

# THE U. S. VISA SYSTEM

A Guide to the Visas Available to the  
United States of America



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# THE U. S. VISA SYSTEM

## A Guide to the Visas Available to the United States of America

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# Disclaimer

***The U.S. Visa System*** provides an overview about non-immigrant and immigrant visa programs that are available for people who want to travel to the United States for a visit, education or employment. The information contained in this guide should not be considered as legal advice.

Although the author and publisher believe the information in this book to be accurate on the date of its publication, the reader should be aware that laws and information about visas, immigration and moving to America are constantly changing. It is up to the reader to make sure that the information is accurate and up to date. The author and publisher shall not be held liable for any damage suffered directly or indirectly due to the use of this guide.

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# Introduction

Many people who have thought about changing their country of residence cannot believe that this can actually become a future reality. According to the statistics, however, Green Cards for U.S. permanent residency are received by approximately one-million immigrants each year. Furthermore, tourist, student and temporary work visas for the United States are issued to about 10 million people around the world annually. As you can see, there is a very real possibility to live in the United States through various U.S. visa programs.

We wrote this book to help people who are thinking about immigrating to the United States and who want more information about the process. This book will provide you with an overview about different types of U.S. temporary visas and permanent resident visas so you that you will have the knowledge you need to choose the right visa for you.

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## HOW DOES THE US VISA SYSTEM WORK?

It is common knowledge that foreigners must have a temporary visa or a permanent resident visa before entering the United States.

The “non-immigration visa” is stamped inside of the passport of individuals who would like to visit the U.S. for the purpose of business, employment, education, tourism, seeing family, receiving medical treatment, etc. This type of visa is for a temporary stay in the USA (i.e., for a limited length of time) and includes an expiration date which indicates how long the visa is valid for.

An “immigration visa” is for individuals who have been authorized to live, work and study in the USA long-term (i.e., for an unlimited length of time) as Lawful Permanent Residents (LPRs) of the United States. Someone who is approved for U.S. permanent residency will have an immigration visa stamped inside his/her passport to allow entry into the United States and will also get a U.S. Permanent Resident Card (known as a Green Card) which he/she will carry as an official form of identification (ID) and proof of LPR status. A permanent resident of the United States receives many benefits, including the option to apply for U.S. citizenship after living in the USA at least five years and meeting other criteria.

There are some countries, however, whose citizens are allowed to enter the United States without a visa through a “visa-free” travel program known as the Visa Waiver Program (VWP). According to the U.S. Visa Waiver Program, eligible individuals from particular countries can be authorized to enter the United States without a visa for a visit of up to 90 days for certain business or tourism purposes. Please note that the list of countries whose citizens may participate in the VWP is periodically updated and some restrictions may apply.

The following countries were allowed to participate in the Visa Waiver Program (VWP) as of December 2017: Andorra, Australia, Austria, Belgium, Brunei, Chile,

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Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom.

Although a visa is not required for travel to the United States through the VWP, advanced authorization must be obtained through the U.S. Department of Homeland Security's Internet-based Electronic System for Travel Authorization (ESTA) before the traveler boards the air or sea carrier for their trip to the USA. Each person traveling to the U.S. through the VWP must also have a passport that is valid for at least six months after the date for his/her planned departure from the United States. Since April 1, 2016, an advanced e-passport (an enhanced secure passport with an embedded electronic chip that can be scanned to confirm the identity of the traveler) is required for the VWP. Please note that individuals who travel to the USA through the VWP are not allowed to apply for a "change of status" in the United States.

Canadian citizens who want to visit the United States as tourists or for non-paid business events generally do not need a visa to enter the USA, but must present proof of Canadian citizenship (e.g., valid passport, birth certificate, naturalization certificate) and a valid government issued photo ID (e.g., valid passport, driver's license, provincial health card) at the port of entry. Otherwise, the relevant U.S. visa will likely be required.

According to the U.S. Customs and Border Patrol (CBP), "A visa and passport are not required of a Mexican national who is in possession of a Form DSP-150, B-1/B-2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the Department of State and is applying for admission as a

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temporary visitor for business or pleasure from contiguous territory by land or sea. Mexican citizens using the Border Crossing Card may travel 55 miles into the U.S. - except in the Nogales/Tucson area, where travel to Tucson is authorized.” In other cases, Mexican citizens may require a valid passport and the relevant U.S. visa.

In sum, citizens from most of the world’s countries who want to travel to the USA will need to have the relevant visa stamped inside of their valid passport. Furthermore, citizens from the approximately three-dozen countries that are eligible for the U.S. Visa Waiver Program who want to stay in the United States for longer than 90 days and/or for reasons that do not qualify for the VWP will also need to receive the relevant visa. Please note that this is a summary and the U.S. visa regulations can be updated at any time.

In the next section, we are going to begin with an overview of visas intended for a temporary stay in the USA (i.e., non-immigrant visas). Getting this type of visa could be beneficial if you are thinking about acquiring a non-immigrant temporary work visa later or, perhaps, even a permanent resident Green Card.



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# Temporary visas for business, tourism and students

The United States has different kinds of temporary non-immigrant visas for people who plan to travel to the USA for a limited amount of time for business, tourism, medical treatment, or educational purposes.

## **Business/Tourism Visa (B-1/B-2 Visa)**

This is the most famous and popular type of U.S. visa issued to millions of people each year. Individuals who want to visit the USA for the purpose of conducting business or commerce (e.g., to meet with business associates, attend a conference, negotiate a contract, etc.) will usually apply for the B-1 Visa. People who plan to travel to the United States as tourists (e.g., for vacation, to visit family or friends, etc.) or to receive medical treatment will need to receive a B-2 Visa. Both of these visa types are often described together as the B-1/B-2 Visa. In order to apply for the B-1/B-2 Visa, the Form DS-160 (Online Nonimmigrant Visa Application) must be submitted online along with a digital passport-style photo, plus the \$160 USD Application Fee (2017) must be paid. An interview normally needs to be scheduled at the U.S. Embassy or Consulate in the applicant's country of residence. There is also a Visa Issuance Fee that must be paid (the exact amount depends on an applicant's country of citizenship).

It may be a good idea to bring supporting documents with you to the interview, just in case the U.S. official asks to see them for verification purposes. Please be aware that what you say to the official during the interview at the U.S. Embassy or Consulate might be more important than the information that is contained in the documents that you bring with you. For example, if you are applying for a B-2 Visitor Visa and indicate in your application that the purpose of your visit is to go

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on a vacation, but you tell the U.S. official during the interview that you want to work in the USA, this might hurt your chances to be issued the B2 Visitor Visa. The applicant's country of citizenship and his/her reason for visiting the USA help to determine if the B-1/B-2 visa will be valid for a year, two or even ten years. This does not mean that an individual is allowed to enter the USA and stay there for one, two or ten years (i.e., without leaving). It only means that during the time period in which the B-1/B-2 Visa is valid, you are allowed to enter the United States. The B-1/B-2 Visa may allow an individual to remain in the USA for up to six months, but the exact length of stay in the United States will normally be determined by the Customs and Border Protection (CBP) official at the port of entry. Sometimes, you may be able to extend the length of time for your stay an additional 6-12 months without leaving the USA, but this process must be completed with U.S. Citizenship and Immigration Services (USCIS) before the visa expires. Remember, you must not work or study (other than a brief 1-2 day recreational study course) with this type of temporary visa.

