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**MOST COMMON VISA OPTIONS FOR STUDENTS:  
LIFE AFTER OPT – WORK VISAS AND THE GREEN CARD**

**Nonimmigrant Visas:**

B-1/B-2	Business or Visitor
E-1/E-2	Treaty Trader or Investor
E-3	Australia Specialty Worker
L-1A	Intracompany Transferee
TN	Trade NAFTA (citizens of Canada or Mexico)
H-1B	Temporary Worker – Cap Issues, Singapore & Chile, H-1B Process, and Portability

Applying for a Visa at a Border Post (Canada and Mexico)

Visa Overstays and Unlawful Presence

**Immigrant Visas:**

Immigrant Visa Process  
Immigrant Visa Numbers  
Visa Bulletin – Employment-Based

EB-1	Outstanding Professors or Researchers
EB-2	Advanced Degree Professional (master's or doctorate level)
EB-3	Professional w/ Bachelor's Degree
DV	Diversity Visa Lottery Program

Immediate Relative      Petition filed by U.S. citizen spouse, child or parent

**NONIMMIGRANT → IMMIGRANT → U.S. CITIZEN**

## **CHANGE OF STATUS TO B-1/B-2 BUSINESS/VISITOR (Nonimmigrant Visa)**

A foreign national who plans to visit the U.S. on a temporary basis for business and/or pleasure may be granted B-1/B-2 status but only for the amount of time needed to accomplish the purpose of the trip (no more than six months). Foreign students who plan to stay and travel in the U.S. after graduation (beyond the 60-day grace period) should apply for a change of status from F-1 to B-2 before the current status expires and before the grace period starts. File USCIS Form I-539, Application to Extend/Change Nonimmigrant Status with supporting documentation. Must show financial ability and intent to return to home country.

## **E-1/E-2 TREATY TRADER/INVESTOR VISA (Nonimmigrant Visa)**

- E Visa is used for purposes of conducting trade between the U.S. and the country of majority ownership of the company (E-1) or overseeing investment in the U.S. (E-2).
- Initial period of stay of one year with unlimited extensions as long as foreign national affirms they will leave the U.S. when period of authorized stay ends.
- Initial application made at U.S. consulate; preliminary petition does not need to be approved by the USCIS.

### **REQUIREMENTS:**

- A treaty of commerce and navigation or bilateral investment treaty must exist between the U.S. and applicant's country of nationality.
- Majority ownership or control of the investing or trading company must be held by nationals of the treaty country.
- Principal investor or trader and employees of the treaty enterprise must have same nationality as the treaty enterprise.
- For E-1 Treaty-trader status, the trading company must be engaged in substantial trade principally between the U.S. and the treaty country; and the employee or principal must serve company in managerial or in a specialized technical capacity.
- For E-2 Treaty-investor status, the investor makes an irrevocable commitment of funds that represents active and substantial investment which will create job opportunities for U.S. workers. The foreign national must fill a key role as an investor who develops and directs the investment, as a qualified manager, or as a specially trained and highly qualified employee necessary for the development of investment. An E-2 must have sufficient income to support him/herself.

E-2 treaty countries: Albania, Armenia, Azerbaijan, Australia, Austria, Bangladesh, Belgium, Bolivia, Bosnia-Herzegovina, Brunei, Bulgaria, Cameroon, Canada, China (Taiwan only), Colombia, Congo (Brazzaville), Congo (Kinshasa), Costa Rica, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Grenada, Honduras, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, South Korea, Kyrgyzstan, Latvia, Liberia, Lithuania, Luxembourg, Macedonia, Mexico, Moldova, Mongolia, Morocco, Netherlands, Norway, Oman, Pakistan, Panama, Paraguay, Philippines, Poland, Romania, Senegal, Slovak Republic, Slovenia, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Ukraine, United Kingdom, Yugoslavia.

### **PROCESSING E VISA APPLICATIONS AT U.S. CONSULATE:**

The E-visa application is submitted directly to the Treaty Visa Office at the U.S. Embassy or Consulate in the applicant's home country and reviewed by a Treaty Officer. Information often can be obtained from the Consulate's website.

### **E-3 AUSTRALIAN SPECIALTY WORKER (Nonimmigrant Visa):**

The E-3 Visa is designed as a separate visa category for Australian nationals employed in specialty occupations

- A specialty occupation is one that requires theoretical and practical application of highly specialized knowledge, requiring a minimum of a bachelor's degree
- This category is separate from H-1B visas and provides a more flexible option for Australians
- This visa category allows renewal indefinitely in two-year increments
- Unlike spouses of H-1B, E-3 dependants are able to apply for employment authorization
- There is a cap of 10,500 new E-3 visas per year

#### **Requirements:**

- The applicant must be an Australian national,
- Employment must be in a specialty occupation requiring a bachelor's degree or higher, and
- Employee must possess the required degree for the specialty occupation.

