Nonimmigrant-Based Employment

Hiring a Foreign National for Short-Term Employment

OVERVIEW

Employers sometimes need to hire foreign labor when there is a shortage of available U.S. workers. To help satisfy their labor needs, employers may be able to assist foreign laborers to legally enter the U.S. temporarily. There are several employment-based nonimmigrant visa categories that permit a foreign worker to enter the U.S. and work temporarily for a specific employer or company. Under each category, the foreign national must meet specific requirements related to the occupation for which an employer is petitioning.

What information are you seeking? (Choose one below)

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

Information about Intracompany Transferees (L-1 Nonimmigrants)

Read Disclaimer

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

Which of the following three subjects are you interested in? (Choose one below)

- How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category
- How to temporarily employ a foreign national who is already in the U.S. in another nonimmigrant category
- How to extend the stay of a temporary nonimmigrant worker

Back to: Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

OVERVIEW

An employer or agent, who wants to hire a foreign worker to temporarily perform services, perform labor, or receive training, may file a Form I-129 "Petition for Non-immigrant Worker," on behalf of the worker. Form I-129 is primarily used for non-immigrants. That is, the worker who enters the United States under this petition must depart from the U.S. when his authorized "period of stay" in the country has expired. Form I-129 may also be used to request an extension of the period of stay or to request a change of status for certain non-immigrants.

For more details on the process of temporarily employing a foreign national, you must first decide which employment-based nonimmigrant category most closely relates to the job you are offering to the foreign national employee.

Note: Select the link above to see the various categories.

Back to: Hiring a Foreign National

Please select one of the following employment-based nonimmigrant categories:

- E-3 Australian Specialty Occupation Workers
- H-1B Nonimmigrant Workers in a Specialty Occupation
- H-2A Temporary Agricultural Workers
- H-2B Skilled or Unskilled Workers
- H-3 Trainees or Special Education Exchange Visitors
- L-1 Intra-Company Transferees
- O-1 Aliens with Extraordinary Ability
- P-1 Internationally Recognized Athletes, or an Athletic Team, Members of an Entertainment Group, and Certain Other Athletes and Entertainers
- P-2 Artists or Entertainers in Exchange Agreement
- P-3 Culturally Unique Artists or Entertainers
- Q-1 International Cultural Exchange Visitors
- R-1 Religious Workers
- TN Professionals (NAFTA)

Back to: Foreign National Living Abroad Hiring a Foreign National

How does an employer help an employee get H-1B, H-2A, or H-2B status?

There are generally three steps that lead to an individual obtaining an H-1B, H-2A, or H-2B nonimmigrant status or visa. The employer must take the first two steps and the employee takes the last step. The following outlines these steps:

1. For H-1Bs, employer files a Labor Condition Application (ETA 9035)**, or** for H-2As and H-2Bs, an Application for Temporary Employment Certification (ETA 9142) with the U.S. Department of Labor based on their web-based system.

   Note: For specific filing procedures please go to the Employment and Training Administration website.

2. File the approved ETA 9035, or ETA 9142 with a Petition for a Nonimmigrant Worker, Form I-129, and Supplement H to Form I-129.

3. Once the Petition for a Nonimmigrant Worker, Form I-129, is approved, the following table shows the steps the beneficiary should take:

If the beneficiary is…	**Then…**
Outside the U.S.	The beneficiary should apply for a visa at the U.S. consulate
Inside the U.S. in a valid nonimmigrant status at the time the I-129 is filed.	The beneficiary can begin to work for the petitioning employer.
Inside the U.S. out of status	The beneficiary must depart the U.S. and apply for a visa at the U.S. consulate abroad.

Note: For H-2B petitions: the employment start date on the petition must match the start date on the labor certification.

Back to: Foreign National Living Abroad Hiring a Foreign National

How does a petitioner (or H-3 sponsor) file for an H-3, L-1, O, P-1, P-2, P-3, or Q-1 visa?

There are generally two steps that lead to an individual obtaining the above mentioned nonimmigrant statuses or visas. The petitioner (or H-3 sponsor) must take the first step and the employee (or H-3 Trainee or Special Education Exchange Visitor) takes the last step. These steps are outlined below:

1. File a Petition for a Nonimmigrant Worker, Form I-129 and the corresponding Supplement to Form I-129.
2. Once the Petition for a Nonimmigrant Worker, Form I-129, is approved, the following table shows the steps the beneficiary should take:

If beneficiary is…	**Then….**
Outside the U.S.	The beneficiary should apply for a visa at a U.S. consulate.
Inside the U.S. in a valid nonimmigrant status at the time the I-129 was filed.	The beneficiary can begin to work immediately for the petitioning employer.
Inside the U.S. out of status	The beneficiary must depart the U.S. and apply for a visa at the U.S. consulate abroad.

Notes:

- Filing procedures for multiple L-1 workers is different: Blanket L-1 Petitions.
- Canadians do not have to obtain an L-1 visa; the approved petition can be sent to a Port of Entry.
- An L-1 petition is non-transferable and tied only to that employer. However, if an L-1 worker wants to change employers, a new employer can file a new L-1 petition on behalf of the worker. The new employer must notify USCIS of the job change.
- Petitioners may file O and P petitions up to one year prior to the petitioner's need for the alien's services.

Back to: Foreign National Living Abroad Hiring a Foreign National

Do the I-129 filing procedures for multiple L-1 workers differ from those for one L-1 worker?

Yes. Filing procedures are different since it is first required that the employer obtains approval for the blanket petition. Then, the employer can file a separate form to obtain individual approval for each L-1 worker. This process is illustrated below:

a) File a Petition for a Nonimmigrant Worker, Form I-129, and Supplement L to Form I-129.
Note: The employer must make sure to indicate that the petition is a blanket petition

b) Once the blanket petition is approved, the employer can take the following steps depending on the location of the employee at the time the petition is filed:

If beneficiary is…	**Then the employer should file….**
Inside the U.S. in a valid nonimmigrant status at the time Form I-129 was filed.	Form I-129S and a copy of Form I-797 (approval notice) to request a change of status based on the approved blanket petition.
Outside the U.S.	A completed Form I-129S and a copy of Form I-797 (approval notice).
Inside the U.S. out of status	The beneficiary must depart the U.S. and apply for a visa at the U.S. consulate abroad.

c) Once the Petition for a Nonimmigrant Worker, Form I-129, or Form I-129S is approved, the following table shows the steps the beneficiary should take:

If beneficiary is…	**Then the beneficiary…**
Inside the U.S. in a valid nonimmigrant status at the time Form I-129 was filed.	Can begin to work immediately for the petitioning employer.
Outside the U.S.	Should apply for an L-1 visa at the U.S consulate.

Back to: Foreign National Living Abroad Hiring a Foreign National

Can a U.S. employer include more than one worker on the Application for Temporary Employment Certification (ETA Form 9142)?

The employer should contact the Employment and Training Administration to determine if it is possible to include more than one worker on the Application for Temporary Employment Certification (ETA Form 9142).

Can an U.S. employer petition for more than one worker on the Petition for a Nonimmigrant Worker (I-129)?

Yes, depending on the classification sought, a single petition may cover multiple workers if the workers meet the following conditions:

- Will perform the same services
- Will work in the same location
- Are included on the same labor certification, if such is required, and,
- Come from places that are served by the same U.S. consulate, or, if visa exempt, they will enter at the same port of entry.

Do the I-129 filing procedures for multiple workers differ from those for one worker?

Generally the filing procedures for multiple workers are the same as they are for one worker except that the employer should include Attachment 1 to Form I-129 when filing Form I-129.

Must the name of all workers be listed on Form I-129 if it is a blanket petition?

Yes, all beneficiaries must be named unless circumstances (e.g. emergencies) make identification by name impossible. If identification by name is impossible, then the number of unnamed beneficiaries must be stated on the petition.

Is there any numerical limitation on the number of workers a U.S. employer can petition for on a single Form I-129 petition?

No, there is not a numerical limitation on the number of workers a U.S. employer can petition for on a single Form I-129 petition. However, there are also other factors that could limit an employer's ability to petition for multiple workers, such as the ability to pay each worker the prevailing wage.

Does the employer have to pay an additional fee for a blanket petition?

No, the employer does not have to pay any additional fee when filing Form I-129 on behalf of more than one worker.

Can a P-1, P-2, P-3, or Q-1 nonimmigrant work in more than one location?

Generally, a nonimmigrant in P or Q status may work in more than one location. However, the petition must include an itinerary with the dates and locations of the performances at the time Form I-129 is filed.

Back to: Foreign National Living Abroad Hiring a Foreign National

How can an employer expedite a Form I-129?

A petitioning employer or the beneficiary must file a Request for Premium Processing Service, Form I-907**,** with the appropriate fee along with Form I-129, or after receiving the receipt notice for Form I-129, at the USCIS Service Center that generated the receipt notice.

Note: For R-1 petitioners, successful completion of a site inspection is a pre-requisite for filing for premium processing service. The processing time for the I-907 is usually 15 days, and the employer can check the status of that form via e-mail. If USCIS does not notify the petitioner with a decision or a request for evidence within 15 days, the fee will be refunded.

What is the filing fee for the Application for Temporary Employment Certification (ETA Form 9142) or for the Labor Condition Application (ETA Form 9035)?

The employer should contact the Employment and Training Administration to determine if there is a fee for the Temporary Employment Certification (ETA Form 9142) or for the Labor Condition Application (ETA Form 9035).

What kind of evidence or documents will a U.S. employer need to file with the Application for Temporary Employment Certification (ETA Form 9142) or with the Labor Condition Application (ETA Form 9035)?

The employer should contact the Employment and Training Administration to find out what type of documentary evidence is needed to file with an Application for Temporary Employment Certification (ETA Form 9142) or with a Labor Condition Application (ETA Form 9035).

How can a nonimmigrant bring his/her family to the U.S. or change the status of family members already in the U.S.?

In order for nonimmigrants to obtain a visa or status for their dependents, please use the process in the following table:

If the nonimmigrant's dependents are….	Then the dependents should….
Inside the U.S. in a valid nonimmigrant status	File one Application to Extend or Change Nonimmigrant Status, Form I-539**,** for all dependents either: • With the nonimmigrant's Form I-129, or; • Separately upon approval of the nonimmigrant's Form I-129.
Inside the U.S. out of status	The beneficiary must depart the U.S. and apply for a visa at the U.S. consulate abroad.
Outside the U.S.	Contact the nearest U.S. Consulate to find out the procedures to obtain a nonimmigrant visa.

Note: The term "dependents" as used in this question is defined as the spouse and unmarried children under the age of 21.