It is important to maintain a good travel history. For example, many people have crossed the border illegally, remained in a country with an expired visa, or visited a country using a tourism visa and then stayed there to work illegally (i.e., without the required work visa). In addition to being improper behavior, living in violation of immigration laws can make everyday life stressful and cause major problems. These people are not able to freely live full lives in a foreign country, since they have to hide from the authorities, rent uncomfortable places to live, apply for low-paid jobs to avoid publicity, etc. In other words, be sure to comply with the U.S. visa regulations in order to avoid potential problems and so you don't ruin your chances to possibly apply for a Green Card or other visa program in the future.

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## Student Visa (F-1 or M-1 Visa)

There are two types of student visas for international students who want to attend an educational program in the United States. Foreign “Academic Students” who will be attending a qualifying college, university, high school, private elementary school, seminary, conservatory, or certain other academic institutions (including language learning programs) are obliged to have an F-1 Student Visa. International “Vocational Students” who will be attending a vocational school or other qualifying non-academic institution (other than a language learning program) must have an M-1 Student Visa. The spouse and dependent children of F-1 students who will accompany the international student to the USA can apply for the F-2 Visa, while the spouse and dependent children of M-1 students can apply for the M-2 Visa.

Before you can apply for the F-1 (Academic) Student Visa or the M-1 (Vocational) Student Visa, you must first apply for and be accepted to attend a school in the United States that is certified by the Student and Exchange Visitor Information System (SEVIS). After you are accepted to the SEVIS-approved school, you will be entered into the SEVIS database, must pay the SEVIS I-901 fee, and then the school will provide you with the Form I-20 which you (and all accompanying family members) must complete and bring to the interview at the U.S. Embassy or Consulate in your country of residence. You will also need to submit the Form DS-160 (Online Nonimmigrant Visa Application), upload a digital passport-style photo, and pay the \$160 USD Application Fee (2017) for the F-1 or M-1 Student Visa. Applicants for a U.S. F-1 or M-1 Student Visa who are 14 years of age or older must also schedule an interview at the U.S. Embassy or Consulate in their country of residence and will need to bring the required documents (e.g., valid passport, Form DS-160 confirmation page, application fee receipt, Form I-20, etc.). Other documents may also be requested. Citizens of some countries may need to pay the Visa Issuance Fee after the Student Visa is approved.

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International students with an F-1 Student Visa who meet the criteria may be able to get work experience related to their major field of study through the Optional Practical Training (OPT) program. Before they finish their academic studies (pre-completion) and/or right after they finish their academic studies (post-completion), an F-1 student may be eligible for up to 12 months of OPT employment in the USA to get practical work experience related to their field of study. Please note that all periods of pre-completion OPT will be deducted from the available period of post-completion OPT. For example, if the F-1 student was authorized for 12 months of OPT and did a Pre-Completion OPT for three months, he/she would have nine months left for the Post-Completion OPT.

There are two ways that F-1 students can choose to take part in the OPT:

1. **Pre-Completion OPT:** After an F-1 student has been attending school for a full academic year, he/she may apply to take part in a Pre-Completion OPT. If approved for the Pre-Completion OPT, the F-1 student may work part-time while school is in session and may work full-time when school is not in session.
2. **Post-Completion OPT:** An F-1 student may also apply to take part in a Post-Completion OPT after completing his/her studies. If approved for the Post-Completion OPT, the F-1 student may work either part-time (a minimum of 20 hours per week) or full-time. Have two years of training or experience in a skilled profession or trade within the past 5 years. The occupation must require at least two years of training or experience to qualify

International students with an F-1 Student Visa who received degrees in particular science, technology, engineering or math (STEM) fields might have an opportunity to apply for an extension of their Post-Completion OPT authorization for up to an additional 24 months of employment related to their major field of

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study if they meet the criteria. The designated school official (DSO) can provide more information regarding the procedure to apply for an OPT, which includes endorsement by the school of the F-1 student's Form I-90 for the OPT, filing the Form I-765 (Application for Employment Authorization) with USCIS, providing the necessary documentation, and paying a fee.

Finally, there may be an option for some F-1 students to apply for an H1-B Work Visa and change of status, depending on the student's field of study and other factors. This could allow an eligible international F-1 student to work in the United States with a temporary work visa after graduation. Application for an H1-B Work Visa and change of status should be made far enough in advance, before the F-1 Student Visa expires. If the F-1 student applied for the H1-B Work Visa and change of status well in advance of the student visa expiration date, but a decision has not been made yet, the student may be able to apply for a "cap-gap extension" of their F-1 Student Visa status.

## **Exchange Visitor Visa (J-1 Visa)**

The Exchange Visitor J-1 Visa is a U.S. temporary non-immigrant visa that allows qualified foreign nationals who have been accepted into an approved Exchange Visitor Program (EVP) to live in the United States in order "to teach, study, conduct research, demonstrate special skills or receive on the job training for periods ranging from a few weeks to several years." A key goal of this program is to promote better understanding among people from different countries and cultures around the world. There are a variety of designated Exchange Visitor Programs for qualifying students, teachers, professors and research scholars, interns, trainees, physicians, specialists and others. The spouse and dependent children (unmarried and under 21-years-old) who will accompany the J-1 Exchange Visitor Visa holder to the USA may apply for the J-2 Visa for family members. Approximately 300,000 people from 200 countries and territories participate in the Exchange Visitor Program each year, the majority of whom (85

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percent) are 30-years-old or younger.

Before an individual can apply for the J-1 Visa, he/she must first apply for and be accepted to a J-1 Exchange Visitor Program (EVP) via an approved sponsoring organization. After being accepted into an approved EVP, the foreign national will be entered into the Student and Exchange Visitor Information System (SEVIS) database and will usually pay the SEVIS I-901 Fee. They will also receive the Form DS-2019 (Certificate of Eligibility for Exchange Visitor Status). The Form DS-160 (Online Nonimmigrant Visa Application) will need to be submitted online along with a digital passport-style photo, plus the \$160 USD Visa Application Fee (2017) must be paid. Citizens of some countries may also need to pay a Visa Issuance Fee once the J-1 Visa is approved. Applicants who are 14 years of age or older will need to schedule an interview at the U.S. Embassy or Consulate in their country of residence and bring all of the required documents (e.g., a valid passport, DS-160 confirmation page, receipt for the Visa Application Fee, the Form DS-2019 Certificate of Eligibility for Exchange Visitor Status, etc.). Bring any proof of your income, your assets, successful business in your country and internationally, your plan for the exchange program, letters, etc. The consul will be interested mostly in what you say. Do not be afraid to show patriotism to your country.

It is very important to pay attention to the fact that the ESTA program does not provide a possibility to change your status in the USA. This means if you have entered the USA using ESTA, you cannot demand an employment visa. The same rule applies for some types of J-Visas. You can change the B-1, B-2 and M-1 visas in the US for a Temporary (Nonimmigrant) Worker Visa or for Permanent (Immigrant) Worker Visa.

Please note that this is a summary, there may be other criteria and procedures, and the rules may be updated at any time.

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Before we start focusing on U.S. employment visas, we would like to highlight something of great importance – the major rules of employment for employers in the United States who hire foreign workers and some key regulations for foreign workers who are employed in the USA.

## **For an Employer**

An employer in the United States who wants to hire, or continue to employ, a worker in the U.S. must confirm that the individual is permitted to legally work in the USA. This usually involves having the employee fill out the Form I-9 (Employment Eligibility Verification) and presenting the required identification and relevant documents.

Employers in the U.S. are allowed to hire the services of a foreign national to conduct work at their business. If the foreign worker is already a Lawful Permanent Resident (LPR) of the United States with a valid Green Card, an employer is permitted to hire that person in accordance with the employment verification requirements. If the employer wants to hire a foreign worker who is not a U.S. Green Card holder, the employer will be required to file a petition so that the foreign worker can receive the relevant non-immigrant or immigrant classification and be granted either a temporary work visa or a Permanent Resident Green Card. Employers in the United States have the option to file the relevant petition on behalf of non-immigrant or immigrant foreign workers.

