



IMMIGRANT AND NON-IMMIGRANT VISA CATEGORIES

This handout outlines some of the most commonly-used nonimmigrant and immigrant visa categories available to foreign nationals seeking to enter the United States temporarily or permanently for business or personal reasons.

I. NONIMMIGRANT VISAS

Nonimmigrant status may be available to foreign nationals intending to enter the United States temporarily for a specific time and purpose.

A. BUSINESS VISAS

This is a brief outline of the most useful immigration visa categories permitting temporary entry for business persons. The appropriateness of a visa depends upon the circumstances of an employee's duties, training, experience, nationality, anticipated length of stay in the United States, and often upon the relationship between the United States and a foreign entity.

1. B-1 Business Visitor

The B-1 visa is appropriate for persons entering for a limited time to oversee business operations, investigate business opportunities, sell goods or engage in certain other activities. B-1 business visitors may not engage in gainful employment in the United States, may receive no remuneration from a United States source, and the principal benefit of their activities must accrue to an entity abroad.

The North American Free Trade (NAFTA) Agreement expands the range of appropriate B-1 activities for Canadians to include research and design, growth, manufacture and production, marketing, sales, distribution, after-sales service and general services.

2. L-1 Intra-Company Transferee

The L-1 Intra-Company Transferee visa is one of the most useful to an operating company with a qualified parent or subsidiary, affiliate or branch that desires to bring its foreign executives and managers or employees with specialized knowledge to the United States. Citizens of countries other than Canada must file L-1 petitions by mail with the United States Citizenship and Immigration Services ("USCIS") which may require several weeks to approve them. Pursuant to the North American Free Trade Agreement, however, Canadian citizens may submit individual L-1 petitions in person at a port of entry without advance filing with the USCIS and, if qualified, be granted L-1 status immediately.

3. TN-1 Professional



The TN-1 Professional category is available only to citizens of Canada and Mexico who desire to engage in business activities at a professional level in one of the occupations listed on Appendix 1603.D.1 to Chapter 16 of the North American Free Trade Agreement, including but not limited to: accountants, computer systems analysts, engineers, management consultants and scientific technicians/technologists. Generally, a TN-1 professional must have a baccalaureate degree or its equivalent or appropriate credentials demonstrating professional status.

4. E-1 Treaty Trader and E-2 Treaty Investor

An E-1 visa is available to executives, supervisors and employees with skills essential to the operation of a foreign owned or controlled company in the United States that carries on substantial trade in goods or services principally between the United States and their country of nationality. An E-2 visa is available to nationals of that country who fill a key role with the company making a substantial investment in the United States, either as the person who directs the investment, as a qualified manager, or as a specially trained and highly qualified employee necessary for the development of the investment. The foreign national's country must have a treaty regarding this with the US.

5. H-1B Persons in Specialty Occupations

An H-1B visa may be available to a foreign national who is a professional or otherwise accomplished in his or her field and is filling a position in the United States in a "specialty occupation". A "specialty occupation" is one that requires:

1. Theoretical and practical application of a body of highly specialized knowledge; and
2. Attainment of a **bachelor's or higher degree** in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Engineers, architects, scientists, systems analysts, and other professionals may be H-1B eligible if it can be shown that the position to be filled requires the services of someone who has the requisite credentials.

Persons without a bachelor's degree who have a combination of education, specialized training, and professional experience also may be eligible for an H-1B visa, if he or she has three years of experience in a specialty for every year of university education lacking. If a license is required to practice the profession, the foreign national must possess the necessary license. An H-1B applicant may be newly hired to fill the United States position or may be an employee of the company assigned to the United States from abroad.

Applying for an H-1B visa is a complex process because the employer and the foreign national must prove entitlement to an H-1B visa to three governmental agencies. First, the employer must file a labor condition attestation with the United States Department of Labor regional office confirming that it will pay the prevailing wage. Second, the employer must



submit a petition to the USCIS. Third, the foreign national must go to a United States consulate or embassy abroad to apply for a visa. The H-1B category is subject to an annual cap.

6. H-2B Skilled or Unskilled Workers

The H-2B visa category is used by United States companies to employ skilled or unskilled foreign nationals temporarily in positions that are temporary in nature and for which unemployed United States workers are not available. The procedure is difficult, time-consuming and uncertain. The company, prior to applying to the United States Immigration and Naturalization Service, must first obtain, from the United States Department of Labor, labor certification, i.e., a determination that the employee will not displace a qualified unemployed person and will not adversely affect the working conditions of similarly employed workers.

B. STUDENT AND TRAINEE VISAS

1. F-1 & M-1 Student Visas

The F-1 visa category is appropriate for students who intend to pursue academic programs in degree-conferring colleges, universities, junior schools, seminaries, conservatories, academic high schools, elementary schools and language or professional institutions.

M-1 visas are appropriate for nonacademic or non-language vocational studies. The maximum initial admission period on an M-1 visa is one year. Extensions of stay are authorized in increments of up to one year for M-1 students. No transfer of school is allowed after six months from the date of admission unless the transfer is justified by circumstances beyond the student's control. A single period of practical training, not exceeding six months, will be granted; one month of training is allowed for each four months of full-time study.