Back to: Foreign National Living Abroad Hiring a Foreign National

How can an employer cancel a nonimmigrant's visa or status?

The employer or petitioner should write a letter to the USCIS Service Center where the Form I-129 was approved, requesting withdrawal of the peititon and send a copy of that letter to the consulate where the visa was issued requesting cancellation of the visa.

Can a foreign employer apply for a nonimmigrant to work in the U.S.?

A foreign employer can only apply for a nonimmigrant through a U.S. agent. The foreign employer is held responsible for all the employer requirements and held liable for all the employer sanctions of a U.S. employer when petitioning through a U.S. agent.

What is a U.S. employer held liable for once an H-1B or H-2B nonimmigrant is in their employ?

Under immigration law, a U.S. employer is liable for the reasonable costs of return transportation abroad of the H-1B or H-2B nonimmigrant if they terminate the nonimmigrant prior to the expiration of the period of authorized admission. However, there are other general employment responsibilities not covered by immigration law. These inquiries should be directed to the Department of Labor.

What is a U.S. employer held liable for once an O-1, P-1, P-2, or P-3 nonimmigrant is in their employ?

Under immigration law, both the U.S. employer and the petitioner are "jointly and severally" liable for the reasonable costs of return transportation abroad of the O or P nonimmigrant if the employer terminates the nonimmigrant prior to the expiration of the period of authorized admission. However, there are other general employment responsibilities not covered by immigration law. These inquiries should be directed to the Department of Labor.

What is a U.S. employer or petitioner held liable for once an , H-2A, H-3, L-1, Q-1, R-1, or TN nonimmigrant is in their employ (or for H-3s, in their organization)?

An employer or petitioner applying for an H-2A, H-3, L-1, Q-1, R-1, or TN nonimmigrant has employment responsibilities not covered by immigration law. These inquiries should be directed to the Department of Labor.

Back to: Foreign National Living Abroad Hiring a Foreign National

From whom can a consultation or a written advisory opinion be obtained?

A written advisory opinion can be obtained from a peer group (including labor organizations), or a person designated by the group with expertise in the alien's area of ability.
A consultation should include:

- The nature of the work to be done by the foreign national; and
- The foreign national's qualifications for the employment.

A peer group includes:

- A group or organization that is comprised of practitioners in the area of the worker's field; or
- A person or persons with expertise in the worker's field with confirmable or provable credentials.

Can a beneficiary or beneficiaries of a Form I-129, based on P-1, P-2, or P-3 status, be substituted?

Yes. A petitioner may request substitution by submitting a letter with the request along with a copy of the petitioner's approval notice to the consular office at which the alien will apply for a visa, or port of entry where the alien will apply for admission.

However, essential support personnel for P principals may not be substituted at a consular office or at a port of entry. In order to add additional new essential support personnel, a new Petition for a Nonimmigrant Worker, Form I-129, must be filed.

Can Essential Support Personnel of a P-1, P-2, or P-3 nonimmigrant be filed for on the same petition as the principal P nonimmigrant?

No. A separate petition must be filed for Essential Support Personnel of a P nonimmigrant principal.

Can a nonimmigrant travel outside the U.S. and then reenter?

An H-1B and L-1 visa allows a nonimmigrant holding and maintaining that status to reenter the U.S. during the validity period of the visa and approved petition. For all other nonimmigrant visas, travel outside the U.S. is allowed; however, temporary absences for either business or personal reasons may count toward the maximum period of admission. Also, nonimmigrants should always carry their documentation with them when traveling.

Can a nonimmigrant in H-1B or L-1 status intend to immigrate permanently to the U.S.?

Nonimmigrants in H-1B or L-1 status can be the beneficiary of an immigrant visa petition, apply for adjustment of status, or take other steps toward Lawful Permanent Resident status without affecting their status. This is known as "dual intent" and has been recognized in immigration law since passage of the Immigration Act of 1990. During the time that the application for LPR status is pending, a nonimmigrant in valid H-1B or L-1 status may travel on his or her visa rather than obtaining advance parole or requesting other advance permission from USCIS to return to the U.S.

Back to: Foreign National Living Abroad Hiring a Foreign National

Can a nonimmigrant in O, P, or R status intend to immigrate permanently to the U.S.?

The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be the basis for denying an , O-1, P, or R-1 petition, a request to extend such a petition, or the alien's admission, change of status, or extension of stay. The alien may legitimately come to the U.S. for a temporary period and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the U.S. This provision does not apply to essential support personnel of O and P nonimmigrants.

Can a nonimmigrant in H-2A, H-2B, H-3, Q-1, TN status intend to immigrate permanently to the U.S.?

No. Nonimmigrants in H-2A, H-2B, Q-1, or TN status must prove that they have a "nonimmigrant" or temporary intent at the time of filing for such status. In other words, they must intend to return to their foreign residence upon the expiration of their period of authorized stay.

Can a nonimmigrant employee change employers?

Generally, a nonimmigrant employee can change employers. However, the new employer must follow the process for initially applying for a nonimmigrant employee. For information on this process, please select the relevant nonimmigrant visa category below:

H-1B	H-2A	H-2B	H-3	L-1	O-1	P-1
P-2	P-3	Q-1	R-1	TN Canadian	TN Mexican	

Can a nonimmigrant employee work for more than one employer?

Generally, a nonimmigrant employee may work for more than one employer at the same time. However, each employer must follow the process for initially applying for a nonimmigrant employee. For information on this process, please select the relevant nonimmigrant visa category below:

H-1B	H-2A	H-2B	H-3	O-1	P-1	P-2	P-3	Q-1	R-1	TN Canadian	TN Mexican

Note: An L-1 can only work for the company that originally petitioned for the L-1 or one of its subsidiaries, branches or affiliates.

When can the nonimmigrant employee begin to work for the new employer?

The nonimmigrant employee can begin to work the new employer once the Form I-129 has been approved by USCIS.

Note: Due to the "portability provisions" of AC21, certain H-1B nonimmigrants can begin to work for a new employer once Form I-129 is filed with the USCIS.

Back to: Foreign National Living Abroad Hiring a Foreign National

What is VIBE?

The Web-based *Validation Instrument for Business Enterprises* (Vibe) is a tool designed to enhance USCIS's adjudications of certain employment-based immigration petitions. Vibe uses commercially available data from an independent information provider (IIP) to validate basic information about companies or organizations petitioning to employ alien workers. Currently, the independent information provider for the VIBE program is Dun and Bradstreet (D&B).

For more information about VIBE, please visit our website at www.uscis.gov/vibe.

How do I fill out Part 6 of Form I-129?

If you need guidance on export control requirements for Part 6 of the I-129 form, please go to www.uscis.gov and type in "I-129 and export controls" in the Search box. Results will show frequently asked questions pertaining to this form. For assistance on completing an export license application, contact the U.S. Department of Commerce, Bureau of Industry and Security at 202-482-4811 or if you are on the west coast the number is 949-660-0144 ext. 0. For foreign individuals who will work on military-related projects that may require an export license, contact the U.S. Department of State at 202-663-1282.

Back to: Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

E-3 Australian Specialty Occupation Workers

OVERVIEW

This visa category largely takes Australians out of the H-1B visa quota and offers them a separate visa that is similar, but more flexible than the H-1B. This visa category also incorporates some of the elements of an E treaty visa and functions as a hybrid visa that should be highly useful to Australian nationals seeking to work in the U.S. to perform services in a "specialty occupation".

Frequently Asked Questions

Back to: Foreign National Living Abroad Hiring a Foreign National

What is the E-3 visa category?

The E-3 visa classification is for Australian nationals. The E-3 nonimmigrant must be coming to the U.S. solely to perform services in a specialty occupation.

To apply, what is required of the petitioning employer?

The petitioning employer will be required to file a Labor Condition Application (ETA 9035) with the Department of Labor's National Office. Employers must make the same attestations that they make for H-1B applications, including those regarding paying the prevailing and actual wages, not breaking up strikes, maintaining public access files, etc. Nothing needs to be filed with USCIS.

How does a prospective employee obtain an E-3 visa?

Individuals who are not in the U.S. who wish to be admitted initially as an E-3 must apply directly with the Department of State. Such persons must submit a job offer letter, relevant credentials, and an E-3 labor attestation.

What is a specialty occupation?

For purposes of the E-3 category, a specialty occupation is defined in the same manner as in the H-1B context. A specialty occupation is one which requires:

- The theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation; and
- Completion of a specific course of higher education culminating in a baccalaureate degree (Bachelors Degree) or higher degree (or its equivalent) in a specific occupation specialty: engineering, mathematics, physical sciences, computer sciences, medicine and health care, education, biotechnology, and business specialties, etc.

An example of this would be an individual obtaining an accounting degree from Harvard, performing an internship at a local auditing firm, and then being hired as an auditor for a Fortune 500 company.

Back to: E-3 Australian Specialty Occupation Workers Foreign National Living Abroad Hiring a Foreign National

What are the time limits on the duration of stay for an E-3?

An E-3 may be admitted initially for a period up to two years and extensions of stay may be granted indefinitely in increments of up to two years.

How does a nonimmigrant change his/her status to that of an E-3 or extend E-3 status?

By filing Form I-129, a national of the Commonwealth of Australia, currently admitted to the U.S. as a nonimmigrant in a category eligible to change nonimmigrant status, may apply to change to E-3 status and apply to extend such status after it is initially granted. Form I-129 must be submitted to process the change of status or extension of status. The E supplement to the I-129 is not currently required. Please follow the instructions to Form I-129. The following documentation must also be submitted with the I-129:

- A letter from the U.S. employer describing the specialty occupation, the anticipated length of stay, and the arrangements for remuneration;
- Evidence that you meet the educational requirement for the specialty occupation, which must be a U.S. bachelor's degree or higher (or its equivalent) in the specific specialty;
- A U.S. Department of Labor issued certified labor attestation for E-3 Specialty Occupation Worker;
- Proof that you are a national of Australia; and,
- Proof that you meet the general requirements to be eligible to apply to change status or extend status.

Note: Premium Processing is not currently available to those applying to change to E-3 status.

Can an E-3 nonimmigrant immigrate permanently to the U.S.?

An E-3 nonimmigrant shall maintain an intention to depart the U.S. upon the expiration or termination of his or her E status. E-3 visas are not dual intent visas in the sense of H-1B visas and L-1 visas. However, an application for initial admission, change of status or extension of stay, may not be denied solely on the basis of an approved request for permanent labor certification or a filed or approved immigrant visa preference petition.

Back to: E-3 Australian Specialty Occupation Workers Foreign National Living Abroad Hiring a Foreign National

Is there a limit on the number of E-3 visas that will be issued?

