifications as indicated in the specific instructions.

Agents. A U.S. individual or company in business as an agent may file for types of workers who are traditionally self-employed or who traditionally use an agent to arrange short-term employment with numerous employers. A petition filed by an agent must include a complete itinerary of services or engagements, including dates, names and addresses of the actual employers, and the locations where the services will be performed. A petition filed by a United States agent must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

Including more than one alien in a petition. Multiple aliens who will seek admission in H-2A, H-2B, H-3, P-1, P-2, P-3, O-2 or Q-1 classification may be included on the same petition provided:

1. They will all be employed for the same period of time;
2. They will all perform the same services, receive the same training or participate in the same international cultural exchange program; and
3. If the petition is for aliens seeking H-2A classification, they will apply for a visa at the same consulate or, if visa exempt, will apply for admission at the same port-of-entry.

NOTE: If the employer includes more than one alien on the petition (other than those seeking H-2A classification) and needs to request USCIS to notify more than one consulate or embassy concerning the processing, the employer should file a Form I-824, Application for Action on an Approved Application or Petition, with appropriate fee, for each embassy or consulate that must be notified.

Where some or all of the aliens are not named, specify the total number of unnamed aliens and total number of aliens in the petition. Where the aliens must be named, petitions naming subsequent beneficiaries may be filed later with a copy of the same labor certification. Each petition must reference all previously filed petitions using that certification.

General Filing Instructions.

Complete the basic form and any relating supplement. Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A." If the answer is "none," write none.
If you need extra space to answer any item, attach a sheet(s) of paper with your name and your Alien Registration Number (A#), if any, and indicate the number of the item to which the answer refers. You must file your petition with the required initial evidence. The petition must be properly signed and filed with the proper fee.

NOTE: Submit the petition and all supporting documentation in duplicate if you checked block "a" in Question 5 of Part 2 of the form.

Classification – Initial Evidence

These instructions are divided into two parts.

1. The first part includes classifications requiring a petition for an initial visa or entry and any extension of stay or change of status.
2. The second part includes classifications requiring only a petition for a extension of stay or change of status.

1. Petition always required.

The following classifications always require a petition. A petition for new or concurrent employment or for an extension where there is a change in previously approved employment must be filed with the initial evidence listed below, and with the initial evidence required by the separate instructions for a change of status or extension of stay.

However, a petition for an extension based on unchanged, previously approved employment should only be filed with the initial evidence required in the separate extension of stay instructions.

H-1B.

An H-1B is an alien coming temporarily to perform services in a specialty occupation.

Write **H-1B1** in the classification requested block.

A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The petition must be filed by the U.S. employer and must be filed with:

1. Evidence that a labor condition application has been filed with the U.S. Department of Labor;

2. Evidence showing that the proposed employment qualifies as a specialty occupation;

3. Evidence showing that the alien has the required degree by submitting either:

A. A copy of the person's U.S. baccalaureate or higher degree as required by the specialty occupation;

B. A copy of a foreign degree and evidence that it is equivalent to the U.S. degree; or

C. Evidence of education and experience that is equivalent to the required U.S. degree.

4. A copy of any required license or other official permission to practice the occupation in the state of intended employment; and

5. A copy of any written contract between you and the alien or a summary of the terms of the oral agreement under which the alien will be employed.

An H-1B is also an alien coming to perform services of an exceptional nature relating to a cooperative research and development project administered by the U.S. Department of Defense (DOD).

Write **H-1B2** in the classification requested block.

A U.S. employer may file the petition. The petition must be filed with:

1. A description of the proposed employment;
2. Evidence that the services and project meet the above conditions;
3. A statement listing the names of all aliens who are not permanent residents, and who are or have been employed on the project within the past year, along with their dates of employment; and
4. Evidence that the beneficiary holds a baccalaureate or higher degree in the field of employment.

An H-1B is also a fashion model, who has national or international acclaim and recognition, coming to be employed in a position requiring such a level of acclaim and recognition.

Write **H-1B3** in the classification requested block.

A U.S. employer or agent or foreign employer may file the petition.

On October 21, 1998, Congress enacted the American Competitiveness and Workforce Improvement Act ("ACWIA"), Public Law 105-277, that modified the H-1B nonimmigrant program. On December 8, 2004, Congress enacted the H-1B Visa Reform Act of 2004.

Because of these two Acts, an H-1B or H-1B 1 Free Trade Nonimmigrant petitioner must complete the H-1B supplement form which is part of this petition. The supplement is used to collect additional information about the H-1B nonimmigrant worker and the H-1B petitioner (U.S. employer). It will also be used to determine whether the H-1B or H-1B 1 Free Trade Nonimmigrant petitioner is exempt from the additional ACWIA filing fee and, if not exempt, the appropriate fee. (The supplement was formerly issued separately as Form I-129W).

The H-1B Visa Reform Act of 2004 also imposed an additional fee of **$500.00** for certain H or L petitions. On or after **March 8, 2005,** a U.S. employer seeking initial approval of H-1B or L nonimmigrant status for a beneficiary, or seeking approval to
employ an H-1B or L nonimmigrant currently working for another U.S. employer, must submit this additional **$500.00** fee. **There are no exemptions from this fee.** This form will serve as the vehicle for collection of the **$500.00** fee.

H-1B and H-1B1 Data Collection and Filing Fee Exemption.

Who is required to file? A U.S. employer seeking to classify an alien as an H-1B or H-1B 1 Free Trade Nonimmigrant nonimmigrant worker must file this supplement concurrently with Form I-129 and the appropriate fee. (See **"Fee"** for additional information regarding the appropriate fee.)

Completing Part A of the Supplement Form.
All U.S. employers seeking to classify an alien as an H-1B or H-1 B 1 Free Trade Nonimmigrant nonimmigrant worker must complete **Part A** of the supplement form. An employer must answer all of the questions in the "Employer Information" Section.

1. **H-1B Dependent employer.** An "H-1B dependent employer" means an employer that:

   A. Has 25 or fewer full-time equivalent employees who are employed in the United States and employs more than seven H-1B nonimmigrants;

   B. Has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States and employs more than 12 H-1B nonimmigrants; or

   C. Has at least 51 full-time equivalent employees who are employed in the United States and employs H-1B nonimmigrant in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

2. **Willful Violators.** A willful violator is an employer whom the Secretary of Labor has found, after notice and opportunity for a hearing, to have willfully failed to meet a condition of the labor condition application described in section 2 12(n) of the Immigration and Nationality Act.