2. J-1 Exchange Visitor

The J-1 visa category is appropriate for exchange visitors participating in educational and cultural exchange programs designated by the United States Information Agency. This visa category was designed to promote the interchange of persons, knowledge and skills in the field of education, arts and sciences. Students, scholars, trainees, teachers, professors, research assistants, specialists or leaders in a field of specialized knowledge or skill, and others may be eligible to apply for J-1 visas.

The principal disadvantage for foreign nationals from certain countries entering the United States on a J-1 visa is that they are often subject to a two-year foreign residency requirement so that they must return to their home country after completing the exchange visitor program for at least two years before they are eligible for any nonimmigrant or immigrant visa. The USCIS will waive the two year foreign residency requirement only in rare circumstances.

3. H-3 Visa Temporary Worker Trainee



This visa category is for training individuals to work in a profession, a purely industrial establishment, or any field of endeavor, including but not limited to agriculture, commerce, communication, finance, government and transportation. After a temporary stay, H-3 trainees must depart the United States and use their new knowledge and skills to pursue a career abroad.

II. IMMIGRANT VISAS

Immigrant visas are required for foreign nationals who intend to enter the United States to live and work permanently. In order to apply for permanent residence or "green card" status, the foreign national must have a basis for doing so. There are only four available bases: 1) a family relationship to a United States citizen or permanent resident; 2) an offer of full-time, continuing employment from a United States employer; 3) having made a substantial investment; or 4) claiming refugee status.

The refugee category will not be discussed here..

A. FAMILY BASED IMMIGRATION

Immediate relatives of U.S. citizens may apply for permanent residence and immediately enter the United States. Those who qualify as immediate relatives of U.S. citizens include:

(a) Spouses of U.S. citizens. The U.S. citizen and foreign national spouse must demonstrate to the USCIS that their marriage is bona fide. If the marriage was created within two years prior to applying for permanent residence, the foreign national will be granted residence on a "conditional" basis for a period of time, generally two years. Certain steps must be taken to remove the conditional status.

(b) Children of U.S. citizens. To qualify in this sub-category the citizen's child must be unmarried and under the age of 21 years.

(c) Parents of U.S. citizens. Parents of U.S. citizens are eligible to immigrate as immediate relatives, The petitioning citizen must be 21 years of age or older.

The following groups are eligible for permanent residence and have a preference to immigrate to the United States. Individuals may have to wait for an immigrant visa to become available before entering the United States.

- 1. First Preference** : Unmarried sons and daughters of U.S. citizens.
- 2. Second Preference** : Spouses, children (under 21 years of age), and unmarried sons and daughters of legal permanent residents.
- 3. Third Preference** : Married sons and daughters of U.S. citizens.
- 4. Fourth Preference** : Brothers and sisters of U.S. citizens.



B. EMPLOYMENT-BASED IMMIGRATION

There are five employment-based preference categories. Certain preference categories require certification from the U.S. Department of Labor that there are no qualified United States workers available to fill the position being offered to the foreign national and that hiring the foreign national will not adversely affect the wages and working conditions of similarly employed U.S. workers.

1. First Preference: Priority Worker: The priority worker category is divided into three sub-categories:

a. Aliens with Extraordinary Ability: This sub-category is appropriate for individuals who have risen to the top of their field of endeavor in the sciences, arts, education, business and athletics.

b. Outstanding Professors and Researchers: This sub- category is appropriate for outstanding professors and researchers who have at least three years of experience in teaching or research in their field, and who have received international recognition for their work.

c. Multinational Executives and Managers: This sub-category facilitates the transfer of high-level managers and executives to the United States as permanent residents.

2. Second Preference: Advanced Degree and Exceptional Ability Foreign Nationals
This category is divided into two distinct groups:

a. Aliens with Advanced Degrees: To qualify, a foreign national must possess an advanced degree or its equivalent in his or her proposed field of employment in the United States and the occupation must require the advanced degree.

b. Aliens with Exceptional Ability: This sub-category is restricted to foreign nationals who possess a degree of expertise significantly above that ordinarily encountered in the arts, sciences, or business.

Although a job offer and labor certification is normally required for the second preference category, both may be waived if the Petitioner can demonstrate that it is in the national interest to do so.

3. Third Preference: Skilled Workers, Professionals and Unskilled Workers: This is a catch-all category for foreign nationals with full-time, permanent job offers in the United States who do not qualify for first or second preference. It is divided into three sub-categories:



- a. **Skilled Workers** - foreign nationals who possess at least two years of training or experience and whose occupation in the United States requires a minimum of two years of training or experience;
- b. **Professionals** - foreign nationals who hold a bachelor's degree, or foreign equivalent degree, are members of the professions, and whose occupation requires the minimum of a bachelor's degree for entry into the occupation;
- c. **Unskilled Workers** - foreign nationals who possess less than two years of training or experience and whose occupation in the United States requires less than two years of training or experience.

4. The Fourth preference Category will not be discussed here, as it is rarely used for employment purposes.

5. **Fifth Preference: Investors**: To qualify, a foreign national is required to invest at least \$1,000,000 in the United States (or \$500,000 in targeted rural and high unemployment areas) in either a new or existing business. The investment must create employment for at least ten U.S. workers and these positions may not be filled by family members of the investor. The investor will be granted conditional permanent residence for two years, at the end of which, he must establish that the investment continues and that ten U.S. jobs have been created.

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