There is an annual cap of 10,500 E-3 visas. The spouse and children of the E-3 principal are allowed to accompany the principal and will not count against the cap. Extensions of stay will not count against the cap either.

Can spouses of E-3s work?

Dependent spouses of principal E-3 workers are eligible to apply for work authorization. To apply the dependent spouse must file Form I-765, Application for Employment Authorization, with the Service Center that has jurisdiction over the dependent spouse's place of residence. However, applications for employment authorization concurrently filed with Form I-129 petitions for E-3 principal workers can only be filed at the Vermont Service Center.

In order to establish a valid marital relationship and verify current status of the dependent spouse and the E-3 principal, both the dependent spouse's and the E-3 principal's Form I-94, Arrival-Departure Record, or a printed Form I-94 from the CBP webpage www.cbp.gov/I94, evidencing admission as or change of status to an E-3, should be submitted together with the Form I-765. When applicable, you should also submit a copy of the petition approval notice of the E-3 principal.

What are the employment authorization processing procedures for dependent spouses?

Form I-765 currently contains a space for the applicant to fill in the basis for employment authorization. Applicants should write in the words "spouse of E nonimmigrant".

You may be granted employment authorization for the period of admission and/or status of the E-3 principal, not to exceed two years. In addition, dependent spouses may file Form I-765 concurrently with Form I-539, Application to Extend or Change Nonimmigrant Status.

Back to: E-3 Australian Specialty Occupation Workers Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

H-1B Nonimmigrant Workers

OVERVIEW

The H-1B nonimmigrant visa category allows U.S. companies to petition for qualified candidates from foreign countries to perform services temporarily in the United States:

- In a specialty occupation;
- As a fashion model who has distinguished merit and ability;
- To perform services of an exceptional nature requiring exceptional merit and ability relating to a cooperative research and development project agreement administered by the Secretary of Defense.

What information are you seeking? (Please select one of the following options)

- Information about the Filing Process
- Information about On-site Visits
- Information about the Period of Authorized Stay
- Information about a Change of Employers or Multiple Employers
- Information about Employer Responsibilities
- Information about Travel
- Other Questions

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

Information about the Filing Process

- How does an employer apply for an H-1B nonimmigrant employee?
- What kind of evidence or documents will a U.S. employer need to file with the Petition for a Nonimmigrant Worker (I-129)?
- What is a specialty occupation?
- Is it possible to substitute education with experience?
- Can an employer petition for more than one H-1B employee on the same petition?
- What is the filing fee for a Labor Condition Application (ETA 9035)?
- What is the filing fee for Form I-129?
- Can an employer be exempt from paying the American Competitiveness and Workforce Improvement Act (ACWIA) fee for an H-1B?
- How can an employer expedite Form I-129?
- Where does the employer file Form I-129?
- How do I fill out Part 6 of Form I-129?
- How can a nonimmigrant bring his/her family to the U.S. or change the status of family members already in the U.S.?

Information about On-site Visits

- Will USCIS be conducting on-site inspections?
- Who will be conducting the site visits?
- What specific tasks will the site inspectors perform?

Information about the Period of Authorized Stay

- How long can a nonimmigrant stay in H-1B status?

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

Information about a Change of Employers or Multiple Employers or Change in work Location

- Can an H-1B nonimmigrant change employers?
- Can an H-1B nonimmigrant work for more than one employer?
- When can the nonimmigrant begin to work for the new employer?
- Can an employer change the worksite location of an H-1B nonimmigrant?
- What is “portability”?
- Who can an H-1B nonimmigrant work for?
- Does the merger or sale of an employer’s business affect the H-1B nonimmigrant’s status?

Information about Employer Responsibilities

- What is a U.S. employer liable for once an H-1B nonimmigrant is in their employ?
- Must an H-1B nonimmigrant be working at all times?
- How can an employer cancel a nonimmigrant’s visa or status?

Information about Travel

- Can a nonimmigrant travel outside the U.S. and then reenter?

Other Questions

- Can an H-1B nonimmigrant intend to immigrate permanently to the U.S.?
- Is there an annual limit on the number of H-1B nonimmigrants and are there exemptions to the annual limit?
- What is the procedure for selecting H-1B petitions when the annual cap is reached within the first five business days?
- What are the interim procedures USCIS will employ to determine if H-1B petitions filed by a non-profit organization related to or affiliated with an institution of higher education are exempt from the annual cap?
- Can the spouse of an H-1B nonimmigrant work?
- What is VIBE?

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

What kind of evidence or documents will a U.S. employer need to file with the *Petition for a Nonimmigrant Worker* (Form I-129)?

If an employer files an I-129 for an H-1B worker in a specialty occupation, then the employer will need the following supporting evidence:

- A certified labor condition application from the Department of Labor;
- Copies of evidence that the proposed employment qualifies as a specialty occupation;
- Evidence the individual has the required degree by submitting either:
  - A copy of the person's U.S. baccalaureate or higher degree which is required by the specialty occupation;
  - A copy of a foreign degree determined to be equivalent to the U.S. degree; or
  - Copies of evidence of education and experience which is equivalent to the required U.S. degree;
- A copy of any required license or other official permission to practice the occupation in the state of intended employment; and
- A copy of any written contract between the employer and the individual or a summary of the terms of the oral agreement under which the individual will be employed.

If an employer files an I-129 for an H-1B fashion model of distinguished merit, then the employer will need the following supporting evidence:

- A certified labor condition application from the Department of Labor;
- Copies of evidence establishing that the individual is nationally or internationally recognized in the field of fashion modeling;
- This evidence must include at least two of the following types of documentation which show that the person:
  - Has achieved national or international recognition in his or her field as evidenced by major newspaper, trade journals, magazines or other published material;
  - Has performed and will perform services as fashion model for employers with a distinguished reputation;
  - Has received recognition for significant achievements from organizations, critics, fashion houses, modeling agencies or other recognized experts in the field; and
  - Commands a high salary or other substantial remuneration for services, as shown by contracts or other reliable evidence.
- Copies of evidence establishing that the services to be performed require a fashion model of distinguished merit and ability and either:
  - Is involved in an event or production that has a distinguished reputation;
  - Or will be providing a service for an organization or establishment that has a distinguished reputation, or record of employing persons of distinguished merit and ability.

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

What is a specialty occupation?

A specialty occupation is one that requires:

- The theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation; and
- Completion of a specific course of higher education culminating in a baccalaureate degree in a specific occupation specialty: engineering, mathematics, physical sciences, computer sciences, medicine and health care, education, biotechnology, and business specialties, etc.

An example of this would be an individual obtaining an accounting degree from Harvard, performing an internship at a local auditing firm, and then being hired as an auditor for a Fortune 500 company.

Can an employer be exempt from paying the American Competitiveness and Workforce Improvement Act (ACWIA) fee for an H-1B?

Yes. The ACWIA fee is also not required when:

- A petitioner files its second or subsequent request for an extension of stay with the same employer;
- A petitioner files an amended petition that does not contain any requests for extension of stay filed by the employer;
- The petition is to correct a USCIS error.

The following organizations are not required to pay the ACWIA fee:

- Institutions of higher education and related or affiliated nonprofit entities;
- Non-profit or governmental research organizations;
- Primary or secondary education institutions; or
- Nonprofit entities engaged in "established curriculum-related clinical training of students."

Is it possible to substitute education with experience?

Yes. A degree or its equivalent is sufficient if it is a requirement for the job. However, the degree and/or equivalent experience may not be sufficient without showing that it is a specialized degree and/or specialized experience as required by the specialty occupation.

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

Will USCIS be conducting on-site inspections?

Yes. USCIS will be conducting on-site inspections as part of the Administrative Site Visit and Verification Program (ASVVP). The ASVVP is designed to supplement existing DHS and USCIS anti-fraud initiatives. As part of the process, site inspections are conducted to verify that a location of employment exists and to validate information provided on the petition. Inspections may include a tour of the organization's facilities, interviews with organization officials, a review of selected organization records relating to the organization's compliance with immigration laws and regulations, and interviews with any other individuals or review of any other records that USCIS considers relevant to the integrity of the organization.

For more information about USCIS on-site inspections, please call our toll-free number at 1-800-375-5283.

Who will be conducting the site visits?

USCIS Immigration Officers will be conducting site visits through the Administrative Site Visit and Verification Program. Site inspectors receive specialized training specific to conducting site visits. These individuals will be operating under the authority delegated to USCIS by the Secretary of Homeland Security to perform functions under U.S. immigration laws, including verifying information associated with applications or petitions.

What specific tasks will the site inspectors perform?

Site inspectors will verify the existence of a petitioning entity, take digital photos, obtain documents, and speak with organizational representatives to confirm the beneficiary's work location, employment workspace, hours, salary, and duties to assist USCIS in determining whether they are in compliance with the terms and conditions stated in the petition.

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

How long can a nonimmigrant stay in H-1B status?

Generally, most H-1Bs are granted an initial period of admission of up to three (3) years. H-1B status may be extended for another three years for a maximum period of stay of six years.

However, there are exceptions to the maximum stay as follows:

- The American Competitiveness in the 21st Century Act (AC21) allows for an extension of the 6-year maximum stay if a labor certification application or Form I-140 was filed one-year prior to the start of the sixth year.
- Similarly, AC21 allows for a 3-year extension beyond the 6-year maximum stay if the worker has an approved labor certification application and an approved Form I-140, but cannot apply for adjustment of status due to retrogression in the employment-based visa numbers.
- Another exception is for workers who have spent more than one year abroad after spending less than six years in H-1B status within the U.S. Such workers can elect either (1) to be re-admitted for the remainder of the initial 6-year stay or (2) seek to be re-admitted as a new H-1B worker subject to the annual cap.

Must an H-1B nonimmigrant be working at all times?

As long as the employer/employee relationship exists, an H-1B nonimmigrant is still in status. An H-1B nonimmigrant may work in full or part-time employment, as provided by the approved H-1B petition, and remain in status. An H-1B nonimmigrant may also be on vacation, sick/maternity/paternity leave, on strike, or otherwise inactive without affecting his or her status.

Can an employer petition for more than one H-1B employee on the same petition?

No, it is not possible for an employer to petition for more than one H-1B nonimmigrant on the same petition. Each H-1B nonimmigrant requires a separate Petition for a Nonimmigrant Worker (I-129).

For whom can an H-1B nonimmigrant work?

H-1B nonimmigrants may only work for the petitioning U.S. employer and only in the H-1B activities described in the petition. The petitioning U.S. employer may place the H-1B worker on the worksite of another employer if all applicable rules (e.g., Department of Labor rules) are followed.