3. **Exempt H-1B nonimmigrant.** An "exempt H-1B nonimmigrant" means an H-1B who:

   A. Receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least $60,000; or

   B. Has attained a master's degree or higher (or its equivalent) in a specialty related to the intended employment.

4. **Highest education level.** Place an "X" in the appropriate box of **Part A, Number 3 ("a"** through **"i")** of the supplement form that is most closely related to the highest formal education level attained by the beneficiary. **DO NOT** consider work experience in determining the beneficiary's equivalency.

5. **Major/Primary field of study.** Use the beneficiary's degree transcripts to determine the primary field of study. Once the beneficiary's major is determined, fill in the boxes with one character per box. Thirty (30) characters maximum. **Do not** consider work experience to determine the beneficiary's major education level.

6. **Master's or higher degree from a U.S. institution of higher education.** Indicate whether or not the beneficiary has earned a master's or higher degree from a U.S. institution of higher education, as defined in 20 U.S.

   C. section 1001(a).

7. **Rate of pay per year.** The "rate of pay" is the salary or wages paid to the beneficiary. Salary or wages must be expressed in an annual full-time amount and do not include non-cash compensation or benefits. For example, an H-1B worker is to be paid $6,500 per month for a four-month period including a health benefits package and transportation. The yearly rate of pay if he or she were working for a full year would be 12 times the monthly rate or $78,000. This amount does not include health benefits or transportation costs. The figure $78,000 should be entered on this form as the rate of pay.

8. **LCA Code.** The LCA Code is a three-digit occupational group for professional, technical, and managerial occupations and fashion models that can be obtained from Appendix 2 of the Dictionary of Occupational Titles printed on Department of Labor ETA Form 9035, Labor Condition Application for H-1B Nonimmigrant.

9. **NAICS Code.** The North American Industry Classification System (NAICS) code can be obtained from the Department of Commerce, U.S. Census Bureau **(www.census.gov/epcd/www/naics.htm).** Enter the code from left to right, one digit in each of the six boxes. If you use a code with less than six digits, enter the code left to right and then add zeros in the remaining unoccupied boxes.

For example the code sequences 33466 would be entered as:

3	3	4	6	6	0

The code sequences 5133 would be entered as:

5	1	3	3	0	0

Completing Part B of the Supplemental Form.

A U.S. employer seeking an exemption from the **$1,500.00** or **$750.00** filing fee must complete Part B. A U.S. employer is exempt from payment of the additional **$1,500.00** or **$750.00** filing fee if:

1. The employer is an institution of higher education as defined in the Higher Education Act of 1965, section 101 (a), 20 U.S.C. section 1001 (a); or

2. The employer is a nonprofit organization or entity related to, or affiliated with an institution of higher education. Institutions of higher education are defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C., section 1001(a). Such a nonprofit organization or entity includes but is not limited to hospitals and medical research institutions. "Related to" or "affiliated with" means the entity is:

   A. Connected or associated with the institution of higher education through shared ownership or control by a board or federation operated by the institution of higher education, or

   B. Attached to the institution of higher education as a member, branch, cooperative or subsidiary.

   "Nonprofit organization or entity" means the organization or entity is **(a)** defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6), and **(b)** has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service; or

3. The employer is a nonprofit research organization or governmental research organization that is primarily engaged in basic research and/or applied research. "Nonprofit organization or entity" means the organization or entity is:

   A. Defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c) (6); 26 U.S.C. 501(c)(3), (c)(4), or (c)(6), and

   B. Has been approved as a tax exempt organization for research or educational purposes by the
   Internal Revenue Service.

A government research organization is a U.S. Federal government entity whose primary mission is the performance or promotion of basic research and/or applied research; or

4. This petition is the second or subsequent request for an extension of stay filed by the employer regardless of when the first extension of stay was filed or whether the **$1,500.00** or **$750.00** filing fee was paid on the initial petition or the first extension of stay; or

5. This petition is an amended petition that does not contain any requests for extension of stay filed by the employer; or

6. This petition is to correct a USCIS error; or

7. The employer is a primary or secondary education institute; or

8. The employer is a nonprofit entity which engages in an established curriculum-related clinical training or students register at the institution.

What evidence is required under Part B?

U.S. employers claiming exemption from payment of the **$1,500.00** or **$750.00** filing fee on the basis of status as **(a)** a nonprofit organization or entity related to, or affiliated with an institution of higher education, or **(b)** as a nonprofit research organization must submit evidence of tax exempt status under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6), 26 U.S.C. 501(c)(3), (c)(4), or (c)(6); or

All other U.S. employers claiming exemption from payment of the **$1,500.00** or **$750.00** filing fee must submit a statement describing why the organization or entity is exempt.

Completing Part C of the Supplemental Form.

All U.S. employers must complete **Part C** even if they are not claiming the fee exemption in **Part B.**

Write **H-2A** in the classification block on the petition.

The petition must be filed by a U.S. employer or an association of U.S. agricultural producers named as a joint employer on the certification. The petition must be submitted with:

1. A single valid temporary agricultural labor certification or, if U.S. workers do not appear at the work-site, a copy of the U.S.

Department of Labor's denial of a certification and appeal, and evidence showing that qualified domestic labor is unavailable; and

2. Copies of evidence showing that each named alien met the minimum job requirements stated in the certification at time the application was filed.

H-2B.

An H-2B is an alien coming temporarily to engage in nonagricultural employment that is seasonal, intermittent, to meet a peak load need, or a one-time occurrence.

Write **H-2B** in the classification block on the petition.

The petition must be filed by a U.S. employer with either:

1. A temporary labor certification from the U.S. Department of Labor, or the Governor of Guam if the proposed employment is solely in Guam, stating that qualified U.S. workers are not available and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers; or

2. A notice from such authority that the temporary labor certification cannot be made, along with evidence of the unavailability of U.S. workers and of the prevailing wage rate for the occupation in the United States, and evidence overcoming each reason why the certification was not granted; and

3. Copies of evidence, such as employment letters and training certificates, showing that each named alien met the minimum job requirements stated in the certification at the time the application was filed.

NOTE: Employers filing H-2B petitions for employment to commence on or after October 1, 2005 must submit an additional fee of **$150.00.** The Save Our Small and Seasonal Businesses Act of 2005 authorized this **$150.00** Fraud Prevention and Detection Fee.

NOTE: For additional information see the U.S. Department of Labor Internet website at **www.ows.doleta.gov/foreign.**

H-3. (Two types)
H-2A.
An H-3 is an alien coming temporarily to participate in a temporary or seasonal agricultural employment.

An H-2A is an alien coming temporarily to engage in special education training program in the education of children with physical, mental or emotional disabilities.