#### **Application Process:**

##### **If in the U.S.:**

- Form I-129, Petition for Nonimmigrant Worker filed with USCIS
- Letter from prospective employer
- Evidence foreign national meets educational requirements including licensure, if applicable
- Certified Labor Condition Application
- Filing fee of \$320 to Department of Homeland Security

##### **If in Australia:**

- Form DS-156, Application for Nonimmigrant Visa and photo filed with Embassy/Consulate
- Letter from prospective employer
- Evidence foreign national meets educational requirements including licensure, if applicable
- Certified Labor Condition Application
- Filing fee of US\$131 to Department of State

## **L VISA FOR INTRACOMPANY TRANSFEREES**

- L-1 visa is useful for international companies to bring foreign employees to the U.S.
- Employee can be admitted for an initial period of stay of up to three years:
  - L-1A managers and executives have a maximum limit of seven years,
  - L-1B specialized knowledge personnel, limited to five years.
- The permissible period of stay for a transferee coming to open a new office is one year initially with extensions possible after the first year if the U.S. business has commenced operation and the company is doing business in the U.S. and abroad.

### **Requirements:**

- Employee must have worked abroad for the overseas company for a continuous period of one year full-time within the preceding three years.
- The company for which the employee has worked for a year abroad must be the same employer or a subsidiary or affiliate of the U.S. company.
- Transferring company must be a qualifying organization - one that is doing business in the U.S. and abroad during the whole period of transfer.
- Employee being transferred must have been employed abroad in an executive or managerial position or a position involving specialized knowledge.
- Employee coming to the U.S. company must fill an executive or managerial position or a position involving specialized knowledge.
- Employee must be qualified for position by virtue of prior education and experience.
- L-1 employee must intend to depart upon completion of authorized stay (although can pursue permanent residence at the same time).

## **TN VISA for Canadian & Mexican Professional Employees under NAFTA (Nonimmigrant Visa)**

One of NAFTA's goals is to enhance and facilitate economic and commercial interaction with the U.S., Canada and Mexico. The Trade NAFTA (TN) visa allows the U.S. business to employ Canadian and Mexican professionals for up to one year as long as the employee is engaged in one of the occupations or professions listed in NAFTA. Examples of some of the most common occupations are: engineers, graphic designers, nurses, occupational therapists, scientific technicians and accountants, to name only a few. The employee must have the required degree or qualifications listed for that occupation, and the job in the U.S. must require a professional with those qualifications. Business persons seeking entry to engage in self-employment are not eligible for the TN visa.

TN nonimmigrants may apply for entry with the NAFTA officer at the port of entry (international airport) or with the immigration inspector at a land border crossing. Recommend that applicants applying at the border avoid Sundays. TN visas are now issued for three-year periods and often are renewable with no limitation. The filing fee is \$57.

The spouse and children of a TN would receive TD status and are not allowed to work.

State Department website info: [http://travel.state.gov/visa/temp/types/types\\_1274.html](http://travel.state.gov/visa/temp/types/types_1274.html)

List of NAFTA professions: [http://www.nafta-sec-alena.org/DefaultSite/index\\_e.aspx?DetailID=167#Ap1603.D.1](http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=167#Ap1603.D.1)

## **CHANGE OF STATUS TO H-1B TEMPORARY WORKER (Nonimmigrant Visa)**

- The H-1B nonimmigrant visa category is used to employ foreign nationals temporarily in a specialty occupation.
- The position offered may be full or part-time and must require the services of a professional (someone who has a baccalaureate or higher degree directly related to job duties).
- The employee must be qualified to perform the services in the specialty occupation by having attained a baccalaureate or higher degree in the field in which he/she will work.
- This initial period of stay for an H-1B can be up to 3 years, with a maximum period of six years.
- H-1B CAP: 65,000 visas per fiscal year, Oct. 1 to Sept.30 (actually 58,200 since 6,800 set aside for Chile & Singapore) plus additional 20,000 visas per fiscal year for foreign nationals with a master's or higher level degree from U.S. academic institution.
- **TARP** –If a company has accepted TARP funds they are considered a “dependent” employer for H-1B purposes and must take additional recruitment steps prior to filing the Labor Condition Application and H-1B petition. The requirements apply only to H1B petitions for newly hired foreign national workers on or after February 17, 2009 through February 16, 2011.

**NOTE: If changing from another nonimmigrant visa to an H-1B, apply for the change of status before current visa status expires.**

### **The H-1B Application Process:**

1. Prevailing Wage Determination - to determine H-1B employee will receive at least the actual wage paid to other similarly experienced employees --or-- the prevailing wage level for the occupation in the area of intended employment, whichever is greater.
2. Labor Condition Application (LCA), Form ETA 9035, filed with the U.S. Department of Labor - employer attests that H-1B employee will be paid the prevailing wage rate for the occupation or the actual wage rate, whichever is higher; that employment of H-1B nonimmigrant will not adversely affect similarly employed workers; that there is no strike or lockout at the job site; and that the position has been posted at the employment site.
3. Application to the U.S. Citizenship and Immigration Service of an H-1B petition, Form I-129 & H Supplement - filed by the employer with supporting documents to the USCIS.
4. If the H-1B is approved, the USCIS will issue one of two types of approval notices:  
Form I-797A to denote Change of Status - if employee is already in the U.S. in valid visa status, he/she will receive a new I-94 card which shows the new status. -OR-  
Form I-797B to obtain Approval and Issuance by U.S. Embassy/Department of State of the H-1B visa - if the foreign national is outside the U.S. or is in the U.S. but ineligible to change status, employee applies for the H-1B visa at the U.S. Embassy/Consulate in home country.