Can an employer change the worksite location of an H-1B nonimmigrant?

On April 9, 2015, the Administrative Appeals Office (AAO) issued the precedent decision, *Matter of Simeio Solutions, LLC*. This decision represents the USCIS position that H-1B petitioners are required to file an amended or new petition before placing an H-1B employee at a new place of employment not covered by an existing, approved H-1B petition. For more information, please refer to the AAO decision.

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

What is "portability"?

"The American Competitiveness in the Twenty-First Century Act" (AC21), which was signed into law on October 17, 2000, establishes new benefits in the H-1B nonimmigrant classification such as portability. Due to this law:

A person in H-1B status may accept new employment upon the filing of a new petition by a prospective employer if:

- He or she was lawfully admitted;
- The new petition is "nonfrivolous";
- The new petition was filed before the date of expiration of the period of the prior authorized stay; and
- Subsequent to such lawful admission, the H-1B beneficiary has not been employed without authorization before the filing of such petition.

In order to be admitted at the border under the portability provisions, an applicant must meet the following requirements. He or she must:

- Be otherwise admissible;
- Be in possession of a valid un-expired passport and visa, unless exempt from passport or visa requirements (Canadian citizens);
- Establish that s/he was previously admitted in H-1B status by presenting an I-94, or a printed Form I-94 from the CBP webpage www.cbp.gov/I94, or Form I-797; and
- Present the filing receipt form I-797 for the new H-1B or other evidence of timely filing prior to the expiration of the previous H-1B status.

Does the merger or sale of an employer's business affect the H-1B nonimmigrant's status?

The merger or sale of an H-1B employer's business will not necessarily affect the nonimmigrant status. However, if the change means that the nonimmigrant is working in a capacity other than the specialty occupation for which they petitioned, it is a status violation.

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

Is there an annual limit on the number of H-1B nonimmigrants?

Yes. The current law (AC21) limits to 65,000 the number of non-immigrants per fiscal year who may have a visa issued or otherwise provided H-1B status. USCIS has received a sufficient number of H-1B petitions to reach the annual cap for Fiscal Year (FY) 2016. USCIS has also received more than the limit of 20,000 H-1B petitions filed under the U.S. advanced degree exemption.

USCIS has selected enough petitions through the computer-generated random process to meet the 65,000 general-category cap and the 20,000 cap under the advanced degree exemption. USCIS will reject and return all unselected petitions with their filing fees, unless the petition is found to be a duplicate filing (USCIS will not refund filing fees for duplicative or multiple H-1B petitions).

More information about the procedure USCIS will employ for selecting cap-subject petitions when the cap is reached within the first five business days.

Petitions to extend the status of current H-1B workers do not count toward the cap. Accordingly, USCIS will continue to process petitions filed to:

- Extend the stay of a current H-1B worker in the U.S.
- Change the terms of employment for current H-1B workers.
- Allow current H-1B workers to change from one cap-subject position to a different cap-subject position with a different employer.
- Allow current H-1B workers to work concurrently in a second H-1B position.

The following are exemptions to the H-1B cap:

- The first 20,000 H-1B beneficiaries who have earned a master's degree or higher from a U.S. institution of higher education are not subject to the annual cap. USCIS has already received more than 20,000 H-1B petitions filed on behalf of persons exempt from the annual cap under the "advanced degree" exemption.
- H-1B workers who are employed by or have an offer of employment from an institution of higher education or a related or affiliated nonprofit entity. Please see the interim procedures for non-profit organizations seeking exemption from the annual cap.
- H-1B workers who are employed by or have an offer of employment from either a nonprofit or government research organization.
- J-1 non-immigrants who have obtained a waiver of the two-year home residency requirement through the State 30 program.

The following H-1B visa numbers are set aside from the annual cap:

- The U.S.-Chile and U.S.-Singapore Free Trade Agreements require USCIS to set aside 6,800 visa numbers for beneficiaries from these countries who are eligible for H-1B1 classification under these Agreements. If all of the Singapore/Chile slots are not filled during the current fiscal year, the unused visa numbers will be added back into the general fiscal year cap, but will not be available until the next fiscal year.

Note: For additional information on the annual cap, direct the customer to our Webpage at www.uscis.gov/h-1b_count.

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

What is the procedure for selecting H-1B petitions when the annual cap is reached within the first five business days?

Due to the high demand for H-1B petitions, USCIS has implemented new rules for counting the annual limit of 65,000 H-1B petitions. The overall goal of the new rule is to promote equal opportunity for prospective petitioners and to ensure a fair and orderly distribution of available H-1B visas. **The new rule makes the following modifications**:

- USCIS will now either deny or revoke multiple petitions filed by an employer for the same H-1B worker;
- USCIS will not refund filing fees for duplicative or multiple H-1B petitions;
- In years when USCIS implements the random selection process for petitions, USCIS will include petitions in the random selection process that are filed during the first five business days available for filing H-1B petitions for a given fiscal year, rather than just the first two such days; and
- If a petition incorrectly indicates that it is exempt from any of the H-1B numerical limits, the petition will be denied if no H-1B visa numbers are available and the filing fees will not be returned.

However, the new rule does not prevent related employers (such as a parent company and its subsidiary) from filing petitions on behalf of the same foreign national for different positions, based on legitimate business need.

What happens when the cap is reached?
If USCIS determines that the number of H-1B petitions received meets the cap within the first five business days of accepting petitions, USCIS will apply a random selection process among all H-1B petitions received during this time period. If the 20,000 advanced degree limit is reached during the first five business days, USCIS will randomly select from those petitions ahead of conducting the random selection for the 65,000 limit. Petitions subject to the 20,000 limit that are not selected in that random selection will be considered with the other H-1B petitions in the random selection for the 65,000 limit.

Premium Processing
H-1B petitioners may still continue to request premium processing together with their H-1B petition. On April 27, 2015, USCIS will begin premium processing for cap-subject H-1B petitions requesting premium processing, including petitions seeking an exemption for individuals with a U.S. master's degree or higher.

Note: General information on the annual limit and exemptions to the annual limit.

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

What are the interim procedures USCIS will employ to determine if H-1B petitions filed by a non-profit organization related to or affiliated with an institution of higher education are exempt from the annual cap?

Effective March 18, 2011, for an interim period, USCIS will give deference to prior determinations made since June 6, 2006, that a non-profit entity is related to or affiliated with an institution of higher education – absent any significant change in circumstances or clear error in the prior adjudication – and, therefore, exempt from the H-1B statutory cap. However, the burden remains on the petitioner to show that its organization previously received approvals of its request for H-1B cap exemption as a non-profit entity that is related to or affiliated with an institution of higher education.

Petitioners may satisfy this burden by providing USCIS with evidence such as a copy of the previously approved cap-exempt petition (Form I-129 and pertinent attachments) and the previously issued I-797 approval notice issued by USCIS since July 6, 2006, and any documentation that was submitted in support of the claimed cap exemption. Furthermore, USCIS suggests that petitioners include a statement attesting that their organization was approved as cap-exempt since June 6, 2006.

Can the spouse of an H-1B nonimmigrant work?

Effective May 26, 2015, H-4 spouses of certain H-1B nonimmigrants who are in the process of seeking employment-based lawful permanent resident (LPR) status are eligible to apply for work authorization (EAD).

An H-4 nonimmigrant spouse can apply for work authorization if his/her **H-1B spouse**:

- Is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker; or
- Received an H-1B extension under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 as amended by the 21st Century Department of Justice Appropriations Authorization Act (known as AC21). This means that the H-1B principal must have received an extension of his or her H-1B status because:
    - He/she is the beneficiary of a labor certification application filed with the Department of Labor 365 days prior to the end of the H-1B's sixth year (preference category requires a labor certification) and the labor certification application is either still pending or was approved and timely filed with Form I-140; **OR**
    - He/she is the beneficiary of a form I-140 that was filed 365 days prior to the end of the H-1B's sixth year (preference category does not require a labor certification or the labor certification can be waived) and Form I-140 is still pending.

To apply the dependent spouse must file Form I-765, Application for Employment Authorization, with supporting evidence and the required fee.

The expiration date on the EAD will likely be the same date as the expiration date on the H-4's most recent Form I-94 indicating his/her H-4 nonimmigrant status.

Back to: H-1B Nonimmigrant Workers Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

H-2A Temporary Agricultural Workers

OVERVIEW

The purpose of the H-2A nonimmigrant visa category is to afford U.S. employers the ability to bring workers to the U.S. temporarily to perform agricultural labor or agricultural services of a temporary or seasonal nature. Laborers in this visa category, or status, fall under three basic occupations:

- Farm workers;
- Orchard workers;
- Ranch hands.

What information are you seeking? (Please select one of the following options)

- Definitions
- Information about the Filing Process
- Information about the Period of Authorized Stay
- Information about a Change of Employers or Multiple Employers
- Information about Employer Responsibilities
- Information about Travel
- Other Questions

Back to: H-2A Temporary Agricultural Workers Foreign National Living Abroad Hiring a Foreign National

Definitions

- What is the definition of “temporary nature”?
- What is the definition of “seasonal nature”?

Information about the Filing Process

- What is the list of countries whose nationals are eligible to participate in the H-2A program?
- How does an employer apply for an H-2A nonimmigrant employee?
- What kind of evidence or documents will a U.S. employer need to file with an Application for Temporary Employment Certification (ETA Form 9142)?
- Can a U.S. employer include more than one worker on the Application for Temporary Employment Certification (ETA Form 9142)?
- What kind of evidence or documents will a U.S. employer need to file with Form I-129 for an H-2A nonimmigrant?
- Can a U.S. employer petition for more than one worker on the Petition for Nonimmigrant Worker (Form I-129)?
- Do the Form I-129 filing procedures for multiple workers differ from those for one worker?
- Must the name of all workers be included on Form I-129?
- Is there a numerical limitation on the number of workers an employer can petition for on a single Form I-129?
- Can an employer substitute beneficiaries on Form I-129?
- What is the filing fee for the Application for Temporary Employment Certification (ETA Form 9142)?
- What is the filing fee for the Form I-129?
- Does the employer have to pay an additional fee for an I-129 blanket petition?
- How can an employer expedite Form I-129?
- Where do I file Form I-129?
- How can a nonimmigrant bring his/her family to the U.S. or change the status of family members already in the U.S.?
- Can a foreign employer apply for an H-2A to work in the U.S.?
- Who can file a petition for an H-2A worker?

Back to: H-2A Temporary Agricultural Workers Foreign National Living Abroad Hiring a Foreign National

Information about the Period of Authorized Stay

- How long can a nonimmigrant stay in H-2A status?
- Do H-2A nonimmigrants have a grace period to leave the U.S. after the expiration of their stay?

