

Immigration Overview

Temporary Visas

B-1/ B-2 (Visitors for Business and Pleasure): This visa does not permit employment in the United States. Visitors for business are admitted to perform a business function in international trade for a foreign employer. Entering as a visitor and then attempting to “change status” to a student or employment category can be risky. This visa is applied for and obtained directly from a United States Consulate in the country in which the foreign national resides. However, please note, the United States has established a "visa waiver" program with about 30 different countries (including among others, Australia, France, Germany, Great Britain, Italy, Japan, the Netherlands, Sweden, and Switzerland), which allows citizens of these countries to travel to the United States for up to ninety (90) days without obtaining a visa. The visa waiver may be used to bring business visitors to the United States, as long as they are performing services on behalf of a foreign employer and do not receive a salary from a United States employer. Caution is advised, however, because an extension of stay or change or adjustment to another visa category may not be possible if the visa waiver is utilized.

H-1B (Professional Employees working in a "Specialty Occupation"): A foreign national who is seeking admission to be employed in an occupation which requires highly specialized knowledge and a bachelor's degree in a particular discipline or its equivalent may be eligible for the H-1B visa. It is used extensively by U.S. employers to employ foreign nationals who have attended a U.S. (or foreign) university and who seek professional employment in the U.S. following graduation. A foreign national may be present in the United States in H-1B visa status for up to six (6) years. The H-1B visa category is the most common, employment-sponsored visa category and, as such, is highly regulated and subject to an annual limit which is often exceeded early in, or even before the start of, the fiscal year.

L-1A/L-1B (Intra-Company Managers/ Executives and Employees with "Specialized Knowledge"): This visa is available to foreign nationals who have been continuously employed for at least one (1) year in a qualifying capacity by a company outside the United States, and who seek to enter the United States temporarily in order to continue rendering services to the same employer, or an affiliate, subsidiary, or parent of the overseas employer. The foreign national's employment, both prior to and following transfer to the U.S., must be in a capacity that is managerial or executive, or in a capacity which requires specialized knowledge. This visa may be granted for up to seven (7) years in the case of executives and managers (“L-1A” visa), and for up to five (5) years for foreign nationals who qualify with specialized knowledge (“L-1B” visa).

TN (Designated Canadian and Mexican Professionals): The North American Free Trade Agreement ("NAFTA"), which went into effect on January 1, 1994, provides a special visa category for certain Canadian and Mexican professionals. Although limited to Canadian and Mexican nationals, “TN” status under NAFTA is similar to H-1B status in requiring professional

level activities. However, "TN" status is not subject to the quota limitation for H-1B visas, nor are individuals subject to a maximum 6 year limit on admissibility in this status.

E-1/E-2 (Treaty Traders and Treaty Investors): Any foreign national may apply for this visa if there is a Treaty of Friendship, Commerce, and Navigation or a Bilateral Investment Treaty in effect between the United States and the foreign national's home country, and if the foreign national enters the United States either (i) to carry on substantial trade, primarily between the United States and his/her own country (E-1 visa); or (ii) to develop and direct the operation of an enterprise in which the foreign national or foreign-based enterprise has made a substantial investment (E-2 visa). E visa holders are granted a five year visa but are only admitted to the U.S. for stays of up to two years at a time.

Other Temporary Visas: There are several other temporary visa categories which may be useful to foreign businesses. These include visas for foreign nationals of "extraordinary ability in the sciences, arts, education, business or athletics" ("O" visa); exchange visitors such as industrial and business trainees, exchange students, foreign scholars, experts, and medical interns and residents ("J" visa); cultural exchange visitors ("Q" visa); certain performing artists and athletes ("P" visa); religious workers ("R" visa); students ("F" visa); temporary unskilled workers ("H-2B" visa); trainees ("H-3" visa); and others.

Permanent Visas

Permanent resident status, commonly referred to as having a "green card," is usually obtained either by having a close family relationship to a United States citizen, or through a permanent job offer in the United States. The employment-based permanent visas are divided into five (5) categories, based primarily on the education and skill required for the permanent job. The waiting period in certain categories may be many years. In some cases, however, a foreign national may be present in the United States in a temporary visa status while the waiting period for permanent status is being run.

The five (5) employment-based categories are as follows.

Priority Worker. This category is composed of three (3) groups, including persons of "extraordinary ability" in the sciences, arts, education, business or athletics; outstanding professors and researchers; certain multi-national executives and managers who have been employed abroad for at least one (1) year by the same employer. The burdensome requirement of "labor certification" is not required for immigrants in this category.

Professionals Holding Advanced Degrees and Foreign Nationals of "Exceptional Ability." These are members of the professions holding advanced degrees, i.e. a degree which requires at least one (1) year of graduate study following completion of a four (4) year undergraduate degree, or the equivalent of an advanced degree, may qualify in this category. The category also includes foreign nationals with "exceptional ability" in the sciences, arts, or business, if their presence will substantially benefit the United States prospectively. For most

foreign nationals in this category, the United States employer must obtain "labor certification" from the Department of Labor as a prerequisite to obtaining approval of an immigrant visa petition. This process requires advertisement of the position and certification that no qualified United States workers could be found.

Skilled Workers, Professionals Holding Basic Degrees, and "Other Workers." "Professionals" must have baccalaureate degrees, while "Skilled Workers" must have two (2) years of training or experience for the position offered. The "Unskilled Worker" category is a catch-all provision for individuals who fail to qualify in a higher category. As noted, a substantial delay for visas in the "Unskilled Worker" category may be expected. Labor certification is required in this category.

Special Immigrants. This category includes ministers and religious workers, and certain other special groups.

Investors. Individuals who invest at least One Million Dollars (\$1,000,000) in capital and who employ ten (10) or more United States persons may qualify for a limited number of "Investor Visas." Investment of Five Hundred Thousand Dollars (\$500,000) will suffice for investors in certain targeted areas of unemployment.

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