## **For Employees**

A foreign worker may only accept an offer of employment in the United States if he/she has the legal authorization to work in the USA. In some cases, foreign workers may be granted permission to work in the United States due to their immigration status (for example, Green Card holders, individuals with refugee status, people who were given asylum, and those granted a non-immigrant work-



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related classification). In other situations, a foreign worker will be required to apply for legal authorization to work in the United States.

There are several options available to foreign workers who want to be employed legally in the USA, whether as temporary foreign workers or as U.S. Permanent Residents. The U.S. employer will usually file the petition on behalf of the foreign worker for the appropriate immigration classification.

## **U.S. Federal Tax Information**

There are special U.S. tax withholding rules for employers in the United States who employ foreign workers. Furthermore, foreign workers who are employed in the USA also have certain U.S. tax obligations. In the United States, taxes are usually deducted from a worker's gross income (i.e., what the worker earned before taxes were taken out). The amount that the worker is actually paid after taxes and any other deductions are withheld is known as net income. How much money is deducted from a worker's salary depends to a large extent on his/her income. Workers with smaller incomes in the U.S. have a lower federal income tax rate, while people with larger incomes have a higher federal income tax rate.

Now that we have looked at some of the general rules regarding the employment of foreign workers in the United States, let us next focus on different visa options that are available. The two major categories are the temporary non-immigrant work visas to live and work in the USA for a limited period of time and the U.S. Permanent Resident Green Card that allows immigrants to live and work in the United States for an unlimited length of time.



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# Temporary (Non-Immigrant) Work Visas

We will start with the U.S. temporary (non-immigrant) work visa. As the name of this visa category suggests, a U.S. temporary work visa allows a person to live and work in the United States temporarily – that is, for a limited and/or specified period of time. There are different terms, eligibility requirements and conditions, depending on the type of U.S. temporary work visa and factors that are unique to each foreign worker.

In most cases, an employer in the United States that wants to hire a temporary foreign worker will need to file the non-immigrant petition with USCIS on behalf of the foreign worker so that he/she may legally live and work in the USA.

The spouse and children of a non-immigrant temporary worker who are eligible for the dependent non-immigrant classification and are living outside of the USA may apply for a visa at the U.S. Embassy or Consulate in their country of residence. If they are living in the United States legally and want to extend their stay or change their status to a non-immigrant classification, the family members will need to file the Form I-539 (Application to Extend/Change Nonimmigrant Status) with USCIS.

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## H-Visa (Specialized Professionals and Other Workers)

One of the most famous U.S. temporary employment visas is the H-Visa type.

There are several sub-categories of the H-Visa including the:

- H1-B (Specialty Occupations)
- H2-A (Temporary Agricultural Workers)
- H2-B (Temporary Non-Agricultural Workers)
- H-3 (Non-Immigrant Trainees or Special Education Exchange Visitors)
- H-4 (Family Member)

### *H1-B Visa (Specialty Occupations)*

The United States issues up to 65,000 H1-B temporary work visas each year. The H1-B Visa is valid for up to three years and may have an option to be extended for up to three additional years (depending on the circumstances). The H1-B Visa holder's spouse and unmarried children under 21-years-old who meet the eligibility criteria may apply for the H-4 non-immigrant classification and visa to live in the USA (H-4 Visa holders are not allowed to work in the United States). In general, to apply for the U.S. H1-B Visa, the foreign worker must meet several criteria which are summarized as follows. According to the USCIS, the applicant must have an occupation for which the "nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree." The foreign worker should also possess the Bachelor's Degree or higher credential in the specialty field from an accredited college or university in the USA or have the equivalent foreign degree in the specialty field. Some applicants may need a state license, certification or registration that is unrestricted and permits them to practice the specialty occupation fully in the state where the foreign worker

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is seeking employment. If an applicant does not possess a bachelor's or higher degree in the specialty field, USCIS states that he/she may be able to qualify with "education, training, or progressively responsible experience in the specialty that is equivalent to the completion of such a degree, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty."

Furthermore, the potential employer in the United States must file the Form ETA-9035 Labor Condition Application (LCA) and get approval from the U.S. Department of Labor. The employer will also need to file the Form I-129 (Petition for a Nonimmigrant Worker) with USCIS and pay the relevant governmental fee(s).

Once the I-129 Petition for a Nonimmigrant Worker is approved by USCIS, the foreign worker will file an application for the H1-B Visa at the U.S. Embassy or Consulate in his/her country of residence. They will also need to apply for H1-B classification and admission to the United States with U.S. Customs and Border Protection (CBP).

Be aware that there is also an H1-B2 Visa for Department of Defense (DOD) Researchers and Development Project Workers, as well as an H1-B3 Visa for Fashion Models of prominence. Each of these H1-Visa sub-categories has its own criteria that must be satisfied.

## *H2-A Visa (Temporary Agricultural Workers)*

Employers in the United States who satisfy certain regulatory requirements may be able to bring foreign workers from certain eligible countries to the USA through the H2-A Visa program in order to fill seasonal or temporary agricultural jobs. The H2-A Visa may be granted for "up to the period of time authorized on the temporary labor certification" and may be extended for one-year durations

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for an overall maximum period of up to three years total. The H2-A Visa holder's spouse and unmarried children under 21-years-old who meet the eligibility criteria may apply for the H-4 non-immigrant classification and visa to live in the USA (H-4 Visa holders are not allowed to work in the United States).

The application procedure for the H2-A Visa generally involves the potential employer filing and receiving approval for a temporary labor certification from the U.S. Department of Labor, filing the Form I-129 (Petition for Nonimmigrant Worker) with USCIS, and paying the relevant governmental fee(s).

Once the I-129 Petition for a Nonimmigrant Worker is approved by USCIS, the foreign worker will file an application for the H2-A Visa at the U.S. Embassy or Consulate in their country of residence. They will also need to apply for H2-A classification and admission to the United States with U.S. Customs and Border Protection (CBP).

## *H2-B Visa (Temporary Non-Agricultural Workers)*

The H2-B Visa program permits qualified employers in the USA to petition for foreign nationals to live and work in the United States to fill temporary non-agricultural jobs. There is a cap of up to 66,000 foreign workers who may be granted an H2-B Visa each year. The H2-B Visa may be granted for "up to the period of time authorized on the temporary labor certification" and may be extended for one-year periods for an overall maximum period of up to three years total. The H2-B Visa holder's spouse and unmarried children under 21-years-old who meet the eligibility criteria may apply for the H-4 non-immigrant classification and visa to live in the USA (H-4 Visa holders are not allowed to work in the United States). The procedure to apply for the H2-B Visa is similar to the process to apply for the H2-A Visa.

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## *H-3 Visa (Non-Immigrant Trainees or Special Education Exchange Visitors)*

The H-3 Visa allows non-immigrant trainees and special education exchange visitors to live and work in the United States. Foreign trainees who are granted the H-3 Visa may remain in the USA for up to two years to receive non-medical training that is not available in their home country. Special education exchange visitors who receive the H-3 Visa may stay in the U.S. for up to 18 months “to participate in a special education exchange visitor training program that provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.” The H-3 Visa holder’s spouse and unmarried children under 21-years-old who meet the eligibility criteria may apply for the H-4 non-immigrant classification and visa to live in the USA (H-4 Visa holders are not allowed to work in the United States). The employer or organization that wants to bring the foreign trainee or special education exchange visitor to the United States must file the Form I-129 (Petition for Nonimmigrant Worker), provide all of the required information, and pay the governmental fee(s). Other criteria may apply.