Information about a Change of Employers or Multiple Employers

- Can a nonimmigrant change employers?
- Can a nonimmigrant work for more than one employer?
- When can the nonimmigrant employee begin to work for the new employer?

Information about Employer Responsibilities

- What is an employer liable for once an H-2A nonimmigrant is in their employ?
- How can an employer cancel a nonimmigrant visa or status?
- What are the new notification requirements for H2A employers?
- What are the fees that are prohibited from being paid by H-2A employees?

Information about Travel

- Can a nonimmigrant travel outside the U.S. and then reenter?

Other Questions

- Can an H-2A nonimmigrant intend to immigrate permanently to the U.S.?
- What is the period of time that H-2A nonimmigrants must remain outside the U.S. after completing the 3-year maximum stay before they can renew their H-2A status?
- Can an H-2A only work full-time?
- What is VIBE?

Back to: H-2A Temporary Agricultural Workers Foreign National Living Abroad Hiring a Foreign National

What is the list of countries whose nationals are eligible to participate in the H-2A program?

Effective January 18, 2016, workers from the following countries can be the beneficiaries of an approved H-2A petition and may participate in the H-2A visa program:

Andorra; Argentina; Australia; Austria; Barbados; Belgium; Belize; Brazil; Brunei; Bulgaria; Canada; Chile; Colombia; Costa Rica; Croatia; Czech Republic; Denmark; Dominican Republic; Ecuador; El Salvador; Estonia; Ethiopia; Fiji; Finland; France; Germany; Greece; Grenada; Guatemala; Haiti; Honduras; Hungary; Iceland; Ireland; Israel; Italy; Jamaica; Japan; Kiribati; Latvia; Lichtenstein; Lithuania; Luxembourg; Macedonia; Madagascar; Malta; Mexico; Moldova; Monaco; Montenegro; Nauru; The Netherlands; Nicaragua; New Zealand; Norway; Panama; Papua New Guinea; Peru; Philippines; Poland; Portugal; Romania; Samoa; San Marino; Serbia; Singapore; Slovakia; Slovenia; Solomon Islands; South Africa; South Korea; Spain; Sweden; Switzerland; Taiwan; Thailand; Timor-Leste; Tonga; Turkey; Tuvalu; Ukraine; United Kingdom; Uruguay; and Vanuatu.

What kind of evidence or documents will a U.S. employer need to file with Form I-129 for an H-2A nonimmigrant?

A U.S. employer who wants to file a petition for H-2A, as required by regulations should initially file the petition with either:

- An original notice from such authority that such certification cannot be made, along with evidence of the unavailability of U.S. workers and of the prevailing wage rate for the occupation in the U.S, and evidence overcoming each reason why the certification was not granted; and

- Copies of evidence, such as employment letters and training certificates, that each named person meets the minimum job requirements stated in the certification.

Can an H-2A employer petition for more than one worker on the Petition for Nonimmigrant Worker (Form I-129)?

Yes. Effective January 17, 2009, an H-2A employer is permitted to file a Form I-129 with USCIS when petitioning for multiple H-2A beneficiaries from multiple countries. It is no longer necessary for multiple beneficiaries to obtain visas at the same consulate or enter at the same port of entry.

Must the name of all workers be included on Form I-129?

No. Effective January 17, 2009, if an employer wishes to petition for multiple beneficiaries, some of whom are in the U.S. and some of whom are outside the U.S., the employer must name the beneficiaries who are in the U.S., and only provide the number of beneficiaries who are outside the U.S. This applies regardless of the number of beneficiaries on the petition or whether the temporary labor certification named beneficiaries.

Back to: H-2A Temporary Agricultural Workers Foreign National Living Abroad Hiring a Foreign National

Can an employer substitute beneficiaries on a Form I-129?

Effective January 17, 2009, an employer may substitute beneficiaries where H-2A workers failed to show up at the worksite or absconded, provided that the employer has complied with the new notification requirements. The petitioner may file an H-2A petition using a copy of the previously approved temporary labor certification to replace a worker where: (a) the worker's employment was terminated early (before the end date stated on the H-2A petition and before the completion of work); (b) the worker fails to report to work within 5 work days of the employment start date on the previous petition or within 5 work days of the start date established by the employer, whichever is later; or (c) the worker absconds from the worksite.

What is the definition of "temporary nature"?

Employment of a "temporary nature" is when the employer needs to hire a temporary worker for a position that will, except in extraordinary circumstances, last no longer than one year.

What is the definition of "seasonal nature"?

Employment of "seasonal nature" is defined as work that is associated with a certain time of year, event, or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, requiring labor levels far above those necessary for ongoing operations.

Can an H-2A nonimmigrant change employers?

Effective January 17, 2009, an H-2A worker may continue to be employment authorized while awaiting an extension of H-2A status based on a petition filed by a new employer accompanied by an approved labor certification. Specifically, where an application for an extension of stay is filed during the worker's period of admission, the worker is authorized to be employed by the new petitioning employer for a period not to exceed 120 days. The 120-day period begins on the "Received Date" listed on the notice that USCIS sends acknowledging receipt of the application for extension of stay (Form I-797, Notice of Action). There is one condition on this temporary employment authorization: the new employer must be a registered user in good standing with USCIS' E-Verify program. If the new employer is not registered with E-Verify, the worker would not be authorized to work until USCIS grants the extension of stay application.

Back to: H-2A Temporary Agricultural Workers Foreign National Living Abroad Hiring a Foreign National

What are the notification requirements for H2A employers?

Effective January 17, 2009, H-2A petitioners are required to provide notification to USCIS within 2 work days in the following instances:

- When an H-2A worker fails to report to work within 5 work days of the employment start date on the petition or within 5 work days of the start date established by the petitioner, whichever is later;
- When the labor or services for which the H-2A workers were hired is completed more than 30 days early; or
- When the H-2A worker absconds from the worksite or is terminated prior to the completion of labor or services for which he or she was hired.

The notification should include the following:

- The reason for the notification;
- The reason for late notification, if applicable;
- The USCIS receipt number of the approved petition;
- The petitioner's name, address, telephone number, and employer identification number;
- The employer's name, address, and telephone number, if different from that of petitioner;
- The name of the worker in question;
- The date and place of birth of the worker in question; and
- The last known physical address and telephone number of the worker in question.

In the case of unnamed beneficiaries, USCIS only requires the petitioner to supply the number of workers who failed to report to work instead of their names, dates and places of birth. Petitioners should retain evidence of the notification filed for a one-year period.

Notification can be made by email to: CSC-X.H-2AAbs@uscis.dhs.gov.
Notification can be made by mail to: California Service Center, Attn: Div X/BCU ACD, P.O. Box 30050, Laguna Niguel, CA 92607-3004.

Can an H-2A nonimmigrant only work full-time?

The hours and work schedule of the worker may vary. Most agricultural employees are paid on an hourly or at a piece rate.

Back to: H-2A Temporary Agricultural Workers Foreign National Living Abroad Hiring a Foreign National

How long can a nonimmigrant stay in H-2A status?

H-2A workers are initially admitted for the time approved on the Labor Certification, with a maximum time of 1 year. H-2A status may be extended beyond this in 12-month increments for a maximum period of stay of three years.

Do H-2A nonimmigrants have a grace period to leave the U.S. after the expiration of their stay?

Yes. Effective January 17, 2009, the grace period has been extended to 30 days following the expiration of the H-2A petition. This grace period is to provide the worker enough time to prepare for departure or apply for an extension of stay based on a subsequent offer of employment.

Back to: H-2A Temporary Agricultural Workers Foreign National Living Abroad Hiring a Foreign National

What are the fees that are prohibited from being paid by H-2A employees?

To protect H-2A workers, USCIS may deny or revoke any petition if it determines (1) that the petition beneficiary has paid or has agreed to pay any fee or other form of compensation, whether directly or indirectly, to the petitioner, or (2) that the petitioning employer is aware or reasonably should be aware that the beneficiary has paid or agreed to pay any facilitator or recruiter, or similar employment service, in connection with obtaining the H-2A employment. Prohibited fees do not include the fair market value of costs of transportation to the U.S. or fees required by a foreign government such as for the issuance of passports or visas. USCIS will not revoke the petition if the petitioner provides evidence that the beneficiary has been reimbursed in full for any prohibited fees paid.

- Petitioners who become aware of the payment of prohibited fees paid by beneficiaries should notify USCIS and include the following information:
- The USCIS receipt number of the petition;
- The petitioner's name, address, and telephone number;
- The employer's name, address, and telephone number, if different from that of petitioner;
- Name and address of the facilitator, recruiter, or placement service to which beneficiary paid or agreed to pay the prohibited fees.

Notification can be made by email to: CSC.H2AFee@uscis.dhs.gov.
Notification can be made by mail to: California Service Center, P.O. Box 10695, Laguna Niguel, CA 92607-1095.

What is the period of time that H-2A nonimmigrants must remain outside the U.S. after completing the 3-year maximum stay before they can renew their status?

Effective January 17, 2009, once an H-2A worker has reached the maximum 3-year limit on H-2A status, he or she is required to wait 3 months outside the U.S. before seeking H-2A status again.

Back to: H-2A Temporary Agricultural Workers Foreign National Living Abroad Hiring a Foreign National

Who can file a petition for an H-2A worker?

The following are the only entities that can file Form I-129 with USCIS as H-2A petitioners:

- The employer listed on the approved Department of Labor Temporary Employment Certification (ETA Form 9142);
- The association of U.S. agricultural producers named as a joint employer on ETA Form 9142; OR
- An agent-petitioner who meets the following requirements:

A United States agent may be:

- The actual employer of the beneficiary
- The representative of both the employer and the beneficiary (the term representative does not mean “legal representative)
- A person or entity authorized by the employer to act for, or in the place of, the employer as his or her agent.

A United States agent can only file an H-2A petition in cases:

- Involving workers who are traditionally self-employed
- Involving workers who use agents to arrange short-term employment on their behalf with numerous employers; or
- Where a foreign employer authorizes the agent to act on his or her behalf.

For more information about who can file for an H-2A worker, please see our June 2011 Questions and Answers on our website at www.uscis.gov under the “News” link.

Back to: H-2A Temporary Agricultural Workers Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

H-2B Skilled or Unskilled Workers

OVERVIEW

The purpose of the H-2B nonimmigrant visa category is to afford U.S. employers the ability to bring skilled or unskilled workers from foreign countries to temporarily engage in non-agricultural employment in the United States based on four basic types of temporary need:

- Seasonal
- Peak-load
- Intermittent
- One-time occurrence

Effective January 18, 2009, USCIS made changes to the H-2B nonimmigrant category petition process. These changes were made to ensure the integrity of the process and to better serve both the employers and the employees.