Write **H-3** in the classification block on the petition.
Custodial care of the children must be incidental to the training program. The petition must be filed by the U.S. employer with:

1. A description of the training, staff and facilities, evidence that the program meets the above conditions, and details of the alien's participation in the program; and
2. Evidence showing that the alien is nearing completion of a baccalaureate degree in special education, or already holds such a degree or has extensive prior training and experience in teaching children with physical, mental or emotional disabilities.

An H-3 is also an alien coming temporarily to receive training from an employer in any field other than graduate education or training.

Write **H-3** in the classification block on the petition. The petition must be filed by the U.S. employer with:

1. A detailed description of the structured training program, including the number of classroom hours per week and the number of hours of on-the-job training per week;
2. A summary of the prior training and experience of each alien in the petition; and
3. An explanation stating why the training is required, whether similar training is available in the alien's country, how the training will benefit the alien in pursuing a career abroad, and why the petitioner will incur the cost of providing the training without significant productive labor.

L-1A.

Write **L-1A** in the classification requested block on the petition.

An L-1A is an alien coming temporarily to perform services in a managerial or executive capacity for the same corporation or firm, or for the branch, subsidiary or affiliate of the employer who employed him or her abroad for one continuous year within the three-year period (six months within the previous three years if the employer is eligible and has filed for a blanket L-1 approval and meets the requirements for expedited processing), immediately preceding the filing of the petition, in an executive, managerial or specialized knowledge capacity.

L-1B.

Write **L-1B** in the classification requested block on the petition.

An L-1B is an alien coming temporarily to perform services that entail specialized knowledge for the same corporation or firm, or for the branch, subsidiary or affiliate of the employer that employed him or her abroad for one continuous year within the three-year period (six months within the previous three years if the employer is eligible and has filed for a blanket L-1 approval and meets the requirements for expedited processing), immediately preceding the filing of the petition, in an executive, managerial or specialized knowledge capacity. Specialized knowledge is special knowledge of the employer's product or its application in international markets or an advanced level of the knowledge of the employer's processes and procedures.

L Petition Requirements.

A U.S. employer or foreign employer must file the petition, but a foreign employer must have a legal business entity in the United States. The petition must be submitted with:

1. Evidence of the qualifying relationship between the United States and foreign employer, based on ownership and control, such as an annual report, articles of incorporation, financial statements or copies of stock certificates;
2. A letter from the alien's foreign qualifying employer detailing his or her dates of employment, job duties, qualifications and salary; and

3. A description of the proposed job duties and qualifications, and evidence showing that the proposed employment is in an executive, managerial or specialized knowledge capacity.

If the alien is coming to the United States to open a new office, also file the petition with copies of evidence showing that the business entity is located in the United States; and

1. Already has sufficient premises to house the new office;
2. Has or upon establishment will have the qualifying relationship to the foreign employer; and

3. Has the financial ability to remunerate the alien and to begin doing business in the United States, including evidence about the size of the U.S. investment, the organizational structure of both firms, the financial size and condition of the foreign employer, and if the alien is coming as an L-1 manager or executive to open a new office, such evidence must establish that the intended U.S. operation will support the executive or managerial position within one year.

Blanket L Petition.

An L blanket petition simplifies the process of later filing for individual L-1A workers and L-1B workers who are specialized knowledge professionals employed in positions requiring the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requiring also completion of a specific course of education, culminating in a baccalaureate degree in a specific occupational specialty.

A blanket L petition must be filed by a U.S. employer who will be the single representative between USCIS and the qualifying organizations.

Write **LZ** in the classification requested block. Do not name an individual employee. File the petition with copies of evidence showing that:

1. You and your branches, subsidiaries and affiliates are engaged in commercial trade or services;

2. You have an office in the United States that has been doing business for one year or more;

3. You have three or more domestic and foreign branches, subsidiaries or affiliates; and
4. You and your qualifying organizations have obtained approved petitions for at least ten "L" managers, executives or specialized knowledge professionals during the previous 12 months or have U.S. subsidiaries or affiliates with combined annual sales of at least 25 million dollars; or

5. You have a U.S. work force of at least 1,000 employees.

After approval of a blanket petition, you may file for individual employees to enter as an L-1A alien or L-1B specialized knowledge professional under the blanket petition. If the alien is outside the United States, file Form I-129S, Nonimmigrant Petition Based on Blanket L Petition. If the alien is already in the United States, file the Form I-129 to request a change of status based on this blanket petition. The petition must be submitted with:

1. A copy of the USCIS approval notice for the blanket petition;
2. A letter from the alien's foreign qualifying employer detailing his or her dates of employment, job duties, qualifications and salary for the three previous years; and

3. If the alien is a specialized knowledge professional, a copy of a U.S. degree or a foreign degree equivalent to a U.S. degree.

O-1A.

An O-1A is an alien coming temporarily who has extraordinary ability in the sciences, education, business or athletics (not including the arts, motion picture or television industry).

Write **O-1A** in the classification block on the petition. The petition must be submitted with:

1. A written consultation from a peer group or labor management organization with expertise in the field. If the above item cannot be obtained, the consultation can be from a person of your (the employer's) choosing with expertise in the alien's area of ability (see **General Evidence);**

2. A copy of any written contract between you (the employer) and the alien or a summary of the terms of the oral agreement under which the alien will be employed;

3. An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events and activities.

4. Evidence of the alien's extraordinary ability, such as receipt of major awards or prizes, major published material by the alien or relating to the alien's work, evidence of the alien's contributions to the field, evidence of the alien's original scholarly work or contributions to the field, evidence of the alien's high salary within the field, evidence that the alien participated on a panel, judging the work of others in the field, or evidence of the alien's prior employment in one or more critical capacities.

NOTE: If the preceding forms of evidence do not readily apply to the alien's field of endeavor, you may submit other comparable evidence.

O-1B.

An O-1B is an alien coming temporarily who has extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry.

Write **O-1B** in the classification block on the petition. The petition must be submitted with:

1. A written consultation from a peer group or a person of your (the employer's) choosing with expertise in the alien's area of ability (see **General Evidence).** If the petition is based on the alien's extraordinary achievement in the motion picture or television industry, separate consultations are required from the relevant labor and management organizations;

2. A copy of any written contract between you (the employer) and the alien or a summary of the terms of the oral agreement under which the alien will be employed;

3. Evidence that the alien has received or been nominated for significant national or international awards or prizes in the field, such as an Academy Award, Emmy, Grammy or Director's Guild Award, or at least three of the following:

A. Evidence that the alien has performed or will perform as a lead or starring participant in productions or events that have a distinguished reputation;

B. Evidence that the alien has achieved national or international recognition for achievements in the field;

C. Evidence that the alien has a record of major commercial or critically acclaimed successes, as evidenced by ratings, box office receipts, etc.;

D. Evidence that the alien has received significant recognition from organizations, critics, government agencies or other recognized experts;

E. Evidence that the alien commands or will command a high salary or other remuneration for services in relation to others in the field; or

F. Evidence that the alien has performed in a lead or starring role for organizations that have a distinguished reputation.