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## L-Visa (Workers Transferring to a Company Office in the U.S.)

The second most popular U.S. temporary non-immigrant work visa type is the L-Visa for workers transferring to a company office in the United States. It is sometimes called a business visa, because it is widely used and most often applied for by foreign business people in order to enter the USA and conduct business there. There are sub-categories of the L-Visa, such as the L-1A Visa (Intracompany Transferee Executive or Manager) and the L-1B Visa (Intracompany Transferee with Specialized Knowledge).

### *L-1A Visa (Intracompany Transferee Executive or Manager)*

The L-1A Visa allows an employer in the United States to transfer a manager or executive from their affiliated office outside of the USA to an office inside the United States for an initial stay of up to three years. It also permits a foreign business that does not have an affiliated office in the U.S. to send a manager or executive to the USA for an initial stay of one year in order to establish an affiliate office there. In both cases, the L-1A Visa may be extended for periods of up to two years (the maximum time limit is a total of seven years). Eligible family members (i.e., a spouse and unmarried children under the age of 21) of an L-1A Visa holder may apply for the L-2 Visa to remain in the U.S. for the length of time that the L-1A Visa holder is authorized to live in the United States. The spouse of an L-1A Visa holder who has been granted the L-2 Visa may apply to work in the USA by filing the Form I-765 (Application for Employment Authorization) with USCIS and paying the governmental fee(s).

In order to apply for the L-1A Visa, a foreign worker needs to be employed with a qualifying business or organization from outside of the United States for at least one year during the three years prior to entering the USA; and intend to enter the U.S. for the purpose of providing professional services in a managerial

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or executive capacity at an office affiliated with that same qualifying business or organization.

If a foreign employer wants to send a manager or executive to the USA in order to open a new office there, the foreign employer must demonstrate that it can provide adequate housing for its employee during his/her stay in the United States, plus the employee must have worked for the foreign employer at least one year during the three years prior to entering the USA. Furthermore, the newly-established U.S. office of the foreign company must support at least one management or executive position within one year of the petition being approved.

Employers that want to bring a foreign employee to the United States with the L-1A Visa must file the Form I-129 (Petition for a Nonimmigrant Worker) with USCIS and pay the fee(s) on behalf of the foreign employee. Please note that this is an overview, other criteria and procedures may apply and are subject to change at any time.

## *L-1B Visa (Intracompany Transferee with Specialized Knowledge)*

The L-1B Visa allows an employer in the United States to transfer a foreign employee with specialized knowledge from their affiliated office outside of the USA to an office inside the United States for an initial stay of up to three years. It also permits a foreign business that does not have an affiliated office in the U.S. to send a foreign employee with specialized knowledge to the USA for an initial stay of one year in order to establish an affiliate office there. In both cases, the L-1B Visa may be extended for periods of up to two years (the maximum time limit is a total of five years). According to USCIS, specialized knowledge as it pertains to the L-1B Visa is “special knowledge possessed by an individual of

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the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures."

In order to apply for the L-1B Visa, a foreign worker needs to be employed with a qualifying business or organization from outside of the United States for at least one year during the three years prior to entering the USA; and intend to enter the U.S. for the purpose of providing professional services requiring specialized knowledge at an office affiliated with that same qualifying business or organization.

Foreign employers that want to send an employee with specialized knowledge to the United States in order to open a new office there must demonstrate that they can provide adequate housing for their employee during his/her stay in the USA. Additionally, the employee must have worked for the foreign employer at least one year during the three years prior to entering the United States. In order to bring a foreign employee with specialized knowledge to the U.S. with the L-1B Visa, the employer must file the Form I-129 (Petition for a Nonimmigrant Worker) with USCIS and pay the fee(s) on behalf of the foreign employee.

Eligible family members (i.e., a spouse and unmarried children under the age of 21) of an L-1B Visa holder may apply for the L-2 Visa to remain in the U.S. for the length of time that the L-1B Visa holder is authorized to live in the United States. The spouse of an L-1B Visa holder who has been granted the L-2 Visa may apply to work in the USA by filing the Form I-765 (Application for Employment Authorization) with USCIS and paying the governmental fee(s).



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## P-Visa (Internationally Recognized)

The U.S. P-Visa allows entry into the United States of internationally recognized foreign athletes, members of entertainment groups, performers in a reciprocal exchange program, and artists or performers who are part of culturally unique programs. Below, are some of the P-Visa sub-categories, each of which has its own criteria.

### *P-1A Visa (Internationally Recognized Athlete)*

An athlete who wants to take part in a competition in the USA at an internationally recognized level of performance should apply for the P-1A Visa. This can be done individually or as part of a team. The employer in the U.S. (for example, a professional sports team) will need to file the Form I-129 (Petition for Non-Immigrant Worker) with USCIS, pay the governmental fee(s) and provide the required documents. After the I-129 petition is approved, the foreign athlete will then apply for the P-1A Visa at the U.S. Embassy or Consulate in his/her country of residence. The spouse and children (unmarried and under the age of 21) of the P-1A Visa holder may apply for the P-4 Visa (family members are not allowed to work in the USA, but they may attend a school or college).

An individual foreign athlete who is approved for the P-1A Visa may stay in the United States for the length of time necessary to finish the event, competition or performance up to a maximum of five years. An individual athlete may be able to get an extension of up to five additional years to finish the event, competition or performance, but the overall stay must not go over 10 years. An athletic group that is approved for the P-1A Visa may stay in the United States for the length of time necessary to finish the event, competition or performance up to a maximum of one year. An extension of stay in one-year increments may be granted to an athletic group in order to finish the event, competition or performance. Essential

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support personnel (e.g., coaches, trainers, etc.) may stay in the United States for the length of time necessary to finish the event, competition or performance up to a maximum of five years and may be able to get an extension of up to five additional years to finish the event, competition or performance (the total stay in the USA must not go over 10 years).

### *P-1B (Member of an Internationally Recognized Entertainment Group)*

If you are a member of an internationally recognized entertainment group, with a good reputation, having outstanding achievements, excellent skills and recognition, and you are going to perform in the United States, you should apply for the P-1B Visa. In most cases, your relationship with your entertainment group has to be at least one year. The P-1B Visa is only available for entertainers who perform with a group (for example, a foreign traveling circus), but is not available for individual foreign entertainers.

The employer in the USA must file the Form I-129 (Petition for a Non-Immigrant Worker) with USCIS, pay the governmental fee(s), and provide the necessary documents. The documents proving international recognition, outstanding program and performance, recognized experience and discipline are essential. After the petition is approved, the foreign entertainer will then need to apply for the P-1B Visa at the U.S. Embassy or Consulate in their country of residence. The P-1B Visa will be valid for the length of time necessary to finish the event, competition or performance up to one year, but may be extended in one-year increments. The spouse and children (unmarried and under the age of 21) of the P-1B Visa holder may apply for the P-4 Visa (family members are not allowed to work in the USA, but they may attend a school or college).

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## *P-3 (Artist or Entertainer Participating in a Culturally Unique Program)*

The P-3 Visa is for artists or entertainers who will be staying in the USA temporarily, either individually or with a group, in order to perform, coach or teach in a culturally unique program (whether commercial or non-commercial in nature). This temporary work visa is initially issued for the amount of time necessary to complete the activity, event or performance up to a period of one year (it may be extended in increments of up to one year as needed). Essential support personnel may also apply for the P-3 Visa. The spouse and children (unmarried and under 21 years of age) of the P-3 Visa holder may apply for the P-4 Visa (family members are not allowed to work in the USA, but they may attend a school or college).