What information are you seeking? (Please select one of the following options)

- Definitions
- Information about the Filing Process
- Information about the Period of Authorized Stay
- Information about a Change of Employers or Multiple Employers
- Information about Employer Responsibilities
- Information about Travel
- Other Questions

Back to: Foreign National Living Abroad Hiring a Foreign National

Definitions

- What is the definition of “seasonal need”?
- What is the definition of “peak-load need”?
- What is the definition of “intermittent need”?
- What is the definition of “one time occurrence”?

Information about the Filing Process

- What is the list of countries whose nationals are eligible to participate in the H-2B program?
- How does an employer apply for an H-2B nonimmigrant employee?
- Must the employment start date on the H-2B petition match the start date on the labor certification?
- What kind of evidence or documents will a U.S. employer need to file with the Application for Temporary Employment Certification (ETA Form 9142)?
- Can an employer include more than one worker on the Application for Temporary Employment Certification (ETA Form 9142)?
- What kind of evidence or documents will a U.S. employer need to file with Form I-129?
- Can an employer petition for more than one worker on the Petition for Nonimmigrant Worker (I-129)?
- Do the Form I-129 filing procedures for multiple workers differ from those for one worker?
- Must the names of all workers be included on Form I-129?
- Is there a numerical limitation on the number of workers an employer can petition for on a single Form I-129?
- Can an employer substitute beneficiaries on Form I-129?
- What is the filing fee for the Application for Temporary Employment Certification (ETA Form 9142)?
- What is the filing fee for Form I-129?
- Does the employer have to pay an additional fee for an I-129 blanket petition?
- How can an employer expedite Form I-129?
- Where does an employer file Form I-129?
- How can a nonimmigrant bring their family to the U.S. or change the status of family members already in the U.S.?
- Can a foreign employer apply for an H-2B nonimmigrant to work in the U.S.?

Back to: H-2B Skilled or Unskilled Workers Foreign National Living Abroad Hiring a Foreign National

Information about the Period of Authorized Stay

- How long can a nonimmigrant stay in H-2B status?

Information about a Change of Employers or Multiple Employers

- Can a nonimmigrant change employers?
- Can a nonimmigrant work for more than one employer?
- When can the nonimmigrant begin to work for the new employer?
- Can an H-2B nonimmigrant only work full-time?

Information about Employer Responsibilities

- What is an employer liable for once an H-2B is in their employ?
- How can an employer cancel a nonimmigrant visa or status?
- What are the notification requirements for H-2B employers?
- What are the fees that are prohibited from being paid by H-2B employees?

Information about Travel

- Can a nonimmigrant travel outside the U.S. and then reenter?

Other Questions

- What is the period of time that H-2B nonimmigrants must remain outside the U.S. before they can renew their H-2B status?
- Can an H-2B nonimmigrant intend to immigrate permanently to the U.S.?
- Is there an annual limit on the number of H-2B nonimmigrants?
- What is VIBE?

Back to: H-2B Skilled or Unskilled Workers Foreign National Living Abroad Hiring a Foreign National

What is the list of countries whose nationals are eligible to participate in the H-2B program?

Effective January 18, 2016, workers from the following countries can be the beneficiaries of an approved H-2B petition and may participate in the H-2B visa program:

Andorra; Argentina; Australia; Austria; Barbados; Belgium; Belize; Brazil; Brunei; Bulgaria; Canada; Chile; Colombia; Costa Rica; Croatia; Czech Republic; Denmark; Dominican Republic; Ecuador; El Salvador; Estonia; Ethiopia; Fiji; Finland; France; Germany; Greece; Grenada; Guatemala; Haiti; Honduras; Hungary; Iceland; Ireland; Israel; Italy; Jamaica; Japan; Kiribati; Latvia; Lichtenstein; Lithuania; Luxembourg; Macedonia; Madagascar; Malta; Mexico; Monaco; Montenegro; Nauru; The Netherlands; Nicaragua; New Zealand; Norway; Panama; Papua New Guinea; Peru; Philippines; Poland; Portugal; Romania; Samoa; San Marino; Serbia; Singapore; Slovakia; Slovenia; Solomon Islands; South Africa; South Korea; Spain; Sweden; Switzerland; Taiwan; Thailand; Timor-Leste; Tonga; Turkey; Tuvalu; Ukraine; United Kingdom; Uruguay; and Vanuatu.

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Must the employment start date on the H-2B petition match the start date on the labor certification?

Yes. Effective for petitions filed for employment for the first half of Fiscal Year 2010, an H-2B petition must have an employment start date that is the same as the date of employment need stated on the approved temporary labor certification. Therefore, an employer may not file, and USCIS may not approve, an H-2B petition more than 120 days before the date of the employer's actual need for the beneficiary's services, as identified on the temporary labor certification.

Note: There is one exception to the above: when an amended petition, accompanied by the previously approved labor certification and a copy of the original petition approval notice, is filed at a later date due to the unavailability of the originally requested number of workers. The amended petition may state an employment start date that is later than what is stated in the labor certification.

What kind of evidence or documents will a U.S. employer need to file with the Petition for a Nonimmigrant Worker (I-129)?

A U.S. employer who wants to file an H-2B petition, as required by regulations, should initially file the petition with either:

- An original single valid temporary labor certification from the Department of Labor (or the Governor of Guam if the proposed employment is solely in Guam), indicating that qualified U.S. worker(s) are not available and that employment of the nonimmigrant will not adversely affect the wages and working conditions of similarly employed U.S. workers; or
- An original notice from such authority that such certification cannot be made, along with evidence of the unavailability of U.S. workers and of the prevailing wage rate for the occupation in the U.S, and evidence overcoming each reason why the certification was not granted; and copies of evidence, such as employment letters and training certificates, that each named person meets the minimum job requirements stated in the certification.

Must the names of all workers be included on Form I-129?

No. Effective January 18, 2009, H2B petitioners may specify only the number of positions sought without naming individual H-2B workers, unless the workers are already in the U.S.

Back to: H-2B Skilled or Unskilled Workers Foreign National Living Abroad Hiring a Foreign National

What are the notification requirements for H-2B employers?

Effective January 18, 2009, H-2B petitioners are required to provide notification to USCIS within 2 work days in the following instances:

- When an H-2B worker fails to report to work within 5 work days of the employment start date on the petition;
- When the labor or services for which the H-2B workers were hired is completed more than 30 days early; or
- When the H-2B worker absconds from the worksite or is terminated prior to the completion of labor or services for which he or she was hired.

The notification should include the following:

- The reason for the notification;
- The reason for late notification, if applicable;
- The USCIS receipt number of the approved petition;
- The petitioner's name, address, telephone number, and employer identification number;
- The employer's name, address, and telephone number, if different from that of petitioner;
- The name of the worker in question;
- The date and place of birth of the worker in question; and
- The last known physical address and telephone number of the worker in question.

In the case of unnamed beneficiaries, USCIS only requires the petitioner to supply the number of workers who failed to report to work instead of their names, dates and places of birth. Petitioners should retain evidence of the notification filed for a one-year period.

If the petition was approved by the California Service Center, the notification should be sent:
By email to: CSC-X.H-2BAbs@uscis.dhs.gov.
By mail to: California Service Center, Attn: Div X/BCU ACD, P.O. Box 30050, Laguna Niguel, CA 92607-3004.

If the petition was approved by the Vermont Service Center, the notification should be sent:
By email to: VSC.H2BABS@uscis.dhs.gov.
By mail to: Vermont Service Center, Attn: BCU ACD, 63 Lower Welden Street, St. Albans, VT 05479

Back to: H-2B Skilled or Unskilled Workers Foreign National Living Abroad Hiring a Foreign National

What are the fees that are prohibited from being paid by H-2B employees?

To protect H-2B workers, USCIS may deny or revoke any petition if it determines (1) that the petition beneficiary has paid or has agreed to pay any fee or other form of compensation, whether directly or indirectly, to the petitioner, or (2) that the petitioning employer is aware or reasonably should be aware that the beneficiary has paid or agreed to pay any facilitator or recruiter, or similar employment service, in connection with obtaining the H-2B employment. Prohibited fees do not include the fair market value of costs of transportation to the U.S. or fees required by a foreign government such as for the issuance of passports or visas. USCIS will not revoke the petition if the petitioner provides evidence that the beneficiary has been reimbursed in full for any prohibited fees paid.

- Petitioners who become aware of the payment of prohibited fees paid by beneficiaries should notify USCIS and include the following information:
- The USCIS receipt number of the petition;
- The petitioner's name, address, and telephone number;
- The employer's name, address, and telephone number, if different from that of petitioner;
- Name and address of the facilitator, recruiter, or placement service to which beneficiary paid or agreed to pay the prohibited fees.

If the petition was approved by the California Service Center, the notification should be sent:
By email to: CSC.H2BFee@uscis.dhs.gov.
By mail to: California Service Center, Attn: H2BFee, P.O. Box 10695, Laguna Niguel, CA 92607-1095.

If the petition was approved by the Vermont Service Center, the notification should be sent:
By email to: VSC.H2BPROPLACEMENT@uscis.dhs.gov.
By mail to: Vermont Service Center, Attn: BCU ACD, 75 Lower Welden Street, St. Albans, VT 05479

What is the definition of "seasonal need"?

"Seasonal need" means services that are traditionally connected to a particular time of year because of a recurring event or pattern. Examples of seasonal need include workers engaged in landscaping or employed at fisheries.

What is the definition of "peak-load need"?

Peak-load need means that an employer regularly employs permanent workers to perform the services needed, but has a temporary need for additional staff because of an increase in short-term demand. Another characteristic of peak-load need is that the temporary additions to the staff will not become part of the petitioner's regular operations.

Back to: H-2B Skilled or Unskilled Workers Foreign National Living Abroad Hiring a Foreign National

What is the definition of "intermittent need"?

Intermittent need means that an employer has an occasional need for workers, from time to time, but not on a regular basis.

What is the definition of "one time occurrence"?

One-time occurrence means that an employer has not previously employed workers to fill the position, and that it will not need such services in the future. Rather, there must be a temporary event of short duration. Examples of one-time occurrences are commercial remodeling projects or special events such as international conferences or sporting events.

How long can a nonimmigrant stay in H-2B status?

H-2B workers are initially admitted for the time on the Labor Certification, with a maximum of 1 year. H-2B status may be extended in 12-month increments for a total maximum stay of three years.

