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# Immigration and Visas

# What is a visa and why do you need it?

- What is a visa?
  - A visa is an endorsement that is placed in your passport that allows you to enter, leave, or stay in a country for a specified period.
  - There are many different types of visas that are available based on one's particular circumstances.
- Why do you need a visa?
  - Having a U.S. visa allows you to travel to a port of entry, airport or land border crossing, and request permission of the Department of Homeland Security (DHS), Customs and Border Protection (CBP) inspector to enter the United States. While having a visa does not guarantee entry to the United States, it does indicate a consular officer at a U.S. Embassy or Consulate abroad has determined you are eligible to seek entry for that specific purpose.

# Types of Visas

What types of visas are there? The type of visa you must obtain is defined by U.S. immigration law, and relates to the purpose of your travel.

There are two main categories of U.S. visas:

- Nonimmigrant Visa
  - For travel to the United States on a temporary basis.
- Immigrant Visa
  - For travel to live permanently in the United States.
- There are different preferences of petitions for immigrant visas. The three most common in the employment context are:
  - First preference (EB-1).
  - Second preference (EB-2).
  - Third preference (EB-3).
- Generally, the higher the preference category, the shorter the wait time for obtaining an immigrant visa. Due to the per-country quotas, nationals of certain countries or those applying for the lower preferences have to wait years for final processing of their immigrant visas, as they wait for priority dates to become current.

For our purposes, we are only discussing Immigrant visas.

# First Preference (EB-1)

Certain professionals, irrespective of nationality, historically have enjoyed up-to-date priority dates under the EB-1 category. The following are categories of EB-1 professionals.

## *Extraordinary ability workers.*

- Those who are petitioning in this category must demonstrate sustained national or international acclaim for expertise in the sciences, arts, education, business or athletics.
- No employer sponsorship or job offer is required. However, the extraordinary ability applicant must show the following:
  - Sustained national or international recognition as evidenced through extensive documentation.
  - Intention to enter the U.S. to continue work in the area of extraordinary ability.
  - The way in which the prospective work will substantially benefit the U.S.

## *Outstanding professors and researchers.*

- Applicants for the EB-1 outstanding professor or researcher category must demonstrate that they have at least three years of experience in teaching or research and are recognized internationally as experts in their field.
- The professors or researchers must have a job offer and sponsoring employer to qualify.
- They must be entering the U.S. to pursue tenure or tenure track teaching or a comparable research position at a university or other institution of higher education.

## *Multinational executives/managers.*

- Qualified persons must have been employed for at least one of three preceding years in an executive or managerial capacity by a U.S. parent, subsidiary, branch, or affiliate of a foreign corporation.
- Labor certification is not required, but the prospective employer must provide a job offer and file a petition with the USCIS.

# Second Preference (EB-2)

- There are three subcategories of the EB-2 second preference:
  - Workers who hold an advanced degree or equivalent.
  - Workers who demonstrate exceptional ability in the sciences, arts or business.
  - Workers who have been granted a National Interest Waiver and whose employment would greatly benefit the U.S.
- Unless a National Interest Waiver has been granted, the applicant must have a job offer and labor certification from the DOL.
- Before filing most EB-2 visa applications with the USCIS, the petitioning employer must first seek certification from the DOL. The certification is based on the attestation by the employer that:
- There are not sufficient U.S. workers who are available and qualified for the position that the foreign worker seeks to fill.
- The employment of the foreign worker will not adversely impact the wages and working conditions of U.S. workers.

# Third Preference (EB-3)

## EMPLOYMENT THIRD PREFERENCE (EB-3)

- The third preference category of immigrant filing also requires a job offer from a sponsoring employer and labor certification from the DOL.
- There are three subgroups within this category:
  - Professionals with a bachelor's degree for positions requiring at least a bachelor's degree.
  - Skilled workers for positions that require at least two years' experience.
  - Other workers for positions that require less than two years' experience.
- The EB-3 preference has significant wait times for final immigrant visa processing. While the applicant is waiting for final permanent residency processing, he or she must be either outside the U.S. or in the U.S. pursuant to a valid nonimmigrant visa.

# Academic Visas

## Student Visas.

- Depending on your school and your field of study, you will have to get either the F1 or the M1 visa.
- The F-1 student visa is used primarily for full-time study at a school or college in the U.S. Students are admitted for "duration of status," which is the period of time needed to complete the degree program.
- The F-1 student status does not entitle the student to work in the U.S. without prior authorization.
- The [F-1 visa](#) also entitles the holder to seek employment relating to his or her field of study. Typically, students work with the international student adviser at their school to obtain [F-1 employment authorization](#).

## OPT Visas

- A student may also work in the U.S. under the "practical training" option (OPT). Practical Training is generally used after completion of the academic program.
- The maximum period for OPT is normally 12 months.
- Certain F-1 students who have earned a degree in a science, technology, engineering or math (STEM) field are eligible to apply for a 24-month extension of their post-completion OPT employment authorization if they meet certain requirements.
- OPT after completion of the academic program provides a student with the opportunity to find an employer willing to sponsor the student for another visa, such as the H-1B.