The sponsoring organization or employer of the entertainer or artist in the United States will usually submit the Form I-129 (Petition for a Non-Immigrant Worker) with the required documents and fee(s) to USCIS. After the petition is approved, the foreign entertainer will then need to apply for the P-3 Visa at the U.S. Embassy or Consulate in their country of residence.

## **R-1 Visa (Temporary Religious Workers)**

If you are a foreign national who will be temporarily employed in the United States at least 20 hours per week as a minister or other religious worker dedicated to religious functions and practices, you will need to apply for the R-1 Visa. The employer of the temporary religious worker must be a non-profit religious organization in the USA; or a non-profit religious organization that is associated with a religious denomination in the United States; or a religious organization which is permitted by the holder of a group tax exemption to make use of its group tax exemption.

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The religious occupation must be recognized within the denomination and related to a traditional religious function that mainly involves carrying out or inculcating the denomination's religious beliefs and creeds. Administrative and support occupations (e.g., clerical workers, fundraisers, janitors, etc.) and individuals studying or training for religious work do not qualify as a "religious worker" for R-1 Visa purposes. A religious worker may, however, engage in limited incidental administrative duties and may pursue studies that are incidental to one's status as an R-1 religious worker.

According to the USCIS, "Ministers are defined as individuals who are duly authorized by the religious denomination to which they belong, and are fully trained according to the denomination's standards to conduct religious worship and other duties usually performed by the clergy." The employer will need to declare that the religious worker "is qualified to perform the proposed duties of the religious occupation to be performed in the United States" when they file the Form I-129 (Petition for Nonimmigrant Worker) with USCIS.

The R-1 Visa is initially granted for up to 30 months and may be extended up to 30 additional months (for an overall limit of 60 months in total). The spouse and dependent children (unmarried and under 21 years of age) of the R-1 Visa holder may apply for the R-2 Visa which will authorize them to live in the United States, but does not permit employment in the USA.

## **O-1 Visa (People with Extraordinary Ability or Achievement)**

The O-1 Visa is for people who have extraordinary ability in athletics, the arts, business, education, or the sciences, or who have shown extraordinary achievement in the film or television industry and have received national or international recognition for such achievements, to allow them to live in the

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United States temporarily so that they may continue to work in their field of extraordinary ability.

Sub-categories for the O-1 Visa include the following:

- O-1A Visa (Person with Extraordinary Ability in Athletics, Business, Education, or Science);
- O-1B Visa (Person with Extraordinary Ability in the Arts or Extraordinary Achievement in the Film or Television Industry);
- O-2 Visa (Person Providing Integral Assistance).

According to the USCIS, extraordinary ability in athletics, business, education, or science means that the individual is among a small percentage of people who have achieved a high level of expertise that has enabled them to soar to the top of their area of endeavor. Someone with extraordinary ability in the arts has received distinction through their high level of achievement attained in the arts, as indicated by abilities and recognition that are significantly higher than what is usually found so that the person is a well-known leader in their field.

The procedure to apply for the O-1 and O-2 temporary work visas includes filing a Form I-129 (Petition for Nonimmigrant Worker) along with the required documents to USCIS and meeting other criteria. The O-Visa is granted for an initial period of up to three years and may be extended in increments of up to one-year as deemed necessary by USCIS.

The spouse and dependent children (under 21 years of age) of the O-1/O-2 Visa holder may apply for the O-3 Visa (Family Member) to stay in the United States for the same length of time as the O-1/O-2 Visa holder. The O-3 family members are not permitted to work in the USA, however, they are allowed to attend

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educational programs.

## **E-2 Visa (Treaty Investors)**

The E-2 Treaty Investor Visa is a non-immigrant temporary work visa that authorizes an individual who is a national of a country which has a treaty of commerce and navigation with the United States to be able to live and work in the USA if he/she invests significant capital in a bona fide U.S. enterprise which produces goods or services for profit. The E-2 Treaty Investor must genuinely desire to enter the USA for the primary purpose of developing and directing the U.S. enterprise and needs to have either operational control or at least 50% ownership of the investment enterprise. Certain employees of such a person or of a qualifying organization may also be eligible for this classification if they meet the relevant criteria.

The family members (i.e., spouse and unmarried children under 21 years of age) of the E-2 treaty investor or his/her qualifying employees may also be granted a U.S. non-immigrant visa to stay in the United States. The spouse of the E-2 Treaty Investor who is living in the U.S. may also be able to apply for authorization to work in the USA by filing the Form I-765 and paying a fee.

The E-2 Treaty Investor Visa authorizes an eligible treaty investor and his/her qualifying employees to live and work in the United States for an initial time period of up to two years. Requests can also be made to extend the validity of the E-2 Treaty Investor Visa in increments of up to two years and there is no maximum limit on the number of extensions that may be granted.

Please note that this is a summary, there may be other criteria and procedures, and the rules may be updated at any time.

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# Permanent Resident (Immigrant) Visas

If you and your family want to live in the United States permanently (i.e., with no time limit), then you will need to apply for a U.S. Permanent Resident (immigrant) visa and also be granted a Permanent Resident Card (known as a Green Card). In general, once you are approved to immigrate to the United States as a Lawful Permanent Resident (LPR), the permanent resident (immigrant) visa will be stamped inside of your passport by the U.S. State Department to allow you to legally enter the United States. After you receive your U.S. immigrant visa, you will need to pay the USCIS Immigrant Fee so that you can also be issued a Green Card, which you will carry with you as an official form of identification and proof that you are a Lawful Permanent Resident (LPR) of the United States.

As a Green Card holder, you will be allowed to live and work in any of the 50 states in the USA for an unlimited length of time. You will also have the opportunity to open a bank account, get a driver's license, attend educational programs, buy a home and start a business in the United States. Furthermore, after you live in the USA five years with a Green Card and meet other criteria, you will have the option to apply for U.S. citizenship.

There are several ways to be granted a U.S. Green Card, including through family, employment, and refugee or asylum status.

## Green Card through Family

A foreign national who has a qualifying family relationship with a U.S. citizen or Lawful Permanent Resident (LPR) and who meets all of the eligibility requirements may be able to receive a Green Card through one of two special immigrant visa categories: (1) Green Card for Immediate Relatives of U.S. Citizens; and (2) Green Card for Family Preference Immigrants. The procedure

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to apply for a Green Card through Family will depend on the specific category, whether the prospective immigrant is currently living inside or outside of the United States, and other factors.

## *Immediate Relative (IR) Immigrant Visas (Unlimited)*

If you are an immediate relative of a U.S. citizen and meet the eligibility criteria, you have an advantage, since there are no limits on the number of Green Cards issued each year through this immigrant visa category.

There are five Immediate Relative (IR) Green Card sub-types:

- IR1: Spouse of a U.S. Citizen
- IR2: Unmarried Child Under 21 Years of Age of a U.S. Citizen
- IR3: Orphan adopted abroad by a U.S. Citizen
- IR4: Orphan to be adopted in the USA by a U.S. citizen
- IR5: Parent of a U.S. Citizen who is at least 21 years old

## *Family Preference Immigrant Visas (Limited)*

A limited number (226,000 per year) of family-based Green Cards are issued to other family members of U.S. citizens or Lawful Permanent Residents (LPRs) of the United States who meet the eligibility criteria through the Family Preference immigrant visa category.