What is the period of time that H-2B nonimmigrants must remain outside the U.S. before they can renew their status?

Effective January 18, 2009, once an H-2B worker has reached the maximum 3 year limit on H-2B status, he or she is required to wait 3 months outside the U.S. before seeking H-2B status again.

Can an employer substitute beneficiaries on a Form I-129?

Effective January 18, 2009, beneficiaries in H-2B petitions that are approved and who have not been admitted may be substituted only if the employer can show that the total number of beneficiaries will not exceed the number of beneficiaries certified in the original labor certification. Beneficiaries who have been admitted may not be substituted without a new petition accompanied by a newly approved labor certification.

To substitute beneficiaries who were previously approved for consular processing but have not been admitted with workers who are outside the U.S., the petitioner should send a letter and a copy of the petition approval notice to the consular office where the beneficiary will apply for a visa or to the port of entry where the beneficiary will apply for admission. The petitioner should also submit the beneficiary's qualifications, if applicable.

To substitute beneficiaries who were previously approved for consular processing but who have not been admitted with workers who are currently in the U.S., the petitioner should file an amended petition with fees at the Service Center where the original petition was filed, with a copy of the original petition approval notice, a statement explaining why the substitution is necessary, evidence of the qualifications of beneficiaries, if applicable, evidence of the beneficiaries' current status in the U.S. and evidence that the number of beneficiaries will not exceed the number allocated on the approved labor certification, such as employment records to show that the number of visas sought in the amended petition were not already issued. The amended petition must be for the same period of employment as the original petition. Otherwise, a new labor certification and subsequent petition would be required.

Back to: H-2B Skilled or Unskilled Workers Foreign National Living Abroad Hiring a Foreign National

Is there an annual limit on the number of H-2B non-immigrants?

Yes. The current law limits the number of nonimmigrants who may be issued an H-2B visa to 66,000 per fiscal year, with 33,000 to be allocated for employment beginning in the 1st half of the fiscal year (October 1 - March 31) and 33,000 to be allocated for employment beginning in the 2nd half of the fiscal year (April 1 - September 30). USCIS regulations allow for filings 6 months in advance. However, H-2B petitioners must first obtain a temporary labor certification from the Department of Labor (DOL). DOL regulations state that the application for temporary labor certification may not be filed more than 120 days in advance of the need for the employee. Thus, USCIS normally begins receiving H-2B petitions with employment start dates in October in June and with employment start dates in April in December.

On June 5, 2015, USCIS announced that it reopened the annual H-2B cap for the second half of Fiscal Year 2015. USCIS has now received a sufficient number of petitions to reach the H-2B cap for the second half of FY 2015. June 11, 2015 was the final receipt date for new H-2B petitions requesting an employment start date before October 1, 2015. The final receipt date is the date when USCIS received enough cap-subject petitions to reach the statutory limit of 66,000 H-2B workers for FY 2015.

As of June 3, 2015 USCIS is also accepting cap-subject petitions for FY 2016.

For additional information about the annual cap, see our website at www.uscis.gov/h-2b_count.

Exemptions to the annual cap:

- H-2B workers in the United States or abroad who have previously been counted towards the cap in the previous three years;
- Current H-2B workers seeking an extension of stay;
- Current H-2B workers seeking a change of employer or terms of employment;
- H-2B workers who are employed as fish roe processors, fish roe technicians, or as supervisors of fish roe processing.
- H-2B workers who are admitted to perform labor and services in the Commonwealth of the Northern Mariana Islands (CNMI) and Guam are exempt from the annual cap from November 28, 2009 to December 31, 2019.

Can an H-2B nonimmigrant only work full-time?

Yes. An H-2B worker can only work full-time; their work must not be part-time. Full-time is defined to be at least 35 hours per week.

Back to: H-2B Skilled or Unskilled Workers Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

H-3 Trainee or Special Education Exchange Visitor

OVERVIEW

The purpose of the H-3 visa is to allow individuals temporarily to come to the U.S. to receive training that is not available in the beneficiary's home country, or to be a participant in a special education exchange program. The training provided to an H-3 cannot be for graduate medical education/training or for the purpose of providing employment in the U.S.

What information are you seeking? (Please select one of the following options)

- Information about the Filing Process
- Information about the Period of Authorized Stay
- Information about a Change of Employers or Multiple Employers
- Information about Employer Responsibilities
- Information about Travel
- Other Questions

Back to: Foreign National Living Abroad Hiring a Foreign National

Information about the Filing Process

- How can a petitioner apply for an H-3 Trainee or Special Education Exchange Visitor?
- What initial criteria must a training program for an H-3 Trainee meet to be considered a valid training program for the purposes of the H-3 visa?
- What initial criteria must a facility petitioning for an H-3 Special Education Exchange Visitor meet in order to petition for an H-3 visa or status?
- What initial requirements must an H-3 Special Education Exchange Visitor meet in order to be accorded that status?
- What kind of initial documentary evidence must the petitioner file for an H-3 Trainee?
- What kind of initial documentary evidence must the petitioner file for an H-3 Special Education Exchange Visitor?
- Can a petitioner file for more than one H-3 on the same petition?
- What is the filing fee for the Form I-129?
- How can a petitioner expedite Form I-129?
- Where does the petitioner file Form I-129?
- How can a nonimmigrant bring their family to the U.S. or change the status of family members already in the U.S.?
- Can a foreign petitioner apply for an H-3 nonimmigrant?

Information about the Period of Authorized Stay

- How long can a nonimmigrant stay in H-3 Trainee status?
- How long can a nonimmigrant stay in H-3 Special Education Exchange Visitor status?

Information about a Change of Employers or Multiple Employers

- Can an H-3 nonimmigrant change petitioners?
- Can an H-3 nonimmigrant train with different petitioners?

Information about Employer Responsibilities

- What is a petitioner held liable for once an H-3 nonimmigrant is in their organization or company?
- How can a petitioner cancel an H-3 visa or status?

Back to: H-3 Trainee or Special Education Exchange Visitor Foreign National Living Abroad Hiring a Foreign National

Information about Travel

- Can a nonimmigrant travel outside the U.S. and then reenter?

Other Questions

- Can H-3 nonimmigrant work after completion of their training?
- Must an H-3 Trainee be in training at all times?
- Can an H-3 nonimmigrant intend to immigrate permanently to the U.S.?
- What is VIBE?

Back to: H-3 Trainee or Special Education Exchange Visitor Foreign National Living Abroad Hiring a Foreign National

What initial criteria must a training program for an H-3 Trainee meet to be considered a valid training program for the purposes of the H-3 visa?

A training program may be approved which:

- Has a fixed schedule, objectives, or means of evaluation;
- Is compatible with the nature of the petitioner's business or enterprise;
- Is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;
- Is in a field in which it is likely that the knowledge or skill will be used outside the United States;
- Will result in productive employment that is incidental and necessary to the training; and
- Establishes that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified.

What initial criteria must a facility petitioning for an H-3 Special Education Exchange Visitor meet in order to petition for an H-3 visa or status?

The facility must have professionally trained staff and a structured program for providing education to children with disabilities, and for providing training and hands-on experience to participants in the special education exchange visitor program.

Can an H-3 nonimmigrant work after completion of the training?

No. An H-3 nonimmigrant is required to return to his/her country after completion of the training. An H-3 may only engage in employment as an intern during his/her training or if the employment is incidental and necessary to the training.

Back to: H-3 Trainee or Special Education Exchange Visitor Foreign National Living Abroad Hiring a Foreign National

What initial requirements must an H-3 Special Education Exchange Visitor meet in order to be accorded that status?

- The beneficiary (H-3) must have a foreign residence to which he or she will return.
- The training in question must not be available in the beneficiary's home country.
- The H-3 beneficiary must not be placed in an employment position that is regularly filled by a citizen or lawful permanent resident.
- The individual must be nearing completion of a baccalaureate or higher degree in special education, or already hold such a degree, or have extensive prior training and experience in teaching children with physical, mental, or emotional disabilities.

What kind of initial documentary evidence must the petitioner file for an H-3 Trainee?

The petitioner must include the following initial evidence when filing the I-129:

- A detailed description of the structured training program, including the number of classroom hours per week and the number of hours of on-the-job training per week;
- A summary of the prior training and experience of each individual in the petition; and
- An explanation of why the training is required, whether similar training is available in the alien's country, how the training will benefit the alien in pursuing a career abroad, and why you will incur the cost of providing the training without significant productive labor.

Back to: H-3 Trainee or Special Education Exchange Visitor Foreign National Living Abroad Hiring a Foreign National

What kind of initial documentary evidence must the petitioner file for an H-3 Special Education Exchange Visitor?

The petitioner must include the following initial evidence when filing the I-129:

- A description of the training, staff and facilities, evidence the program meets the required conditions, and details of the individual's participation in the program; and
- Evidence the alien is nearing completion of a baccalaureate or higher degree in special education, or already holds such a degree, or has extensive prior training and experience in teaching children with physical, mental, or emotional disabilities.

Can a petitioner file for more than one H-3 on the same petition?

Yes. A blanket petition may be filed if the beneficiaries will be receiving the same training, for the same period of time, and in the same location.

How long can a nonimmigrant stay in H-3 Trainee status?

An H-3 Trainee is admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The maximum period of stay for an H-3 Trainee is 24 months.

How long can a nonimmigrant stay in H-3 Special Education Exchange Visitor status?

The maximum period of stay in the United States for an H-3 Special Education Exchange Visitor is 18 months.

Must an H-3 Trainee be in training at all times?

Yes. An H-3 must be in training for the duration of the program.

Back to: H-3 Trainee or Special Education Exchange Visitor Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

O Aliens with Extraordinary Ability and Support Personnel

OVERVIEW

The primary purpose of the O-1 nonimmigrant visa category is to temporarily allow aliens with extraordinary ability in certain fields or extraordinary achievement in a particular industry to work in the United States. In addition, the O-2 nonimmigrant visa category allows aliens accompanying an O-1 with extraordinary ability, to assist in a specific event or performance in the United States.

Aliens who have an O-1 visa and are seeking entry into the U.S. must have extraordinary ability in one the following fields in order to qualify for an O-1:

- Arts,
- Sciences,
- Education,
- Business, or
- Athletics

Or they must have extraordinary achievement in one or both of the following industries:

- Motion pictures, or
- Television

What information are you seeking? (Please select one of the following options)

- Definitions
- Information about the Filing Process
- Information about the Period of Authorized Stay
- Information about a Change of Employers or Multiple Employers
- Information about Employer Responsibilities
- Information about Travel
- Other Questions

Definitions

- What is the definition of “extraordinary ability in the field of arts”?
- What is the definition of “extraordinary ability in the field of science, education, business, or athletics”?
- What is the definition of “extraordinary achievement in the motion picture and television industries” mean?
- What is considered a “peer group”?