**H-1B Portability** – An H-1B employee may change employers and begin working for the new prospective employer once a new H-1B petition is properly filed with the USCIS. The key advantage to this provision is that the H-1B employee does not have to wait until the USCIS has approved the new H-1B petition. This is available only to foreign nationals who hold valid H-1B status and are going to new H-1B employment. If the new petition is not approved by the USCIS, the employment authorization for the H-1B employee ceases upon the receipt of the denial notice.

Example: H-1B works for Company X and is offered a position with Company Y. Once Company Y has physically filed the new H-1B petition and has proof of receipt with the USCIS Service Center, the H-1B employee may start working for Company Y. The H-1B receipt notice, Form I-797C, is sufficient evidence to begin work. [Be aware that if current employer is cap-exempt and new employer is cap-subject, have to wait for H-1B availability.]

## **H-1B CAP-EXEMPT OR SUBJECT, F-1/OPT EXPIRATION & OCTOBER 1 START DATE**

Cap-exempt employers: Institutions of higher education; nonprofits related to or affiliated with institutions of higher education; nonprofit research organization or governmental research organization; employers applying for Conrad State Waivers for physicians in J-1 status.

**There are no cap issues with cap-exempt employers. H-1B petitions can be filed at any time.**

H-1B employees transferring (aka “porting”) to a new H-1B employer – be aware that if current employer is cap-exempt and new employer is cap-subject, have to wait for H-1B availability.

Employers can file H-1B applications 6 months in advance of the start date. However, cap-subject employers are limited to filing on April 1 for an October 1 start date because the H-1B numbers are used up immediately for the following fiscal year.

## **H-1B CAP-GAP extension of D/S and work authorization until October 1**

Duration of status and work authorization will be extended for a student on post-completion OPT who is the beneficiary of a timely filed H-1B petition requesting an employment start date of October 1 of the following fiscal year. This would apply to all students on OPT, not just STEM students. The extension of duration of status and work authorization would automatically terminate upon the rejection, denial, or revocation of the H-1B petition filed on the student's behalf.

The conditions for this auto-extension of status and work authorization include: (1) the student is the beneficiary of an H-1B petition filed before the end of the student's lawful F-1 status; (2) the H-1B petition requests a change of status with an effective date of October 1 of the following fiscal year; (3) the F-1 student has not violated the terms and conditions of that status; and (4) the H-1B petition is not rejected, denied or revoked.

This OPT extension is automatic when the conditions are met so that no new Employment Authorization Document is required for I-9 purposes. Again, this extension applies to all F-1s selected to receive an H-1B for the following fiscal year, whether the F-1 works in a science, technology, engineering or mathematics field or not. The extension of status also covers the student's spouse and children in F-2 status.

## **OPT EXTENSION to 29 Months for STEM Students**

The 12-mo. limit on OPT will be extended for an additional 17 mos. for certain STEM degree holders. Requires DSO to recommend the 17-mo. extension and a job offer with an employer registered with **E-verify**. Will have to apply for 17-mo. extension on Form I-765 with fee.

## **Watch Out for Periods of UNEMPLOYMENT DURING OPT**

No more than 90 days of unemployment during post-completion OPT; no more than 120 days of unemployment for STEM extensions; otherwise will be out of status.

***IMPORTANT: REMAIN IN CONSTANT CONTACT WITH THE DSO (designated student official) DURING OPT SO THAT ALL REPORTING REQUIREMENTS ARE MET.***

# U.S. Department of State

## Bureau of Consular Affairs

[http://travel.state.gov/visa/temp/without/without\\_1260.html#TCN](http://travel.state.gov/visa/temp/without/without_1260.html#TCN)

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### Who from Canada, Mexico and Bermuda, Needs a Nonimmigrant Visa to Enter the United States Temporarily?

#### Document Requirements to Enter the U.S. - Western Hemisphere Travel Initiative

The Western Hemisphere Travel Initiative (WHTI) will require all travelers to and from the Americas, the Caribbean, and Bermuda to have a passport or other accepted document that establishes the bearer's identity and nationality to enter or re-enter the United States. This travel initiative is being implemented in two phases. The first phase will be for air travel, and the second for land/sea travel. **IMPORTANT NOTICE: Review the following information to learn about document requirements to enter the United States:**

- [Crossing U.S. Borders](#) - Department of Homeland Security (DHS) website
- [Ready, Set, Go](#) - Customs and Border Protection (CBP) website
- [Non U.S. Citizens](#) - Customs and Border Protection (CBP) website

#### Visa Requirements - Citizens of Canada, and Permanent Residents

Citizens of Canada traveling to the U.S. do not require a nonimmigrant visa, except for the travel purposes as described below. The below listed travel purposes require a visa. Additionally, Canadian citizens who have an ineligibility for a visa under immigration law, or have previously violated the terms of their immigration status in the United States, can [Learn More](#) about ineligibilities related to Canadians on the DHS Customs and Border Protection Website. Canadian citizens with ineligibilities also have the option of applying for a visa and a waiver at the nearest U.S. consulate if it is more convenient for them.