The Family Preference sub-categories are as follows:

- First Family Preference (F1) – unmarried sons and daughters, at



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least 21 years old, of U.S. citizens (23,400 available each year);

- Second Family Preference (F2A) – spouses and children (unmarried and under 21 years old) of U.S. Lawful Permanent Residents (approximately 79,940 available each year);
- Second Family Preference (F2B) – unmarried sons and daughters, over 21 years old, of Lawful Permanent Residents (approximately 34,260 available each year);
- Third Family Preference (F3) – married sons and daughters of U.S. citizens (23,400 available each year);
- Fourth Family Preference (F4) – brothers and sisters of U.S. citizens (the U.S. citizen must be at least 21 years old) and their spouses and minor children (65,000 available each year).

**Please Note:** If you are a foreign national and wish to marry an American citizen in the United States, you will need to enter the USA through the K-1 non-immigrant visa type. The K-1 non-immigrant visa requires that the foreign fiancé(e) marry the U.S. citizen within 90 days of arriving in the United States. In order to get this type of visa, you will have to prove that your purpose for traveling to the USA is marriage to a U.S. citizen whom you have known for a long time and this person is able and is ready to care for you and provide for your material well-being. After getting married to the U.S. citizen, the foreign citizen will need to apply to USCIS for an adjustment of status to Lawful Permanent Resident and pay the Immigrant Fee to receive a Green Card.

## Green Card through Employment

The U.S. government grants approximately 140,000 Employment-Based (EB) immigrant visas and Green Cards to foreign workers and their eligible family

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members (i.e., spouse and unmarried children under 21 years of age) each fiscal year (i.e., between October 1st and September 30th). If you possess the necessary education, job skills, work experience, and meet all of the criteria, you and your family may have the opportunity to live and work in the USA long-term as Lawful Permanent Residents (LPRs) of the United States. You and your family will also have the option to become American citizens after living in the United States five years as U.S. permanent residents and meeting other criteria.

There are five major categories of Employment-Based (EB) immigrant visas for U.S. permanent residency and each category has its own eligibility requirements. Some of these permanent resident immigrant visas require that the foreign worker first receive a genuine offer of U.S. employment (i.e., to be sponsored by an employer in the USA), while others do not require a U.S. job offer in advance. In some cases, the employer may need to get a labor certification approved from the United States Department of Labor before they file the petition for U.S. immigration on behalf of the foreign worker they want to sponsor. The labor certification confirms that there are not enough qualified U.S. workers available and willing to fill the job opening and also states that the wages and working conditions of U.S. workers in that occupation will not be negatively affected by hiring a foreign worker. After the labor certification is approved (if it is required), the U.S. employer will file the Form I-140 (Immigrant Petition for Alien Worker) with USCIS on behalf of the foreign worker. It should be noted that foreign workers with “extraordinary abilities” who apply for the EB-1 Visa are permitted to file their own Form I-140 (Immigrant Petition for Alien Worker) with USCIS.

The five US Employment-Based (EB) permanent resident immigration visa categories are as follows:

**EB-1 Visa (First Preference)** – This U.S. immigrant visa is for qualified individuals

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with extraordinary ability in the arts, athletics, business, education and the sciences; outstanding researchers and professors; and multinational managers and other executives. There are three EB-1 Visa sub-categories (summarized below).

### **1. Persons with Extraordinary Abilities:**

Individuals with extraordinary abilities in the arts, athletics, business, education, or the sciences must provide extensive documentation to show that they have received ongoing national or international recognition and acclaim in their areas of expertise.

In order to demonstrate extraordinary ability in your area of expertise, you need to meet three of the following 10 criteria:

- Evidence that you have received national or international awards or prizes for excellence in your field;
- Evidence that you have membership in associations for your field that require outstanding achievement by their members;
- Evidence that major media, including professional or major trade publications, have published information about you;
- Evidence that you were asked to judge, whether on a panel or individually, the work of other individuals;
- Evidence of your original contributions of major significance to the artistic, athletic, business, scholarly or scientific field;
- Evidence that you have written scholarly articles that appear in major media, including trade or professional publications;
- Evidence of your work being shown at artistic showcases or exhibitions;
- Evidence that you play a critical or leading role

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in a distinguished organization;

- Evidence that you receive a high salary or other substantially high compensation compared to others in your field;
- Evidence of your successes at a commercial level in the performing arts.

Individuals with extraordinary abilities in the arts, athletics, business, education, or the sciences who are applying for the EB-1 Visa are not required to receive a specific job offer in the U.S. if they will be entering the United States in order to continue working in their field of extraordinary abilities. They are also allowed to personally file the Form I-140 (Immigrant Petition for Alien Worker) on their own with USCIS.

## **2. Outstanding Professors and Researchers:**

Outstanding professors and researchers who have a minimum of three years of teaching or research experience must want to travel to the United States in order to seek a teaching or research position that has tenure or a tenure track at a university or other higher education institution. The potential employer in the United States will need to make a job offer and must file the Form I-140 (Immigrant Petition for Alien Worker) with USCIS on behalf of the foreign worker that they want to hire.

At least two of the following six criteria must be satisfied in order to demonstrate that the individual is an outstanding professor or researcher:

- Evidence that the person has received major awards or prizes for outstanding achievement;
- Evidence that the person has membership in associations requiring outstanding achievement by their members;

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- Evidence that others have written material in professional publications about the person's work in their academic field;
  - Evidence that the person participated either individually or on a panel as a judge of another individual's work in the same or related academic field;
  - Evidence that the person has made original contributions of a scholarly or scientific nature to their academic field;
  - Evidence that the person has written scholarly articles or books in their field (published in academic journals that have international circulation).

### **3. Multinational Executives or Managers:**

Individuals who have worked for an overseas affiliate, branch, parent or subsidiary of a U.S. employer at least one year during the previous three years as a multinational executive or manager must be traveling to the United States in order to work in an executive or managerial role. The potential employer in the United States will need to make a job offer and must file the Form I-140 (Immigrant Petition for Alien Worker) with USCIS on behalf of the foreign worker that they want to hire.

**EB-2 Visa (Second Preference)** – This U.S. visa type is available to certain professionals with advanced university degrees (i.e., beyond a Bachelor's Degree or having a Bachelor's Degree combined with five years of relevant work experience); or individuals who have exceptional ability in the arts, business or sciences. Approximately 28.6% of Employment-Based immigration visas issued each year are through the EB-2 Visa (Second Preference) category. Additionally, any of the Employment-Based immigration visas authorized for the EB-1 Visa (First Preference) category that are not used in any given year are also available

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to be granted to EB-2 Visa applicants.

The employer in the United States will usually need to get a labor certification approved by the U.S. Department of Labor; make a job offer to the foreign worker; and file the Form I-140 (Immigrant Petition for Alien Worker) with USCIS on behalf of the foreign worker that they want to hire. In some cases, a foreign worker can apply for a National Interest Waiver to be exempt from the labor certification and job offer requirements because it is in the national interest. The foreign worker can personally file the Form I-140 (Immigrant Petition for Alien Worker) in such a case and must provide evidence for why it is in the national interest to exempt him/her from the labor certification and job offer requirements.

**Advanced Degree sub-category:**

A foreign worker who is applying for the EB-2 Visa through the Advanced Degree sub-category must (1) possess an advanced degree (i.e., beyond a Bachelor's Degree) or the equivalent (i.e., a Bachelor's Degree combined with five years of relevant work experience in the field); and (2) the job he/she is applying for in the U.S. must require an advanced degree. The foreign worker will also need to provide documentation such as (1) an official academic record showing that he/she has a U.S. advanced degree or foreign equivalent; or (2) an academic transcript showing that he/she has a U.S. Bachelor's Degree or its foreign equivalent plus letters from employers showing that he/she has a minimum of five years of relevant work experience in the area of specialty.