NOTE: If the preceding forms of evidence do not readily apply to the alien's field of endeavor, you may submit other comparable evidence.

O-2.

An O-2 is an alien coming temporarily, solely as an essential and integral part of the artistic or athletic performance of an O-1 artist or athlete because he or she performs support services that are essential to the successful performance of the O-1. No test of the U.S. labor market is required.

Write **O-2** in the classification block on the petition.

This form must be filed in conjunction with an O-1 petition and submitted with:

1. A written consultation (see **General Evidence);**

A. If it is for support of an athlete or an alien with extraordinary ability in the arts, the consultation must be from an appropriate labor organization; or

B. If it is for support of an alien with extraordinary achievement in motion pictures or television, the consultation must be from an appropriate labor organization and management organization.

2. Evidence of the current essentiality, skills and experience of the O-2 with the O-1. In the case of a specific motion picture or television production, the evidence must establish that significant production has taken place outside the United States and that the continuing participation of the alien is essential to the successful completion of the production.

P-1A.

A P-1A is an alien coming temporarily, to perform at a specific athletic competition as an individual or as part of a group or team participating at an internationally recognized level of performance. Write **P-1A** in the classification block on the petition. The petition must be submitted with:

1. A written consultation (see **General Evidence)** with an appropriate labor organization;

2. A copy of the contract with a major U.S. sports league or team or a contract in an individual sport commensurate with national or international recognition in the sport, if such contracts are normally utilized in the sport;

3. Evidence of at least two of the following:

A. Substantial participation in a prior season with a major U.S. sports league;

B. Participation in international competition with a national team;

C. Substantial participation in a prior season for a U.S. college or university in intercollegiate competition;

D. A written statement from an official of a major U.S. sports league or official of the governing body for a sport that details how the alien or team is internationally recognized;

E. That the individual or team is ranked, if the sport has international rankings; or

F. That the alien or team has received a significant honor or award in the sport.

P-1B.

A P-1B is an alien entertainer coming temporarily to perform as a member of a foreign-based entertainment group, that has been recognized internationally as outstanding in the discipline for a substantial period of time, and who has had a sustained relationship (ordinarily for at least one year) with the group.

Write **P-1B** in the classification block on the petition. The petition must be submitted with:

1. A written consultation (see **General Evidence)** from an appropriate labor organization;

2. Evidence that the alien or group is internationally recognized in the discipline as demonstrated by the submission of evidence of the group's receipt or nomination for significant international awards or prizes for outstanding achievement, or evidence of at least three of the following:

   A. The alien or group has performed or will perform as a starring or leading group in productions or events with a distinguished reputation;

   B. The alien or group has achieved international recognition and acclaim for outstanding achievement in the field;

C. The alien or group has a record of major commercial or critically acclaimed success;

D. The alien or group has received significant recognition for achievements from critics, organizations,

government agencies or other recognized experts in the field; or

E. The alien or group commands a high salary or other substantial remuneration for services, compared to other similarly situated in the field.

NOTE:

1. By filing for a P-1 group, the petitioner certifies that the group has been established and performing regularly for a period of at least one year, and that at least 75 percent of the members of the group have been performing with the group for at least one year. This one-year period requirement does not apply to circus groups coming to perform with nationally recognized circuses.

2. Use the "Supplementary Information" form to request a waiver of:

   A. The one-year relationship requirement and the international recognition requirement based on emergent circumstances, or

   B. The international recognition requirement because the group has been recognized nationally as outstanding in its discipline for a substantial period of time.

P-2.

A P-2 is an alien coming temporarily to perform as an artist or entertainer, individually or as part of a group, under a reciprocal exchange program between an organization in the United States and an organization in another country.

Write **P-2** in the classification block on the petition.
The petition must be filed by the sponsoring organization or U.S. employer with:

A written consultation (see **General Evidence)** from an appropriate labor organization;

2. A copy of the reciprocal exchange program;

3. A statement from the sponsoring organization describing the reciprocal agreement as it relates to the petition;
4. Evidence that the alien and the U.S. artist or group have comparable skills and that the terms of employment are similar; and
5. Evidence that an appropriate labor organization in the United States was involved in negotiating or concurred with the exchange.

P-3.

A P-3 is an alien coming temporarily to perform, teach or coach, individually or as part of a group, in the arts or entertainment fields in a program that is culturally unique.

Write **P-3** in the classification block on the petition. The petition must be submitted with:

A written consultation (see **General Evidence)** from an appropriate labor organization;

Evidence that all performances will be culturally unique; and **either**

Affidavits, testimonials or letters from recognized experts attesting to the authenticity of the alien's or group's skills in presenting, coaching or teaching art forms; **or**

Documentation that the performance of the alien or group is culturally unique as evidenced by actual reviews in newspapers, journals or other published material.

Essential Support Personnel.

Accompanying support personnel are highly skilled aliens coming temporarily as an essential and integral part of the competition or performance of a principal P-1, P-2 or P-3, or because they perform support services that are essential to the successful performance or services of the principal P-1, P-2 or P-3. The accompanying personnel must have prior experience or critical skills with the principal P-1, P-2 or P-3. The petition must be filed in conjunction with a principal P-1, P-2 or P-3 petition.

Write **P-1S, P-2S** or **P-3S** as appropriate in the classification block on the petition.

The petition must be submitted with:

1. A written consultation (see **General Evidence)** from an appropriate labor organization;
2. A statement describing the alien's critical skills and prior experience with the principal P-1, P-2 or P-3;
3. Statements or affidavits from persons with first hand knowledge that the alien has had substantial experience performing the critical skills and essential support services for the principal P-1, P-2 or P-3;
4. A copy of any written contract between the employer and the alien or a summary of the terms of the oral agreement under which the alien will be employed.

Q-1.

A Q-1 is an alien coming temporarily to participate in an international cultural exchange program for sharing the attitude, customs, history, heritage, philosophy and/or traditions of the alien's country of nationality.

The culture sharing must take place in a school, museum, business or other establishment where the public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program.