Canadians require nonimmigrant visas for temporary travel to the U.S. for these purposes:

- Foreign government officials (A), officials and employees of international organizations (G) and NATO officials, representatives and employees assigned to the U.S. as needed to facilitate their travel
- Treaty traders (E-1)
- Treaty investors (E-2)
- Fiance/es (K-1)
- Children of fiancées (K-2)
- U.S. citizen's foreign citizen spouse, who is traveling to the U.S. to complete the process of immigration (K-3).
- Children of a foreign citizen spouse (K-4) described above
- Spouses of lawful permanent residents (V-1) traveling to the U.S. to reside here while they wait for the final completion of their immigration process
- Children of spouses of lawful permanent residents (V-2) described above

**Permanent residents (aka landed immigrants) of Canada** must have a nonimmigrant visa unless the permanent resident is a national of a country that participates in the Visa Waiver Program (VWP), meets the VWP requirements, and is seeking to enter the U.S. for 90 days or less under that program.

**Additional resources** regarding procedures for Canadian visitors to the United States can be found on the [U.S. Embassy](#) and Consulate websites in Canada - See [Entering the United States](#) on the U.S. Embassy Ottawa website, as well as [Business Travel to the U.S.](#) webpages.

### **Visa Requirements - Citizens of Mexico, and Permanent Residents**

**Citizens and permanent residents of Mexico** generally must have a nonimmigrant visa or Border Crossing Card (also known as a "Laser Visa"). The Border Crossing Card, Form DSP-150 is a biometric, machine readable card that is a combined visitor B1-B2 visa/Border Crossing Card. Select [Border Crossing Card](#) to learn more about the requirements for this card.

Select U.S. [Embassies/Consulates](#) to go to consular sections in Canada and Mexico for more information about getting your nonimmigrant visa.

### **Visa Requirements - Citizens of the British Overseas Territories of Bermuda**

**Citizens of the British Overseas Territories of Bermuda** traveling to the U.S. do not require a nonimmigrant visa for travel up to 180 days, except for the travel purposes as described below. Additionally, these citizens do not require a visa unless they have an ineligibility for a visa under immigration law, or have previously violated the terms of their immigration status in the United States.

Citizens of the Overseas Territories of Bermuda require nonimmigrant visas when traveling to the U.S. for these purposes:

- Foreign government officials (A), and officials and employees of international organizations (G)
- Fiance/es (K-1)
- Children of fiancées (K-2)
- U.S. citizen's foreign citizen spouse, who is traveling to the U.S. to complete the process of immigration (K-3)
- Children of a foreign citizen spouse (K-4) described above
- Spouses of lawful permanent residents (V-1) traveling to the U.S. to reside here while they wait for the final completion of their immigration process
- Children of spouses of lawful permanent residents (V-2) described above
- Other travel purposes where the intended stay is longer than 180 days

### **How to Apply For a Visa at a U.S. Embassy or Consulate If You Are a Third Country National Present in the United States, Or Visiting Canada or Mexico**

#### **Appointments are Required**

Any third country national (TCN)\* present in the United States and visitors present in Canada or Mexico who wish to apply for a nonimmigrant visa at the Embassy or consulates in Canada or Mexico, must make an appointment for an interview. U.S. Consulates are located in Calgary, Halifax, Montreal, Ottawa, Quebec City, Toronto, Vancouver, Ciudad Juarez, Guadalajara, Hermosillo, Matamoros, Merida, Mexico City, Monterrey, Nogales, Nuevo Laredo and Tijuana.

\*Please note that embassies and consulates along the U.S. border can no longer accept applications from non-resident TCNs who are nationals of the six countries currently designated as state sponsors of terrorism. For more information, please see the [Notice: Special Visa Processing Procedures Pursuant to Section 306 of the Enhanced Border Security and Visa Reform Act of 2002.](#)

**[The six countries designated are: Cuba, Iran, Libya, North Korea, Sudan and Syria.]**

**Appointments by Telephone:** If you are in the United States and you wish to schedule an appointment, you should call **1-900-443-3131**; in Canada you should call **1-900-451-2778**. Callers from the United States or Canada wishing to charge the cost of the call to a credit card may schedule an appointment by calling **1-888-840-0032**. Unlike the 1-900 numbers, which are blocked from most hotels, office or pay telephones, the credit card line can be accessed from virtually any telephone. The appointment system requires a touch-tone phone; a push-button rotary phone will not work.

**Appointments by Internet:** Applicants can book appointments in Canada via the Internet at [www.nvars.com](http://www.nvars.com). Each appointment costs \$9.50 Canadian, which will be charged to a major credit card. Applicants are advised to have their credit card information handy. Appointments for Mexico cannot be booked online at this time.

After your appointment is scheduled, you will be mailed an information packet for the post where you will be applying. Please **DO NOT** call an individual post directly to request an appointment. They can only be scheduled by calling the appropriate 1-900 or 1-888 telephone number or by using the Internet.