# Academic Visas

## Exchange Visitor Visas.

- The exchange visitor visas are targeted to those who participate in exchange programs and some type of practical training and employment within the United States. These visas are divided into:
  - [J1 visa](#)
    - The [J-1 exchange](#) visitor category includes a variety of exchange visitor programs and activities that are approved by the U.S. DOS to promote intercultural exchange and public diplomacy.
      - To qualify for a J-1 visa, the first thing you need to do is apply for an exchange program (study or work) through an assigned sponsor in the US. Only after you are accepted into a program, you can apply for a J-1 visa.
      - Employment is authorized only under the terms of the specific exchange program.
      - The permitted duration period of a J-1 visa varies by category.
  - [Q Visa](#)
    - The Q1 visa is a [temporary USA exchange visa](#) for international cultural exchange visitors that allows them to work. The employment also gives these participants the opportunity to share their culture and traditions with people in the US.
    - During the time that the Q1 visa holder spends in the US, they will participate in practical training programs that are given by their US employer. They will have the opportunity to gain and improve their skills, become familiar with US culture, and also inform US citizens of the visa holder's history and customs of the country that they are from.



# Temporary Work Visas

- **Temporary Work Visas.** These visas are issued for temporary work in the United States. Here are the categories of work visas:
  - [H1B visa](#). For persons who have been employed in highly specialized fields.
  - [H1B1 visa](#). For nationals of Chile and Singapore.
  - [L1 visa](#). Issued to intracompany managers or executives.
  - People who have what is called an extraordinary ability in Arts, Science, Business, Education, or Athletics and want to temporarily work in their field of expertise need an O visa. There are three types of O visas:
    - [O1 visa](#) – for persons with extraordinary abilities.
    - [O2 visa](#) – for the assistants of O1 visa holders.
    - [O3 visa](#) – for dependents of O1 visa holders.
  - [TN/TD visas](#). are for citizens of Canada or Mexico who will be working in the NAFTA organization.
  - [E3 visas](#). For nationals of Australia. who will be working in specialty occupations.

# The H1B

- Most commonly sought visa for professional workers.
- The annual cap on H-1B is 65,000 per year with an additional 20,000 for applicants holding advanced U.S. degrees.
- There is an annual lottery system to randomly select who may file an H-1B petition.
- H-1B petitions may be approved for up to three years and can be extended for up to a total of six years. The six-year maximum can be extended if the H-1B visa holder is the beneficiary of a labor certification or a [Form I-140 \(Petition for Immigrant Worker\)](#) filing pending one year or more.
- H1B visas can be transferred between employers.
- H1B requirements:
  - Possession of an advanced educational degree such as:
    - A 4 year Bachelor's Degree (or equivalent degrees)
    - A Master's or Doctoral Degree
    - Advanced training or vocational skills (examples include fashion models)
    - Qualify to work in research and development projects of the US Department of Defense or other government positions.
- The H1B work visa is initiated by an employer in the United States. The employer must have an open job position and they cannot find an American employee who is qualified enough to complete the work. This can be any position that requires higher education degrees or that is specialized enough in skills that not many people can do it successfully.

# O-1 Visas

The O-1 visa category is for individuals of Extraordinary Ability in the sciences, education, business, arts or athletics and individuals of extraordinary achievement in the motion picture and television industries.

- For job candidates who are highly regarded and recognized in their field.
- The O-1 visa is a nonimmigrant visa allowing an individual to temporarily live and be employed in the US.
- *Process.* Unless the candidate has won a highly recognized award such as the Nobel Peace Prize, extraordinary ability must be documented with evidence of awards received, published material in major media and the like.
- *Duration.* O-1 status may be granted for a maximum of three years at a time and may be extended indefinitely in one-year increments.
- The O-1 petition requires an offer of employment and must be signed by the employer. Applicants cannot apply themselves as they can with other visas.
- There is no set maximum period for O-1 status. Though O-1 extensions can be applied for indefinitely, the length of the status is determined by the length of time needed for the individual to perform his duties or activities with the petitioning employer.
- An initial stay is limited to no more than three years, provided the petition can establish that the O-1 candidate will need this much time for the proposed employment. This period may be extended at one-year increments upon evidence showing that the candidate's continued presence would be required.

# TN Visa

Pursuant to the U.S.-Mexico-Canada Trade Agreement (USMCA), which replaced the North American Free Trade Agreement effective July 1, 2020, the [nonimmigrant TN visa](#) allows citizens of Canada and Mexico, who work in certain professions, to work in the U.S.

- *Process.* TN classification is advantageous in that there is no quota, and it requires no prior application with the USCIS. To be eligible for the TN, the Canadian or Mexican citizen must have the degree, experience or licensing requirements designated for each profession.
- To qualify for TN status, an applicant must:
  - Be a citizen of Canada or Mexico;
  - Have a professional degree or its equivalent;
  - Be a professional eligible to receive the TN visa; and
  - Have a job offer of professional employment from a U.S. employer.
- Canadian nationals may apply for the TN directly at any port of entry; Mexican nationals must apply at a U.S. embassy in Mexico. Citizens of both countries must maintain a home-country residence that they have no intention of abandoning.
- *Duration.* The TN status is granted in up to three-year increments and can be renewed indefinitely for additional three year periods.