The work component of the program may not be independent of the cultural component, but must serve as the vehicle to achieve the objectives of the cultural component. An employer (U.S. or foreign firm, corporation, non-profit organization, or other legal entity) or its designated agent may file the petition. If a designated agent is filing the petition, that agent must be employed by the qualified employer on a permanent basis in an executive or managerial capacity and must be either a U.S. citizen or lawful permanent resident. Write **Q-1** in the classification block on the petition.

The petition must be submitted with evidence showing that the employer:

1. Maintains an established international cultural exchange program;
2. Has designated a qualified employee to administer the program and serve as liaison with USCIS;

3. Is actively doing business in the United States;

4. Will offer the alien wages and working conditions comparable to those accorded local domestic workers similarly employed;

5. Has the financial ability to remunerate the participant(s).

To illustrate an established international cultural exchange program, submit program documentation, such as catalogs, brochures or other types of material.

To demonstrate financial ability to remunerate the participant (s), submit your organization's most recent annual report, business income tax return or other form of certified accountant's report.

However, if the proposed dates of employment are within 15 months of the approval of a prior Q-1 petition filed by you for the same international cultural exchange program, and that earlier petition was filed with the above evidence of the program, you may submit a copy of the approval notice for that prior petition in lieu of the evidence about the program required above.

2. Petition only required for an alien in the U.S. to change status or extend stay.

The following classifications listed in this **Section 2** do not require a petition for new employment if the alien is outside the United States. The alien should instead contact a U.S. embassy or consulate for information about a visa or admission.

Use this Form I-129 when the beneficiary is physically present in the United States and a change of status, concurrent employment, or an extension of stay is needed. Note, however, that the beneficiary must maintain legal status in the United States to remain eligible for the benefit sought.

Change of Status: A petition for change of status to one of the classifications described in this Section must be submitted with the initial evidence detailed below and with the initial evidence required by the separate instructions for all petitions involving change of status.

Extension of Stay: A petition for an extension of stay must be filed with the initial evidence listed below and with the initial evidence required by the separate instructions for all petitions for extension. However, a petition for an extension based on unchanged, previously approved employment need only be filed with the initial evidence required by the separate extension of stay instructions.

E-1.

An E-1 is a national of a country with which the United States maintains a qualifying treaty, who is coming to the United States to carry on substantial trade principally between the United States and the alien's country of nationality.

Qualifying trade involves the commercial exchange of goods or services in the international market place. Substantial trade is an amount of trade sufficient to ensure continuous flow of international trade items between the United States and the treaty country. Principal trade exists when over 50 percent of the E-1's total volume of international trade is conducted between United States and the treaty country.

E-2.

An E-2 is a national of a country with which the United States maintains a qualifying treaty, who is coming to the United States to develop and direct the operations of an enterprise in which he or she has invested or is actively in the process of investing a substantial amount of capital.

An E-2 must demonstrate possession and control of funds and the ability to develop and direct the investment enterprise. Capital in the process of being invested or that has been invested must be placed at risk and irrevocably committed to the enterprise. The enterprise must be a real, active, and operating commercial or entrepreneurial undertaking, which produces services or goods for profit. The investment must be substantial and the enterprise must be more than marginal.

E-1 or E-2.

An employee of an **E-1** or an **E-2** who possesses the same nationality may respectively be classified as E-1 or E-2. The employee must principally and primarily perform executive or supervisory duties or possess special qualifications that are essential to the successful or efficient operation of the enterprise.

E Petition Requirements.

The petition must be filed with evidence of:

1. Ownership and Nationality, including but not limited to lists of investors with current status and nationality, stock certificates, certificate of ownership issued by the commercial section of a foreign embassy and reports from a certified personal accountant;

2. Substantial Trade (E-1), including but not limited to copies of three or more of the following: bills of lading, customs receipts, letter of credit, trade brochures, purchase orders, insurance papers, documenting commodities imported, carrier inventories and/or sales contracts;

3. Substantial Investment (E-2), including but not limited to copies of partnership agreements (with a statement on proportionate ownership), articles of incorporation, payments for the rental of business premises or office equipment, business licenses, stock certificates, office inventories (goods and equipment purchased for the business), insurance appraisals, annual reports, net worth statements from certified professional accountants, advertising invoices, business bank accounts containing funds for routine operations, funds held in escrow; or

4. Executive or Supervisory Duties, or Special Qualifications Essential to the Enterprise (E-1 Employee or E-2 Employee), including but not limited to certificates, diplomas or transcripts, letters from employers describing job titles, duties, operators' manuals, and the required level of education and knowledge.

R-1.

An R-1 is an alien who for at least two years has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States, coming temporarily to work solely:

1. As a minister of that denomination;
2. In a professional capacity in a religious vocation or occupation for that organization; or
3. In a religious vocation or, occupation for the organization or its nonprofit affiliate.

Write **R-1** in the classification block on the petition.

The petition must be filed by a U.S. employer with the following documentation:

1. A copy of the tax-exempt certificate showing the religious organization, and any affiliate that will employ the person, is a bona fide nonprofit religious organization in the United States and is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 relating to religious organizations, or documents as is required by the Internal Revenue Service to establish eligibility for this tax exempt status.
2. A letter or letters from the authorizing official of the religious denomination or organization that will be employing the alien or engaging the alien's services in the United States establishing that:
   - **A.** If the alien's religious membership was maintained in whole or in part outside the United States, the foreign and U.S. religious organizations belong to the same denomination;
   - **B.** Immediately prior to the filing of the petition or application for admission to the United States, the alien has been a member in the religious denomination for at least two years;
3. As appropriate:
   - A. If the alien is a minister, he or she is authorized to conduct religious worship services for that denomination and to perform other duties usually performed by members of the clergy of that denomination, including a detailed description of those duties;
   - B. If the alien is a religious professional, he or she has at least a U.S. baccalaureate degree or its foreign equivalent and that at least such a degree is required for entry into the religious profession; or
   - **C.** If the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation.

4. The arrangements made, if any, for remuneration for services rendered by the alien, the amount and source of any salary, a description of any other types of
remuneration to be received, and a statement whether such remuneration shall be in exchange for services rendered;

5. The name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States; and

6. If the alien is to work in a non-ministerial and nonprofessional capacity for a bona fide organization that is affiliated with a religious denomination, evidence of the existence of the affiliation.

Change of Status.

In addition to the initial evidence for the classification you are requesting, a petition requesting a change of status for an alien in the United States must be submitted with a copy of the employee's(s) Form I-94, Nonimmigrant Arrival/Departure Record.

NOTE: Family members should use Form I-539, Application to Change/Extend Nonimmigrant Status, to apply for a change of status.