#### **Who May Not Apply for a Visa at an Embassy or Consulate at the U.S. Border?**

Individuals who have been out of status in the United States because they violated the terms of their visa or overstayed the validity indicated on their I-94 are not eligible to apply at a border post. In other words, if you have remained in the U.S. longer than the period authorized by the immigration officer when you entered the U.S. in any visa category, you must apply in the country of your nationality or legal permanent residence. If you are not certain about your status, check with the nearest U.S. Citizenship and Immigration Service (USCIS), Department of Homeland Security office.

U.S. embassies and consulates routinely do not accept applications for "E" visas from third country national applicants who are not resident in their consular districts.

#### **Hours of Operation**

Operators are available from 7 A.M. to 10 P.M. Eastern Time. Callers may have difficulty getting through if they call during the peak times of 7 A.M., 11 A.M., 2 P.M., 4:30 P.M. and 7 P.M. Eastern Time. Appointments for embassies and consulates outside the Eastern Time Zone can only be made after it is 7 A.M. in the embassy or consulate's time zone. The Internet system is available 24 hours a day, seven days a week.

#### **Additional Information**

**Applicants who are unable to attend their scheduled appointments must cancel them two full working days prior to the appointment by calling toll-free to 1-888-611-6676.**

Visa applicants should take their appointment letters to the interview. They may be admitted without one, but absence of the letter could cause delays.

Certain nationalities require visas from Canadian authorities in order to enter Canada.

Individuals who are already in the U.S. and remain in legal status are encouraged to apply at non-border U.S. embassies and consulates in conjunction with foreign travel for business or pleasure. Those who plan to visit Canada, Mexico or, in the cases of students and exchange visitors, adjacent islands, may re-enter the U.S. within thirty days on expired visas as long as they possess a valid I-94 form unless they are excluded from automatic revalidation, as noted below.

### **Entering the U.S. - Port of Entry**

Department of Homeland Security, U.S. Customs and Border Protection (CBP) officials have authority to permit or deny admission to the United States. In advance of travel, prospective travelers should review important information about [Admissions/Entry](#) requirements, as well as information related to restrictions about [bringing food](#), [agricultural products](#) or other [restricted/prohibited goods](#) explained on the Department of Homeland Security, Customs and Border Protection website. Additionally, upon arrival (at an international airport, seaport or land border crossing), certain travelers are enrolled in the [US-VISIT](#) entry-exit program.

### **Re-Entry into the U.S. - Important Information**

The U.S. Government has undertaken a variety of efforts since September 11 to enhance border security. If you are traveling to the U.S. with a nonimmigrant visa, and are taking a short trip(s) to Canada and Mexico, review the [Automatic Revalidation](#) webpage on the CBP website. Anyone who has applied for and been refused visa issuance at a border post is prohibited from re-admission or re-entry to the United States in the same visa category, even though they are in possession of a valid I-94 form. Travelers who are citizens of countries on the State Department's list of State Sponsors of Terrorism are prohibited from re-entering the U.S. using solely an I-94 form if their visa has expired. (NOTE: Iraq, Libya & North Korea are now eligible for automatic revalidation; Iran, Syria, Sudan & Cuba are not eligible for automatic revalidation of expired visas.)

Citizens from [State Sponsors of Terrorism](#) countries must obtain a new visa (and thus go through a new set of interviews, computer checks, etc.) rather than re-enter the U.S. using solely their I-94 form.

### **Special Visa Processing Procedures - Travelers from State Sponsors of Terrorism**

Section 306 of the Enhanced Border Security and Visa Reform Act of 2002 (EBSVRA) pertains to the issuance of visas to aliens from state sponsors of terrorism.

Four countries are now designated as Section 306. They are Cuba, Syria, Sudan and Iran.

Special Visa Processing Procedures:

All applicants from state sponsors of terrorism age 16 and over, irrespective of gender, must without exception complete form DS-157, in addition to form DS-156, and must appear for an interview with a consular officer.

An exception to the requirement for an interview may be made at the discretion of the consular officer in cases of A and G visa applicants (except for A-3 and G-5 applicants, who must be interviewed).

The language for Section 306 of the EBSVRA in pertinent part follows:

No nonimmigrant visa under Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) shall be issued to any alien from a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate United States agencies, that such alien does not pose a threat to the safety or national security of the United States. In making a determination under this sub-section, the Secretary of State shall apply standards developed by the Secretary of State, in consultation with the Attorney General and the heads of other appropriate United States agencies that are applicable to the nationals of such states.

For answers to frequently asked questions regarding visa applications from state sponsors of terrorism countries please [click here](#).

# CONSEQUENCES OF VISA OVERSTAYS

## OVERSTAY BY NONIMMIGRANT VOIDS VISA

Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Section 632), any nonimmigrant visa is void as soon as a foreign national overstays his or her period of authorized stay. Such person is ineligible to be readmitted to the U.S. except on the basis of a new visa issued in a consular office located in the alien's country of nationality, unless "extraordinary circumstances" exist.

This means that if a nonimmigrant overstays his or her period of authorized stay, even by one day, the visa immediately becomes void. Consequently, when the person leaves the United States, all prior visas automatically becomes invalid, and he or she must obtain a new visa from the U.S. consulate in their home country to reenter.