**Exceptional Ability sub-category:**

In order to apply for the EB-2 Visa through the Exceptional Ability sub-category, a foreign worker must demonstrate exceptional ability in the arts, business or the sciences, which means possessing a level of expertise substantially higher than what is ordinarily found in the arts, business or the sciences.

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At least three of the following seven criteria must be satisfied in order to demonstrate exceptional ability:

- An official academic record that shows that the individual has a certificate, diploma, degree, or other such award from a university, college, school, or other educational institution related to his/her area of exceptional ability;
- Letters that document having a minimum of 10 years of full-time experience in the individual's occupation;
- Certification for the individual's occupation/profession or a license to practice his/her profession;
- Evidence that the individual has received a salary or other compensation for services indicative of his/her exceptional ability;
- Membership in one or more professional associations;
- Receiving recognition from business or professional organizations, government entities or peers for significant contributions and achievements the individual made to the field or industry;
- Other similar evidence demonstrating exceptional abilities in the field.

**EB-3 Visa (Third Preference)** – Qualified skilled workers whose occupations require at least two years of training or work experience, professionals whose jobs require at least a Bachelor's Degree, and certain unskilled workers whose occupations require less than two years of training or work experience, may be able to apply for this U.S. immigration visa. Approximately 28.6% of Employment-Based immigration visas issued each year are through the EB-3 Visa (Third Preference) category. Additionally, any of the Employment-Based immigration visas authorized for the EB-1 Visa (First Preference) and EB-2 (Second Preference) categories that are not used in any given year are also available to be granted to

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EB-3 Visa applicants.

The employer in the United States will usually need to get a labor certification approved by the U.S. Department of Labor; make a full-time job offer to the foreign worker; and file the Form I-140 (Immigrant Petition for Alien Worker) with USCIS on behalf of the foreign worker that they want to hire.

**EB-4 Visa (Fourth Preference)** – Approximately 7.1% of all Employment-Based US immigration visas issued each year are through the EB-4 Visa (Fourth Preference) category for Certain Special Immigrants. There are several sub-categories of EB-4 Special Immigrants, including: international broadcasters; ministers of religion; certain physicians; certain employees or former employees of the U.S. government abroad; certain former employees of the U.S. government in the Panama Canal Zone; Iraqi and Afghan interpreters/translators who have worked directly with the U.S. military or under Chief of Mission authority as a translator/interpreter for a period of at least 12 months; certain retired international organization employees or their unmarried children or their surviving spouses; certain retired NATO-6 civilians or their unmarried children or their surviving spouses; special immigrant juveniles; and others.

The employer in the United States may need to get a labor certification approved by the U.S. Department of Labor, but there are certain special immigrant sub-groups that do not need a labor certification. The U.S. employer will usually file the Form I-360 Petition for Amerasian, Widow(er), or Special Immigrant; however, there are some situations in which the immigrant will file this petition.

**EB-5 Visa (Fifth Preference)** – Foreign investors who make a substantial investment in a new business enterprise in the United States in the amount of \$1 million USD, or in the amount of \$500,000 USD in a “targeted employment area” (i.e., high unemployment or rural area) of the USA, which will create a minimum



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of 10 full-time jobs for qualified U.S. workers within two years, may be able to receive a Green Card through this immigrant visa category. Approximately 7.1% of all Employment-Based U.S. immigration visas issued each year are through the EB-5 Immigrant Investor Visa (Fifth Preference) category.

The immigrant investor (also known as an immigrant entrepreneur) must file the Form I-526 (Immigrant Petition by Alien Entrepreneur) with USCIS and pay the government fee. A labor certification is not required for the EB-5 Visa procedure. If the Form I-526 petition is approved by USCIS, then the immigrant investor living outside of the United States will continue the procedure to apply for an EB-5 Immigrant Visa with the U.S. State Department. This normally involves filing the DS-260 (Application for Immigrant Visa and Alien Registration) online with the U.S. State Department, paying the required fee(s), and providing the necessary documents. In some cases, the EB-5 immigrant investor might file the Form DS-261 (Choice of Address and Agent). Please note that this is an overview and the U.S. National Visa Center (NVC) will provide specific instructions to the immigrant investor during the EB-5 Visa application procedure.

Although there are different eligibility requirements and procedures for each of the U.S. Employment-Based (EB) immigration visas, there are some rules and procedures that generally apply to all five EB-Visa categories.

For example, all of the EB-Visas are issued in chronological order, based upon the date when the petition was filed with USCIS (known as the immigrant's "priority date"), until the numerical limit of U.S. immigration visas authorized for any given EB-Visa category has been reached for that particular year. It is important for the immigrant to be aware that the EB-Visa will not be issued before the "priority date" which is listed for his/her EB-Visa category and country, unless that EB-Visa category and country is listed as "Current" (C). The latest EB-Visa

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“priority dates” can be found in the U.S. State Department’s current online Visa Bulletin (updated each month).

There are also separate governmental fees that must be paid at different stages of the process. For example, a fee is paid to USCIS when filing the relevant petition; a visa application fee is paid when applying for the EB-Immigrant Visa; and after the U.S. immigrant visa is approved, a fee is paid to USCIS so that the U.S. Permanent Resident Card (Green Card) can be issued. Additional costs may include paying for medical exams at an authorized panel physician, English translations of documents (if necessary), travel expenses, etc.

The immigrant interview at the U.S. Embassy or Consulate in the foreign national’s country of residence is scheduled by the National Visa Center (NVC) after the DS-260 (Application for Immigrant Visa and Alien Registration) has been submitted online, all of the required documents have been received, the governmental fee(s) have been paid, the applicant’s file is complete, and any other criteria have been met. The foreign worker and his/her family members (i.e., spouse and unmarried children under 21 years of age) will attend the consular interview on the scheduled date and time and bring their valid passports and any additional documents (if required). Digital inkless fingerprint scans will also be taken on the day of the consular interview.

If approved for immigration to the United States, the EB-5 immigrant visa will be stamped inside of each person’s passport to authorize entry into the USA. The foreign worker will also be given a sealed packet which must not be opened. After the EB-5 immigrant visa is issued, the immigrant(s) will need to pay the USCIS Immigrant Fee(s) prior to traveling to the United States so that the U.S. Permanent Resident Cards (Green Cards) can be issued, which they will carry with them in the United States as official identification and proof of U.S.

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permanent residency status. The immigrants must enter the United States before the expiration date for their EB-5 Visa(s) and need to bring the sealed packet with them to give to the U.S. immigration official at the port of entry.

There are also separate governmental fees that must be paid at different stages of the process. For example, a fee is paid to USCIS when filing the relevant petition; a visa application fee is paid when applying for the EB-Immigrant Visa; and after the U.S. immigrant visa is approved, a fee is paid to USCIS so that the U.S. Permanent Resident Card (Green Card) can be issued. Additional costs may include paying for medical exams at an authorized panel physician, English translations of documents (if necessary), travel expenses, etc.

The immigrant interview at the U.S. Embassy or Consulate in the foreign national's country of residence is scheduled by the National Visa Center (NVC) after the DS-260 (Application for Immigrant Visa and Alien Registration) has been submitted online, all of the required documents have been received, the governmental fee(s) have been paid, the applicant's file is complete, and any other criteria have been met. The foreign worker and his/her family members (i.e., spouse and unmarried children under 21 years of age) will attend the consular interview on the scheduled date and time and bring their valid passports and any additional documents (if required). Digital inkless fingerprint scans will also be taken on the day of the consular interview.

If approved for immigration to the United States, the EB-5 immigrant visa will be stamped inside of each person's passport to authorize entry into the USA. The foreign worker will also be given a sealed packet which must not be opened. After the EB-5 immigrant visa is issued, the immigrant(s) will need to pay the USCIS Immigrant Fee(s) prior to traveling to the United States so that the U.S. Permanent Resident Cards (Green Cards) can be issued, which they will carry with them in the United States as official identification and proof of U.S.