A nonimmigrant, who must have a passport to be admitted, must keep that passport valid during his or her entire stay. If a required passport is not valid, include a full explanation with your petition.

The following nonimmigrants are **not eligible** to change status:

1. An alien admitted under a visa waiver program;
2. An alien in transit (C) or in transit without a visa (TWOV);
3. A crewman (D);
4. A fiancé(e) (K-1) or his or her dependent (K-2);
5. A J-1 exchange visitor whose status was for the purpose of receiving graduate medical training (unless a waiver has been granted under section 2 14(l) of the Immigration and Nationality Act);
6. A J-1 exchange visitor subject to the foreign residence requirement who has not received a waiver of that requirement; and
7. An M-1 student to an H classification, if training received as an M-1 helped him or her qualify for H classification.

Change of status to Free Trade nonimmigrants.

A Free Trade Nonimmigrant is a citizen of Canada or Mexico coming to the United States as a TN or a citizen from Chile or Singapore coming to the U.S. as an H-1B1 Free Trade Nonimmigrant temporarily under the provisions of a Free Trade Agreement. A qualified employer may file this Form I-1 29 for a citizen of one of the above countries if that citizen has already been admitted to the United States in a nonimmigrant category eligible for change of status. Along with the Form I-129 and related supplement (Nonimmigrant classification based on a Free Trade Agreement Supplement), petitioners for Chile or Singapore H-1B1 nonimmigrants must also file the H-1Band H-1B1 Data Collection and Filing Fee Exemption Supplement to ensure accurate fee and data collection.

NOTE: Canadian or Mexican TN nonimmigrants can be petitioned for by either a U.S. employer or a foreign employer. However, for Chile or Singapore H-1B1 nonimmigrants, the petitioner must be a U.S. employer. In addition to the required information noted above under **"Change of Status,"** submit the following:

1. A letter from the employer stating the activity to be engaged in, the anticipated length of stay and the arrangements for remuneration;
2. Evidence that the alien meets the educational and/or licensing requirements for the profession or occupation (including, for citizens of Chile, the post-secondary certificate for Agricultural Managers and Physical Therapists that is accepted by the U.S. Department of State if the citizen of Chile is receiving a nonimmigrant free trade visa overseas);
3. For citizens of Chile and Singapore, a U.S. Department of Labor issued certified labor condition application.

Extension of Stay.

Extension of stay for all except Free Trade nonimmigrants.

A petition requesting an extension of stay for an employee in the United States must be filed with a copy of the employee's Form 1-94, Nonimmigrant Arrival/Departure Record, and a letter from the petitioner

explaining the reasons for the extension. Consult the regulations relative to the specific nonimmigrant classification sought.

NOTE: Family members should use Form I- 539 to file for an extension of stay.

A nonimmigrant, who must have a passport to be admitted, must keep that passport valid during his or her entire stay. If a required passport is not valid, include a full explanation with your petition. Where there has been a change in the circumstances of employment, submit also the evidence required for a new petition.

Where there has been no change in the circumstances of employment, file your petition with the appropriate supplement and with your letter describing the continuing employment, and:

2. If the petition is for H-1B status, submit an approved labor condition application for the specialty occupation valid for the period of time requested.
3. If the petition is for H-2A status, submit a labor certification valid for the dates of the extension, unless it is based on a continuation of employment authorized by the approval of a previous petition filed with a certification, and the extension will last no longer than the previously authorized employment and no longer than two weeks.
4. If the petition is for H-2B status, submit a labor certification valid for the dates of the extension.

Extension of Free Trade stay.

NOTE: Canadian or Mexican TN nonimmigrants can be petitioned for by either a U.S. employer or a foreign employer. However, for Chile or Singapore H-1B1 nonimmigrants, the petitioner must be a U.S. employer.

An employer requesting an extension of stay for an alien with a nonimmigrant classification based on a Free Trade Agreement should follow the above instructions. Submit with your extension request:

–- A letter describing the continuing employment,
–- The newly requested length of stay,

–- Continued valid licensing if required by the profession and/or the State, and
–- In the case of a Chile or Singapore H-1B1 Free Trade Nonimmigrant, a currently valid labor condition attestation.

Along with the Form I-129 and related supplement (Nonimmigrant classification based on a Free Trade Agreement Supplement), petitioners for Chile or Singapore H-1B1 nonimmigrants must also file the H-1B Data Collection and Filing Fee Exemptions Supplement to ensure accurate fee and data collection.

If the extension is for a Chile or Singapore H-1B1 Free Trade Nonimmigrant and it is the sixth consecutive extension request for that person, a statement to that effect must be provided.

General Evidence.

Written consultation. Noted classifications require a written consultation with a recognized peer group, union and/ or management organization regarding the nature of the work to be done and the alien's qualifications, before the petition may be approved.

To obtain timely adjudication of a petition, you should obtain a written advisory opinion from an appropriate peer group, union and/or management organization and submit it with the petition.

If you file a petition without the advisory opinion, you should send a copy of the petition and all supporting documents to the appropriate organization when you file the petition with USCIS, and name that organization in the petition.

Explain to the organization that USCIS will contact them for an advisory opinion. If an accepted organization does not issue an advisory opinion within a given time period, a decision will be made based upon the evidence of record.

If you do not know the name of an appropriate organization with which to consult, please indicate so on the petition. However, be advised that a petition filed without the actual advisory opinion will require substantially longer processing time.

Translations. Any foreign language document must be accompanied by a full English translation that the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate the foreign language into English.

Copies. If these instructions state that a copy of a document may be filed with this petition and you choose to send us the original, we may keep that original for our records.

Liability for Return Transportation.

The Immigration and Nationality Act makes a petitioner liable for the reasonable cost of return transportation for an H-1B, H-2B, O and P alien who is dismissed before the end of the authorized employment.

When to File?

Generally, a Form I-129 petition may not be filed more than six months prior to the date employment is scheduled to begin. Petitioners should review the appropriate regulatory provisions in 8 CFR which relate to the nonimmigrant classification sought.

File the petition as soon as possible before the proposed employment begins or before an extension of stay will be required. If the petition is not submitted at least 45 days before the employment begins, petition processing and subsequent visa issuance may not be completed before the alien's services are required or previous employment authorization ends.

Where to File?

Premium Processing

If you are requesting Premium Processing Services on Form I-129, Petition for Nonimmigrant Worker, you must also file Form I-907, Request for Premium Processing Services. Before you file the I-129/I-907 package, check Premium Processing at **www.uscis.gov** website to ensure the requested classification is Premium eligible.