## UNLAWFUL PRESENCE BARS REENTRY

Also under the 1996 Immigration Act (Section 301), any nonimmigrant who overstays his or her admission or is in unlawful status for more than 180 days and leaves the U.S. will not qualify for readmittance for three years from the date of departure. Any alien unlawfully present for one year or more is inadmissible for 10 years from the date of departure. For example, if a nonimmigrant's period of authorized stay expired on September 1, and he or she remained in the U.S. for more than 6 months to March 1, all previous visas become void once the person leaves the U.S. and that foreign national will be ineligible for any new visa to the U.S. for three years.

**NOTE: The above currently does not affect students admitted with duration of stay (D/S) on their I-94s UNLESS a determination is made by the USCIS or the immigration court that the student's status has been violated. Unlawful presence commences on the date of the determination.**

## IMMIGRANT VISA PROCESS – three steps

### Step 1. LABOR CERTIFICATION – filed with the U.S. Department of Labor

For most employment-based immigrant visa petitions, the employer must prove to the U.S. Department of Labor (DOL) that the position was open to qualified U.S. workers and that no U.S. workers were available. This process is called labor certification. The risk to a foreign national during the recruitment process of the labor certification is if a qualified U.S. worker applies for the position. The employer is not obliged to hire the U.S. applicant but it does prevent the labor certification from being filed.

### Step 2. IMMIGRANT VISA PETITION – filed with the USCIS

Upon approval of the labor certification (if the labor certification is necessary), the employer files Form I-140, Immigrant Petition for Alien Worker, and documents the foreign national's education and/or experience.

### Step 3. ADJUSTMENT OF STATUS -- OR -- CONSULAR VISA PROCESSING

For employment-based immigrant visa applicants who are in the U.S. in valid status, the employee and his/her family may file for **adjustment of status to permanent residence**, Form I-485. The I-485 may be filed concurrently with the I-140, Immigrant Petition; the entire application package is filed by mail to the USCIS. This is contingent on visa availability (see below - Immigrant Visa Numbers).

While the I-485 petition is pending, the foreign national cannot leave the U.S. until permanent resident status is granted or unless travel is specifically requested via application to the USCIS, Form I-131 for Advance Parole. **Exception:** If the applicant has a valid H or L visa, no travel document is required. Also while the I-485 is pending, it is important to remember to remain in valid work status. For example, if the H-1B visa expires while the I-485 is pending, the person must file an I-765 to request work authorization or, if an option, extend the H-1B.

**Consular visa processing** can be an option instead of adjustment of status. The final immigrant visa processing takes place at the U.S. Embassy or Consulate in the person's home country. In some cases it may be to the person's advantage to consular visa process. Careful analysis is recommended.

## IMMIGRANT VISA NUMBERS

The Immigration and Nationality Act (INA) states that an applicant cannot seek to adjust his/her status to lawful permanent resident unless an immigrant visa number is immediately available to the worker at the time his/her adjustment application is filed. The INA sets a limit on the number of green cards that may be issued each Fiscal Year (October 1 through September 30) – the total is 140,000 to be divided among the five employment-based visa categories. Physicians and scientists typically fall into employment-based 2<sup>nd</sup> preference (a.k.a. EB-2) because their positions require an advance degree. Foreign nationals with a bachelor's degree fall into employment-based 3<sup>rd</sup> preference (EB-3). NOTE: The visa preference is determined by the position and its requirements. If a position only requires a bachelor's degree but the person has a master's degree, it does not move the person into EB-2.

A backlog occurs when there are more applicants than visa numbers. A waiting list is created and applicants are placed on the list according to the date of their case filing. This date is called a "priority date." If a labor certification was filed, it is the date of filing with the Department of Labor. If the applicant did not require a labor certification, then the priority date is established on the date that Immigration receives the I-140 immigrant petition. For example: if an employer files a labor certification for mechanical engineer on May 1, the priority date is May 1, 2010.

Currently there is widespread visa retrogression for applicants who are from China and India in several of the employment-based visa categories. This could add several years to the immigrant visa process. The Department of State issues a monthly *Visa Bulletin* which shows the priority date/cutoff for each category. An excerpt is below.

### VISA BULLETIN FOR APRIL 2010

	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
Employment-Based					
1st	C	C	C	C	C
2nd	C	22AUG05	01FEB05	C	C
3rd	01FEB03	01FEB03	08SEP01	01JUL02	01FEB03
Other Workers	01JUN01	01JUN01	01JUN01	01JUN01	01JUN01
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C
5th Pilot Programs	C	C	C	C	C

[http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)

### **FIRST EMPLOYMENT-BASED (EB-1) PREFERENCE (Immigrant Visa)**

There are three EB-1 categories: Aliens of Extraordinary Ability, Outstanding Professors and Researchers, and Multinational Managers/Executives. No labor certification is required.