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permanent residency status. The immigrants must enter the United States before the expiration date for their EB-5 Visa(s) and need to bring the sealed packet with them to give to the U.S. immigration official at the port of entry.

## **Green Card through Refugee or Asylee Status**

Another way to immigrate to the United States is through the U.S Refugee Admissions Program (USRAP) or by seeking asylum in the USA. Refugees and asylum-seekers share similar characteristics in terms of fleeing persecution or fear of persecution in their home countries, and seeking safety through settlement in the United States. A key difference between them, however, is that a refugee is applying for residence in the United States from outside of the USA (and might be fleeing persecution, conflict, natural disaster, etc.); while an asylum-seeker is already inside the U.S. when he/she requests permission to remain in the United States long-term.

### **Refugees**

The United States has welcomed more than 3.2 million refugees from around the world to live in the USA since 1975, including 84,995 refugees (mostly women and children) during Fiscal Year 2016. According to the U.S. State Department, “A refugee is someone who has fled from his or her home country and cannot return because he or she has a well-founded fear of persecution based on religion, race, nationality, political opinion or membership in a particular social group.”

The United Nations High Commissioner for Refugees (UNHCR) reports that there are approximately 21.3 million refugees in the world. The majority of refugees flee their home country to find safety living in a second host country, where they are given refugee status (usually after registering with UNHCR) and often receive public and/or private assistance until they can, hopefully, return safely

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to their home country. A small percentage of refugees will become citizens in the host country where they fled. Less than 1% of refugees (usually, those with the highest risk) will eventually resettle long-term in a third country. The United States is the #1 third country destination for these refugees (the U.S. accepts two-thirds of such refugees each year).

In order to immigrate to the United States as a refugee through the U.S. Refugee Admissions Program (USRAP), a refugee will usually be referred by UNHCR, the U.S. Embassy or a special non-governmental organization (NGO) and be processed by one of the several U.S. State Department Resettlement Support Centers (RSCs). The refugee will be interviewed overseas, their relevant details will be gathered, and a security background check will be conducted. The U.S. Department of Homeland Security (DHS) will also interview the refugee overseas, biometric data (such as fingerprints) will be collected and a biometric security check will be done. Refugees who pass these steps will attend a cultural orientation class to learn about living in America and undergo a medical check. If all goes well, the refugees will be notified about their resettlement destination in the USA, the International Organization for Migration (IOM) will book their flight and they will travel to the United States. The refugees will be greeted at the airport in their U.S. destination city by representatives of domestic resettlement agencies in order to help them get settled in their new community.

According to U.S. immigration regulations, an individual legally admitted into the USA as a refugee under Section 207 of the Immigration and Nationality Act (INA) must live in the United States for one year before he/she can apply to become a Lawful Permanent Resident (LPR) and obtain a Green Card. This is done while the refugee is present in the USA by filing Form I-485 (Application to Register Permanent Residence or Adjust Status) with USCIS and providing all of the required documentation. Refugees are not required to pay USCIS a Form

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I-485 filing fee. Among the documents that are required is proof of the refugee's legal admission into the USA, such as a copy of the Form I-94 (Arrival/Departure Record) showing the date the individual entered the United States as a refugee. Other required documents include: proof of one year legal residence in the USA; Form I-693 (Report of Medical Examination and Vaccination Record); copy of the birth certificate (if available); copy of the government-issued identification; copy of the passport page showing the U.S. non-immigrant visa (if available); copy of the passport page that shows the admission or parole stamp issued by the U.S. immigration official when the refugee entered the USA (if available); and two passport-style color photos made according to the required standard. Please note that this is a summary and other documents and procedures may be required.

## **Asylee**

Many people travel to the United States seeking asylum in order to receive protection from persecution due to their religion, race, nationality, political opinion, or membership in a certain social group. A non-resident foreign national who travels to the United States, or is already in the USA, who applies for asylum is requesting that he/she not be forced to leave the country (whether in the USA legally or illegally) because they were persecuted in their home country, or they are afraid that they will be persecuted if they return to their home country, and are, therefore, seeking protection and legal long-term residence in the United States.

A foreign national in the USA who is seeking asylum under Sector 208 of the Immigration and Nationality Act (INA) must file the Form I-589 (Application for Asylum and for Withholding of Removal) with USCIS within one year of his/her most recent arrival in the United States. Asylum-seekers are not required to pay a Form I-589 filing fee to USCIS. A notice will then be sent instructing the asylum-

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seeker to go to an Application Support Center or designated law enforcement agency to have fingerprints taken for a background and security check.

Within approximately three weeks after a complete Form I-589 was filed, the individual will receive a notice with the location, date and time of a scheduled asylum interview to be held at one of the eight Asylum Offices in the United States (located in California, Texas, Illinois, New York, New Jersey, Virginia and Florida) or at a district office if the asylum-seeker lives too far away from an Asylum Office.

During the asylum interview, an Asylum Officer will determine if the applicant meets the requirements to be granted asylum in the United States and then that evaluation will be reviewed by an Asylum Officer Supervisor to check if the determination complies with the law.

Approximately two weeks after the asylum interview (in most cases), the foreign national will be informed to return to the Asylum Office to receive the decision regarding the request for asylum. In cases where there is a delay, the asylum decision may be mailed to the asylum-seeker instead. If approved for asylum in the United States, the foreign national will be allowed to apply for a Social Security Card, Employment Authorization Document (EAD), and a U.S. Permanent Resident Card (Green Card).

Please note that this is a summary, there may be other criteria and procedures, and the rules may be updated at any time.

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# Conclusion

As you have read, there are several different non-immigrant and immigrant visa options for people who want to travel to the United States for a variety of reasons.

A non-immigrant visa allows a foreign national to remain in the USA for a limited amount of time and it may allow him/her to live, work or study in the United States on a temporary basis (such as with the H-Visa type); OR it may only permit a short-term stay (e.g., vacation, business trip, medical treatment), but not allow the foreign national to work or study in the USA (such as with the B1/B2 Visa). Many of the U.S. temporary non-immigrant visas have an option to be extended beyond their initial validity date, depending on the circumstances.

An immigrant visa (such as the Employment-Based EB-Visa types) authorizes a Lawful Permanent Resident (LPR) to enter the United States to live, work and study in the USA with a Green Card for an unlimited amount of time. Green Card holders also have access to many great benefits, including the option to apply for U.S. citizenship after living in the United States with LPR status for five years and meeting other criteria.

The purpose of this book is to familiarize you with many of the U.S. visa options that are currently available, with an emphasis on different opportunities to legally live and work in the United States, whether temporarily or long-term. Although this book discusses U.S. visa and immigration programs, regulations and procedures, you should be aware that this book is not intended nor does it claim to offer exhaustive information nor advice regarding U.S. visas or immigration to the United States. Furthermore, regulations regarding U.S. visas and immigration are subject to change at any time by the United States government. Nonetheless, it is hoped that you found this book informative and that you have a better understanding about the U.S. visa system.

If you would like to learn more about your U.S. visa options to live and work



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in the United States, our team of experienced immigration professionals look forward to assisting you further. We can help you to choose the right visa to meet your needs, evaluate your potential eligibility, and guide you step-by-step through the U.S. visa application procedure. Thousands of our clients are currently living and working in the United States as Lawful Permanent Residents (LPRs) or U.S. citizens and we hope to also guide you successfully through the process to relocate to the USA and experience the American Dream.

***Best Wishes & Good Luck!***

***USAFIS Organization***