Regular Processing

Form I-129 is filed either at the California Service Center or the Vermont Service Center, depending on the location of the beneficiary's temporary employment and the nonimmigrant classification sought. Prior to submitting your form(s), please note the different addresses. Failure to follow these instructions may result in your application or petition being rejected, delayed, or denied.

California Service Center Filings

File Form I-129 with the California Service Center if the beneficiary is or will be employed temporarily or receiving training in:

Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, or Wyoming.

Mail your package to:

For Regular processing

H-1B Cap Cases:

USCIS
California Service Center
ATTN: H-1B Cap
P.O. Box 10129
Laguna Niguel, CA 92607-10 12

U.S. Masters Cap Cases:

USCIS
California Service Center
ATTN: H-1B U.S. Masters Cap
P.O. Box 10129
Laguna Niguel, CA 92607-10 12

H-1B Extensions:

USCIS
California Service Center
ATTN: H-1B Extensions
P.O. Box 10129
Laguna Niguel, CA 92607-1012

All other I-129 Cases:

USCIS
California Service Center
ATTN: I-129
P.O. Box 10129
Laguna Niguel, CA 92607-1012

Courier Address for All I-129s:

USCIS
California Service Center 24000 Avila Road
2nd Floor, Room 2312
Laguna Niguel, CA 92677
(Please note the type of I-129 in the attention line)

Premium Processing:

If the classification requested on Form I-129 is eligible for Premium Processing and you wish to request Premium Processing Services, please use the designated Premium Processing address for the California Service Center, as indicated below.

Form I-907/I-129 Regular Mailing Address:

Premium Processing Service USCIS
California Service Center
P.O. Box 10825
Laguna Niguel, CA92607
(Please note the type of I-129 in the attention line)

Form I-907/I-129 Courier Mail Address:

Premium Processing Service USCIS
California Service Center
24000 Avila Road
2nd Floor, Room 2312
Laguna Niguel, CA 92677
(Please note the type of I-129 in the attention line)

Form I-907/I-129 E-Mail Address:

CSC-Premium.Processing@dhs.gov

Vermont Service Center Filings

File Form I-129 with the Vermont Service Center if the beneficiary is or will be employed temporarily or receiving training in:

Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, U.S. Virgin Islands, or West Virginia.

Mail your package to: **H-1B Cap Cases:**

USCIS
Vermont Service Center
ATTN: H-1B Cap
1A Lemnah Drive
St. Albans. VT 05479-000 1

H-1B U.S. Masters Cap Cases:

USCIS
Vermont Service Center
ATTN: H-1B U.S. Masters Cap
1A Lemnah Drive
St. Albans. VT 05479-000 1

All other I-129 Cases:

USCIS
Vermont Service Center
ATTN: I-129
75 Lower Welden Street
St. Albans, VT 05479-000 1

Premium Processing:

If the classification requested on Form I-129 is eligible for Premium Processing and you wish to request Premium Processing Services, please use the designated Premium Processing address for the Vermont Service Center, as indicated below (for either mail or courier):

Vermont Service Center Filings

File Form I-129 with the Vermont Service Center if the beneficiary is or will be employed temporarily or receiving training in:

Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, U.S. Virgin Islands, or West Virginia.

Mail your package to: **H-1B Cap Cases:**

USCIS
Vermont Service Center
ATTN: H-1B Cap
1A Lemnah Drive
St. Albans. VT 05479-000 1

H-1B U.S. Masters Cap Cases:
USCIS
Vermont Service Center
ATTN: H-1B U.S. Masters Cap
1A Lemnah Drive

St. Albans. VT 05479-000 1

All other I-129 Cases:

USCIS
Vermont Service Center
ATTN: I-129
75 Lower Welden Street
St. Albans, VT 05479-000 1

Premium Processing:

If the classification requested on Form I-129 is eligible for Premium Processing and you wish to request Premium Processing Services, please use the designated Premium Processing address for the Vermont Service Center, as indicated below (for either mail or courier):

Form I-907/I-129 Mailing Address and Courier Address

H-1B Cap Cases:

Premium Processing Service USCIS
Vermont Service Center ATTN: H-1B
Cap
30 Houghton Street
St. Albans. VT 05478-2399

H-1B U.S. Master Cap Cases:

Premium Processing Service USCIS
Vermont Service Center
ATTN: H-1B U.S. Masters Cap 30 Houghton
Street
St. Albans. VT 05478-2399

All other I-129 Cases:

Premium Processing Service USCIS

Vermont Service Center ATTN: I-129
30 Houghton Street
St. Albans. VT 05478-2399

Form I-907/I129 E-mail address:

VSC-Premium.Processing @dhs.gov.

Exceptions

1. Form I-129 Filed for Temporary Employment or Training in More Than 1 Location: When the temporary employment or training will be in different locations, the state where your company or organization is located will determine the Service Center to which you should send the Form I-129 package. For example, the beneficiary will work in Arizona and Texas, and your company is located in New York, file Form I-129 with the Vermont Service Center.

2. H-1C Classification for Nurses: Mail the I-129 package to the Vermont Service Center, regardless of where the temporary H-1C nurse will be employed.

3. **R Classification for Temporary Religious Workers:** Mail the I-129 package to the California Service Center, regardless of where the temporary religious worker will be employed.

4. **Major League Sports:** This covers major league athletes, minor league sports, and any affiliates associated with the major leagues in baseball, hockey, soccer, basketball, and football. Support personnel includes: coaches, trainers, broadcasters, referees, linesmen, umpires, and interpreters. Mail the I-129 package to theVermont Service Center, regardless of the place of temporary employment.

5. **Trade NAFTA (TN) for Nationals of Mexico and Canada:**

   A. TN Extension or Change of Status for Nationals of Canada or Mexico Already in the U.S.: Mail the Form I-129 package to the Vermont Service Center, regardless of where the TN Canadian or

Mexican national will be employed.

B. Initial TN Classification for Nationals of Mexico: DO NOT use Form I-129 to apply for initial TN classification for a national of Mexico. To obtain more information on the application process, please visit the U.S. Department of State's TN Visa website.

C. Initial TN Classification for Nationals of Canada: DO NOT use Form I-129 to apply for initial TN classification for a national of Canada. Please see 8 CFR 214.6 for information on applying at a U.S. port of entry.

H-1B1 Singapore/Chile Free Trade:

1. **Initial H-1B1 Classification under the Singapore/ Chile Free Trade Agreement for Beneficiaries Outside the U.S.:** DO NOT use Form I-129 to apply for initial H-1B1 classification. To obtain more information on the H-1B 1 application process, please visit the U.S. Department of State's website.

2. **Change of Status to H-1B1 and Extension of H-1B1 Stay:** Mail the Form I-129 package to the Vermont Service Center, regardless of where the H-1B 1 beneficiary will be employed.