**REQUIREMENTS for Extraordinary Ability:** Establish "extraordinary ability" by evidence of a major, internationally recognized award, such as the Nobel Prize or an Academy Award, -or- Document at least three of the following:

- Receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor,
- Membership in associations in the field of endeavor which require outstanding achievements of their members, as judged by recognized national or international experts,
- Published material in professional or major trade publications or major media about the alien and relating to the field of endeavor,
- Participation on a panel, or individually, as a judge of the work of others in the same or an allied field,
- Original scientific, scholarly, artistic, athletic, or business related research contributions of major significance in the field,
- Authorship of scholarly articles in the field in professional journals or other major media,
- Display of work at artistic exhibitions or showcases,
- Evidence of previous lead, starring, or critical roles for organizations or establishments that have a distinguished reputation,
- Evidence of commanding a high salary or other high remuneration for services in relation to others in the field,
- Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disc, or video sales, or
- Comparable evidence if the above standards do not apply.

**REQUIREMENTS for Outstanding Professors and Researchers** with universities or private employers with established research departments:

- The offer of a tenured or tenure track teaching or research position **-or-** the offer of a research position having no fixed term and in which the employee will ordinarily have an expectation of permanent employment **-or-** the offer of a comparable research position with a private employer if the employer has at least three full-time researchers and documented accomplishments in the research field;
- At least three years of teaching or research in the field (time spent working on an advanced degree can be counted but only if the research is recognized as outstanding, or if the foreign national had full responsibility for the courses taught);
- Recognition internationally as outstanding in a specific academic field by submitting at least two of the following:
  - Receipt of major international prizes or awards for outstanding achievement in the academic field,
  - Membership in associations in the academic field which require outstanding achievements of their members,
  - Published material in professional publications written by others about the foreign national's work in the field,
  - Participation on a panel, or individually, as the judge of the work of others in the same or allied academic field,

- Original scientific or scholarly research contributions to the academic field,
- Authorship of scholarly books or articles in scholarly journals with international circulation.

REQUIREMENTS for Multinational Managers/Executives:

- Must have at least one year in the preceding three years of being employed by the overseas affiliate, parent, subsidiary, or branch of the U.S. employer, and
- Must be coming to work in the U.S. in a managerial or executive capacity.

**SECOND EMPLOYMENT-BASED (EB-2) PREFERENCE (Immigrant Visa)**

There are two EB-2 categories: Advance Degree Professionals and Exceptional Ability

ADVANCE DEGREE PROFESSIONALS - requirements:

- The employment must be full-time and permanent (meaning not seasonal).
- The position must require a Master's or higher degree to perform the job duties.
- The employee must have a U.S. academic or professional degree (or foreign equivalent) above a bachelors degree level -OR- a bachelor's degree plus at least five years of progressive experience in the specialty.
- The Department of Labor (DOL) must certify that there are no qualified U.S. workers available to fill the position. The labor certification requirement can be waived if the foreign national's admission is in the "national interest".

EXCEPTIONAL ABILITY ALIENS - to qualify for this immigrant visa category, the employee must have at least three of the following:

- An official academic record showing a degree, diploma, or similar award for a college, university, school, or other institutions of learning relating to the area of exceptional ability,
- Letters from current or former employers showing at least ten years of full-time experience in the occupation for which employment is sought,
- A license to practice the profession or certification for a particular profession or occupation,
- Evidence of commanding a salary, or other remuneration for services, which demonstrates exceptional ability,
- Membership in professional associations,
- Recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business associations.

NATIONAL INTEREST WAIVERS – No Labor Certification Required.

The labor certification may be waived by the U.S. Citizenship and Immigration Service (USCIS) if the applicant qualifies for second preference and the foreign national's admission would be in the "national interest." There is an extremely high level of scrutiny by the USCIS for this category. The factors below will determine whether the foreign national's admission would be in the "national interest."

The foreign national's admission will:

- improve the U.S. economy;

- improve wages and working conditions of U.S. workers';
- improve education and training programs for U.S. children and underqualified workers;
- improve health care;
- improve more affordable housing for young, aged, or poor U.S. residents;
- improve the U.S. environment and lead to more productive use of the national resources; or
- improve admission is requested by an interested U.S. government agency.

### **THIRD EMPLOYMENT-BASED (EB-3) PREFERENCE (Immigrant Visa)**

This immigrant visa classification has three categories: Professionals, Skilled Workers and Other Workers. A labor certification is required. The below concerns Professionals with a Bachelor's Degree:

- The employment must be full-time and permanent (meaning not seasonal).
- An approved labor certification from the Department of Labor (DOL) is required to certify that there are no qualified U.S. workers available to fill the position.
- Document that the position (job offer) is a professional occupation on the basis that a bachelor's degree is required for entry into that occupation;
- Document that foreign national meets the professional requirement by virtue of education and experience (such as diplomas, transcripts, resume, letters from colleagues or employers);
- The employer must be able to pay the foreign national's salary, and the foreign national and the employer must both intend for the foreign national to undertake the position.

### **FOURTH EMPLOYMENT-BASED (EB-4) PREFERENCE (Religious Immigrant Visa)**

To be eligible for lawful permanent residence as a religious worker, you must be a religious worker who for the past two years has been a member of a religious denomination which has a bona fide nonprofit, religious organization in the United States; and who has been carrying on the vocation, professional work, or other work described below, continuously for the past two years; and seeks to enter the U.S. to work solely:

- As a minister or priest of that denomination; or
- In a professional capacity in a religious vocation or occupation for that organization; or
- In a religious vocation or occupation for the organization or its nonprofit affiliate.

