



Immigration Primer

U.S. immigration laws are very complex and can cause problems and delays for those who fail to plan ahead. U.S. immigration laws distinguish between two types of persons: nonimmigrants (persons coming to the United States for a limited temporary period of time for business or pleasure) and immigrants (persons intending to remain in the United States permanently). Generally, petitions or applications for immigration benefits are submitted either directly to a U.S. embassy or consulate abroad or to U.S. Citizenship and Immigration Services (CIS). Lawful Permanent Residency (LPR, more commonly known as the green card) may be obtained in a number of ways, principally through employment or a family relationship. We assist companies in obtaining LPR for their employees, whether through the straight I-140 process or through the Labor Certification (PERM) process. We work with state and federal agencies to make the process as quick and painless as possible for both the employee and employer. The permanent residency process can take several years, so foreign nationals and employers should consider long-term plans as soon as possible.

Most foreign employees work in the United States pursuant to a short-term, nonimmigrant visa. There are six commonly used nonimmigrant business visas: the B-1, L-1, E, H-1B, O-1 and TN (or NAFTA) visas.

B-1 Business Visitor Visas

The B-1 business visitor visa enables a business traveler to visit the United States for short periods of time (normally six months or less) with extensions possible in some cases. During that time he or she may, among other things, solicit sales (under certain restrictions) for the foreign company, negotiate contracts and attend business meetings. He or she may not, however, work for a U.S. company or be paid in the United States.

Visa Waiver Program

Similar to the B-1 visa, citizens of most European nations, Japan and certain other countries may take advantage of the Visa Waiver Program to enter the United States for a period of 90 days, provided they are not paid in the United States and meet certain other requirements, including having a machine-readable passport. Foreign nationals entering the U.S. with the visa waiver must plan on departing by the expiration of this 90-day period.

L-1 Intracompany Transferee Visas

Available for managers, executives and individuals with "specialized knowledge" of the company's business or products who have worked abroad for at least one year within the preceding three years with a related company. Regulations limit the initial issuance of an L-1 visa to one year for those being transferred to newly-formed United States businesses (businesses that have been in operation for less than one year; so called "new office" L-1 petitions). All other L-1 visas may be issued for an initial period of three years. Managers or executives in L-1A status may stay for a maximum consecutive period of up to seven years; those transferred in the specialized knowledge capacity may remain in the United States for up to five years.

E Visas

Provided for by a treaty between the United States and many foreign countries, the E visa authorizes the employment by U.S. companies of executives, managers or those individuals who hold essential skills. An E-1 visa application requires proof that "substantial trade" between the United States and the treaty country is being carried out by the U.S. company.

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An E-2 visa application requires a showing that a “substantial investment” has been made by an overseas company or by foreign nationals in the United States. The E applicant must be of the same nationality as the foreign owner(s) of the U.S. company by which he will be employed. Unlike L-1, H-1B or O-1 visas, petitions for “E” status on behalf of companies and individuals may be made directly at the U.S. embassy abroad, without having to file a petition with CIS. E visas are generally issued in increments of up to five years. However, they can be reissued indefinitely so long as the investment or trade and nationality requirements for eligibility continue to be met.

H-1B Visas

Available to individuals coming to the United States to be employed in specialty occupations. Specialty occupations include those which require the services of a professional, usually with a university degree, such as scientists, engineers, computer systems analysts, and some marketing specialists. Employers sponsoring H-1B aliens must obtain approval of a labor condition application from the U.S. Department of Labor in which the employer must attest, among other things, that it will pay the H-1B nonimmigrant at least the prevailing wage for the job. H-1B visas may be issued for an initial three-year period and may be extended for an additional three years, for a maximum consecutive period of six years (Note: This maximum period may be extended if a green card application has been filed at least 365 days prior to the end of the foreign national's sixth year of H eligibility.) There is an annual cap on the number of new H-1B visas that are granted each fiscal year. In recent years the cap has been reached early in the filing season, so advance planning for H needs is critical.

O-1 Visas

Available to aliens of exceptional ability, including exceptional ability in business. To obtain O-1 classification, he or she must establish that he or she has achieved national or international acclaim. An O-1 petition may be approved for an initial period of three years, and extensions may be granted in one-year increments.

TN or NAFTA Visa

Permits citizens of Canada or Mexico to work in the United States in certain specialty occupations, such as lawyers, accountants or engineers. Canadian TN applicants may apply directly at pre-flight inspection or a port-of-entry, and Mexican TN applicants may apply directly with the U.S. Consulate in Mexico for the visa, in either case without having to file a petition with CIS. TN visas are granted in one-year increments but may be extended indefinitely.

Accompanying family members in the L-1, H-1B, E, O-1 and TN categories will be given nonimmigrant visas which are generally valid for the same period of time as the visa of the principal beneficiary. However, family members, except those in the L-2 or E categories, may not engage in employment in the United States while in dependent nonimmigrant visa status.