E-3 Australian Free Trade:

1. **Change of Status to E-3 and E-3 Extension:** Mail the Form I-129 package to the Vermont Service Center, regardless of where the E-3 beneficiary will be employed.

2. **Initial E-3 Classification for Beneficiaries Outside the U.S.:** DO NOT use Form I-129 to apply for initial E-3 classification if the beneficiary is outside the United States. To obtain more information on the E-3 application process, please visit the U.S. Department of State's website.

Updated filing Address Information

The filing addresses provided on this form reflect the most current information as of the date this form was last printed. If you are filing Form I-129 more than 30 days after the latest edition date shown in the lower right-

hand corner, please visit us online at www.uscis.gov before you file, and check the Forms and Fees page to confirm the correct filing address and version currently in use. Check the edition date located in the lower right-hand corner of the form. If the edition date on your Form I-129 matches the edition date listed for Form I-129 on the online Forms and Fees page, your version is current and will be accepted by USCIS. If the edition date on the online version is later, download a copy and use the online version. If you do not have Internet access, call Customer Service at 1-800-375-5283 to verify the current filing address and edition date. **Improperly filed forms will be rejected, and the fee returned, with instructions to resubmit the entire filing using the current form instructions.**

Note on E-Filing

If you are e-filing this application, it will automatically be routed to the appropriate Service Center, and you will receive a receipt indicating the location to which it was routed. This location may not necessarily be the same center shown in the filing addresses listed above. For e-filed applications, it is very important to review your filing receipt and make specific note of the receiving location. All further communication, including submission of supporting documents, should be directed to the receiving location indicated on your e-filing receipt.

What Is the Filing Fee?

The base filing fee for this petition is **$320.00**

A U.S. employer filing a **$320.00** form I-129 for an H-1B nonimmigrant or for a Chile or Singapore H-1B 1 Free Trade Nonimmigrant must submit the **$320.00** petition filing fee and, unless exempt under Part B of the H-1B Data Collection and Filing Fee Exemption Supplement, an additional fee of either **$1,500.00** or **$750.00.**

A U.S. employer with a total of 25 or less full-time equivalent employees in the United States (including any affiliate or subsidiary of the employer) is only obligated to pay the **$750.00** fee.

A U.S. employer filing a Form I-129 who is required to pay the additional fee may make the payment in the form of a single check or money order for the total amount due or as two checks or money orders, one for the additional fee and one for the petition fee.

NOTE: H-1B and L-1 petitioners required to pay the **$500.00** Fraud Prevention and Detection Fee mandated by the H-1B Visa Reform Act of 2004 must submit a check or money order separate from the additional fee and petition fee. Petitioners for Chile or Singapore H-1B 1 Free Trade Nonnimmigrants do not have to pay this fee.

NOTE: Employers filing H-2B petitions for employment to commence on or after October 1, 2005 must submit an additional fee of **$150.00.** The Save Our Small and Seasonal Businesses Act of 2005 authorized this **$150.00** Fraud Prevention and Detection Fee.

The fee must be submitted in the exact amount. It cannot be refunded. **Do not mail cash.** All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in U.S. currency. The check or money order must be made payable to the **Department of Homeland Security,** except that:

1. If you live in Guam and are filing this petition there, make your check or money order payable to the "Treasurer, Guam."
2. If you live in the U.S. Virgin Islands and are filing this petition there, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

When preparing the check or money order, spell out Department of Homeland Security. Do not use the initials "DHS" or "USDHS."

Checks are accepted, subject to collection. An uncollected check will render the petition and any document issued invalid. A charge of $30.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

How to check if the fee is correct. The fee on this form is current as of the publication date appearing in the lower right corner of this page. However, because USCIS fees change periodically, you can verify if the fee is correct by following one of the steps below.

1. Visit our website at **www.uscis.gov** and scroll down to "Immigration Forms" and check the appropriate fee, or
2. Review the Fee Schedule included in your form package, if you called us to request the form, or
3. Telephone our National Customer Service Center at **1-800-375-5283** and ask for the fee information.

Note: If your petition requires payment of a biometric service fee for USCIS to take your fingerprints, photograph or signature, you can use the same procedure to obtain the correct biometric fee.

Processing Information.

Any petition that is not signed or accompanied by the correct fee, will be rejected with a notice that the petition is deficient. You may correct the deficiency and resubmit the petition. A petition is not considered properly filed until accepted by USCIS.

Initial processing. Once a petition has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility and we may deny your petition.

Requests for more information or interview. We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. The decision on a petition involves separate determinations of whether you have established that the alien is eligible for the requested classification based on the proposed employment, and whether he or she is eligible for any requested change of status or extension of stay. USCIS will notify you of the decision in writing.

Penalties.

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this petition, we will deny the petition and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

Privacy Act Notice.

We ask for the information on this form and associated evidence to determine if you have established eligibility for the immigration benefit you are seeking. Our legal right to ask for this information is in 8 U.S.C. 1154, 1184 and 1258. We may provide this information to other government agencies. Failure to provide this information and any requested evidence may delay a final decision or result in denial of your petition.

USCIS Information and Forms.

To order USCIS forms, call our to toll-free forms line at **1-800-870-3676.** You can also get USCIS forms and information on immigration laws, regulations and procedures by telephoning our National Customer Service Center at **1-800-375-5283** or visiting our internet website at **www.uscis.gov.**

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our internet-based system, **InfoPass.** To access the system, visit our website at **www.uscis.gov.** Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Paperwork Reduction Act.

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden

for this collection of information is estimated at 2 hours and 45 minutes per response, including the time for reviewing instructions, completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529. OMB No. 1615-0009. **Do not mail your application to this address.**

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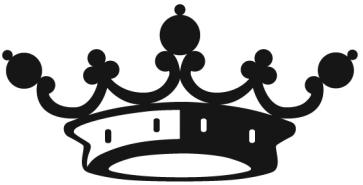
Inside the Minds

The critically acclaimed *Inside the Minds* series provides readers of all levels with proven business intelligence from C-Level executives (CEO, CFO, CTO, CMO, Partner) from the world's most respected companies. Each chapter is comparable to a white paper or essay and is a future-oriented look at where an industry/profession/topic is heading and the most important issues for future success. Each author has been selected based upon their experience and C-level standing within the professional community. *Inside the Minds* was conceived in order to give readers actual insights into the leading minds of business executives worldwide. Because so few books or other publications are actually written by executives in industry, *Inside the Minds* presents an unprecedented look at various industries and professions never before available.



ASPATORE