### **FIFTH EMPLOYMENT-BASED (EB-5) PREFERENCE (Entrepreneur Immigrant Visa)**

In the Immigration Act of 1990, Congress created an investor employment category for immigrants to encourage job creation and capital investment in the U.S. The investor category sets aside 10,000 immigrant visas each year for entrepreneurs who invest at least \$1 million in an enterprise, or \$500,000 if the enterprise is located in a "targeted employment area." Out of the 10,000 annual visas, half are reserved for investments in targeted employment areas.

There are three basic requirements as follows:

1. The alien must establish a business or invest in an existing business that was created or restructured after November 19,1990
2. The alien must have invested \$1 million (\$500,000 in some cases) in the business
3. The business must create full-time employment for at least 10 US workers

## **IMMEDIATE RELATIVE ISSUES**

### **Spouses of United States Citizens:**

Immediate relative petitions (Form I-130) can be filed by U.S. citizens on behalf of their spouses, children and parents.

Fiance(e) petitions (Form I-129F) can be filed by a U.S citizen to allow the foreign fiance(e) to obtain a K-1 visa from a U.S. consulate. Once the fiance(e) enters the U.S., the marriage must take place within 90 days.

For both of the above to obtain permanent residence status (“green card”), the I-485 packet is submitted to the USCIS National Benefits Center in Missouri.

### **Spouses of Nonimmigrants and Pending Immigrants:**

Spouses of nonimmigrants can receive dependent visas, such as H-4, L-2, E-2, O-3, TD.  
Spouses of E-1, E-2, E-3 and L-1 visa holders are eligible to apply for work authorization.  
Spouses of H-1B and TN are not eligible to work unless they qualify for their own H-1B or TN.

Spouses of pending immigrants may be included in the green card process IF the marriage took place prior to final adjustment.

For H-1Bs who are going through the green card process and have not married but who plan to marry another foreign national during the green card process – the marriage should take place before filing for adjustment of status or before filing for consular visa processing to allow the spouse to get his/her own green card.

## **2012 DIVERSITY VISA LOTTERY**

Entries for the DV-2012 Diversity Visa program must be submitted electronically and received during the designated application period. No paper entries are accepted. Instructions for the 2012 Diversity Visa Lottery are located on the Department of State website:

[http://travel.state.gov/visa/immigrants/types/types\\_1322.html#2](http://travel.state.gov/visa/immigrants/types/types_1322.html#2)

The Department of State will only accept completed Electronic Diversity Visa Entry Forms at [www.dvlottery.state.gov](http://www.dvlottery.state.gov) during the registration period. Note that this website [www.dvlottery.state.gov](http://www.dvlottery.state.gov) will only accept applications during the registration period.

The DV-2012 registration is scheduled to begin in October 2010.

For DV-2012, natives of the following countries are not eligible to apply because the countries sent a total of more than 50,000 immigrants to the United States in the previous five years:

BRAZIL, CANADA, CHINA (mainland-born), COLOMBIA, DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, GUATEMALA, HAITI, INDIA, JAMAICA, MEXICO, PAKISTAN, PERU, PHILIPPINES, POLAND, SOUTH KOREA, UNITED KINGDOM (except Northern Ireland) and its dependent territories, and VIETNAM.

Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible. SAR= Special Administrative Region

## WEBSITE RESOURCES

Immigration Forms

<http://www.uscis.gov> Click on Immigration Forms

Immigration Processing Dates

[https://egov.uscis.gov/cris/Dashboard.do;jsessionid=abcK8O\\_Ys5ZVcdBJh7Lqs](https://egov.uscis.gov/cris/Dashboard.do;jsessionid=abcK8O_Ys5ZVcdBJh7Lqs)

Immigration Case Status

<https://egov.uscis.gov/cris/Dashboard.do>

U.S. Dept. of State – Bureau of Consular Affairs - VISAS

[http://travel.state.gov/visa/visa\\_1750.html](http://travel.state.gov/visa/visa_1750.html)

U.S. Dept. of State – Electronic Diversity Visa Entry Form

<http://www.dvlottery.state.gov/>

U.S. Dept. of State – Instructions for Diversity Visa Lottery

[http://travel.state.gov/visa/immigrants/types/types\\_1322.html#2](http://travel.state.gov/visa/immigrants/types/types_1322.html#2)

U.S. Dept. of State – How to Apply for a Visa at a Border Post

[http://travel.state.gov/visa/temp/without/without\\_1260.html#TCN](http://travel.state.gov/visa/temp/without/without_1260.html#TCN)

U.S. Dept. of State - Visa Bulletin

[http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)

U.S. Embassies/Consulates

<http://usembassy.state.gov/>

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*The information contained in this packet is intended as an overview and should not be taken as legal advice for any individual case or situation. The information is intended to be general and should not be relied upon for any specific situation. For legal advice, consult a member of Orr & Reno's Immigration Team or another law firm experienced in immigration.*

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