Information about the Filing Process

- How does an employer apply for an O nonimmigrant employee?
- Who can petition for an O?
- What kind of evidence or documents will a U.S. employer need to file with Form I-129 for an O-1 nonimmigrant?
- What kind of evidence or documents will a U.S. employer need to file with Form I-129 for an O-2 nonimmigrant?
- From whom can a consultation or written advisory opinion be obtained?
- What is the filing fee for Form I-129?
- How can an employer expedite Form I-129?
- Where does the employer file Form I-129?
- How do I fill out Part 6 of Form I-129?
- Can one petition be filed for an O-1 and O-2?
- Does the employer have to file the petition for the O-2 in conjunction with the O-1?
- How can a nonimmigrant bring his family to the U.S. or change the status of family members already in the U.S.?

Information about the Period of Authorized Stay

- How long can a nonimmigrant stay in O status?

Back to: O Aliens with Extraordinary Ability and Support Personnel Foreign National Living Abroad Hiring a Foreign National

Information about a Change of Employers or Multiple Employers

- Can a nonimmigrant change employers?
- Can a nonimmigrant work for more than one employer?
- When can the nonimmigrant begin to work for the new employer?

Information about Employer Responsibilities

- What is an employer liable for once an O nonimmigrant is in their employ?
- How can an employer cancel an O visa or status?

Information about Travel

- Can a nonimmigrant travel outside the U.S. and then reenter?

Other Questions

- Can an O nonimmigrant intend to immigrate permanently to the U.S.?

Back to: O Aliens with Extraordinary Ability and Support Personnel Foreign National Living Abroad Hiring a Foreign National

Who can petition for an O?

The petition must be filed by a U.S. employer or a U.S. agent representing a U.S. employer or foreign employer. That is, the foreign national cannot self-petition for O status, and a foreign employer cannot petition for the status without a U.S. agent. A U.S. agent may file a petition for (1) workers who are traditionally self-employed, (2) workers who traditionally use agents to arrange short-term employment, and (3) foreign employers who have authorized the agent to act on their behalf. The agent may be the employer of the beneficiary, a representative of both the employer and the beneficiary, or a person or entity authorized by the employer to act for, or in the place of, the employer as its agent.

A petition filed by an agent is subject to the following conditions:

- Agents who also function as employers must provide a copy of the contractual agreement between the agent and the worker that specifies the wage offered and the other terms and conditions of employment.
- Agents may file petitions involving multiple employers as the representative of the employers and beneficiary if s/he includes the itinerary and the contract. A complete itinerary of the event or events must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. The contract between each employer and the beneficiary must also be provided. The contract should specify the wage offered and explain the terms and conditions of employment.
- Agents acting on behalf of foreign employers are also responsible for complying with all conditions relating to employer sanctions provisions, such as Form I-9 compliance.

What is the definition of “extraordinary ability in the field of arts”?

Extraordinary ability in the field of arts means having achieved distinction - a high level of achievement in the field of arts.

What is the definition of “extraordinary ability in the field of science, education, business, or athletics”?

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of a small percentage who have risen to the very top of the field of endeavor.

What is the definition of “extraordinary achievement in the motion picture and television industries”?

Extraordinary achievement in the motion picture and television industries means a very high level of accomplishment in the motion picture or television industry.

What is considered a “peer group”?

Peer group is a group or organization comprised of practitioners of the alien's occupation.

Back to: O Aliens with Extraordinary Ability and Support Personnel Foreign National Living Abroad Hiring a Foreign National

What kind of evidence or documents will a U.S. employer need to file with Form I-129 for an O-1 nonimmigrant?

The following tables indicate the documentary evidence that regulations require an employer to initially file with the I-129.

If an employer files an I-129 based on an O-1:	Then the employer will need the following supporting evidence:
With extraordinary ability in the sciences, education, business, or athletics	A written advisory opinion from a peer group (including labor organizations) or a person designated by the group with expertise in the alien's area of ability; A copy of any written contract between the employer and the alien or a summary of the terms of the oral agreement under which the alien will be employed; Evidence that the alien has received a major, internationally-recognized award, such as a Nobel Prize, or evidence of at least three of the following: • Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor; • Membership in associations in the field for which classification is sought that require outstanding achievements as judged by recognized international experts; • Published material in professional or major trade publications, newspapers or other major media about the alien and his work in the field for which classification is sought; • Original scientific, scholarly, or business-related contributions of major significance in the field; • Authorship of scholarly articles in professional journals or other major media in the field for which classification is sought; • A high salary or other remuneration for services as evidenced by contracts or other reliable evidence; • Participation on a panel, or individually, as a judge of the work of others in the same field or in a field of specialization allied to that field for which classification is sought; • Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

OR

(continued on next page)

If an employer files an I-129 based on an O-1:	Then the employer will need the following supporting evidence:
With extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry	A written advisory opinion, describing the alien's ability as follows: • If the petition is based on the alien's extraordinary ability in the arts, the consultation must be from a peer group (including labor organizations) in the alien's field of endeavor; or a person or persons designated by the group with expertise in the alien's area of ability. • If the petition is based on the alien's extraordinary achievements in the motion picture or television industry, separate consultations are required from a labor and a management organization with expertise in the alien's field of endeavor. A copy of any written contract between the employer and the alien or a summary of the terms of the oral agreement under which the alien will be employed; Evidence the alien has received, or been nominated for, significant national or international awards or prizes in the particular field, such as an Academy Award, Emmy, Grammy or Director's Guild Award, or evidence of at least three of the following: • Performed or will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts or endorsements; • Achieved national or international recognition for achievements, as shown by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications; • Performed or will perform as a lead, starring or critical role for organizations and establishments that have a distinguished reputation as evidence by articles in newspapers, trade journals, publications or testimonials. • A record of major commercial or critically acclaimed successes, as shown by such indicators as title, rating or standing in the field, box office receipts, motion picture or television ratings and other occupational achievements reported in trade journals, major newspapers or other publications; • Received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in which the alien is engaged, with the testimonials clearly indicating the author's authority, expertise and knowledge of the alien's achievements; • A high salary or other substantial remuneration for services in relation to others in the field, as shown by contracts or other reliable evidence. If the above standards do not readily apply to the alien's occupation, the petitioner may submit comparable evidence.

Back to: O Aliens with Extraordinary Ability and Support Personnel Foreign National Living Abroad Hiring a Foreign National

What kind of evidence or documents will a U.S. employer need to file with Form I-129 for an O-2 nonimmigrant?

The employer will need the following supporting evidence:

- A written advisory opinion based on one of the two conditions:
- If the O-2 petition is for an alien accompanying an O-1 alien of extraordinary ability in the arts, the opinion must be from a labor organization with expertise in the skill area involved.
- If the O-2 petition is for an alien accompanying an O-1 alien of extraordinary achievement in the field of motion picture or television, the opinion must be from a labor organization and a management organization with expertise in the skill area involved.
- Evidence of the current essentiality, critical skills, and experience of the O-2 alien with the O-1 alien, and that the alien has substantial experience utilizing the critical skills and essential support services for the O-1. In the case of a specific motion picture or television production, the evidence shall establish that significant production has taken place outside the U.S., and will take place inside the U.S., and that the continuing participation of the alien is essential to the successful completion of the production.

Can one petition be filed for an O-1 and O-2 nonimmigrant?

No. O-2 nonimmigrants must be filed for on a separate petition from the O-1 nonimmigrant.

Does the employer have to file the petition for the O-2 nonimmigrant in conjunction with the O-1 nonimmigrant?

Yes. An O-2 nonimmigrant must be petitioned for in conjunction with the services of the O-1 nonimmigrant; therefore, the O-1 petition and the O-2 petition must be filed concurrently.

How long can a nonimmigrant stay in O status?

An O nonimmigrant is normally admitted to the United States for a period of time necessary to accomplish the event or activity, not to exceed 3 years. The period of time is normally equal to the validity period of the petition. In addition, an O nonimmigrant may be admitted up to 10 days before the validity period begins and 10 days after the validity period ends. There is no maximum period of stay for an O nonimmigrant. An O nonimmigrant may remain in O status so long as the approved I-129 remains valid.

Back to: O Aliens with Extraordinary Ability and Support Personnel Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

P-1 Internationally Recognized Athletes, or an Athletic Team, Members of an Entertainment Group, Certain Other Athletes and Entertainers, and Essential Support Personnel

OVERVIEW

The purpose of the P-1 visa classification is to allow individuals who are internationally recognized athletes, or an athletic team, members of an entertainment group, certain other athletes and entertainers, and the individuals who provide essential support to them, to temporarily enter the U.S. to practice their craft for a specific time and event(s).

What information are you seeking? (Please select one of the following options)

- Definitions
- Information about the Filing Process
- Information about the Period of Authorized Stay
- Information about a Change of Employers or Multiple Employers
- Information about Employer Responsibilities
- Information about Travel
- Other Questions

Back to: Foreign National Living Abroad Hiring a Foreign National

Definitions

- What is the definition of “internationally recognized”?
- What is the definition of “group”?
- What is the definition of “team”?
- What is considered a “competition, event, or performance”?

Information about the Filing Process

- How does an employer apply for a P-1 nonimmigrant employee?
- What are the additional allowed types of P-1 athletes and entertainers?
- What initial eligibility requirements must a P-1 Internationally Recognized Athlete meet?
- What initial eligibility requirements must P-1 Members of an Athletic Team meet?
- What initial eligibility requirements must P-1 Members of an Entertainment Group meet?
- What initial eligibility requirements must P-1 Essential Support Personnel meet?
- What kind of initial documentary evidence will a U.S. employer need to file for a P-1 Internationally Recognized Athlete or Members of an Athletic Team?
- What kind of initial documentary evidence will a U.S. employer need to file for P-1 Members of an Entertainment Group?
- What kind of initial documentary evidence will a U.S. employer need to file for P-1 Essential Support Personnel?
- Who can provide a consultation or written advisory opinion?
- Can an employer include more than one worker on Form I-129?
- Do the I-129 filing procedures for multiple workers differ from those for one worker?
- Must the names of all workers be listed on the I-129 if it is a blanket petition?
- Can a beneficiary or beneficiaries of a Form I-129 be substituted?
- Can essential support personnel be filed for on the same petition as the principal P-1?
- What is the filing fee for Form I-129?
- Is there an additional fee for a blanket petition?
- How can an employer expedite Form I-129?
- Where does the employer file Form I-129?
- How can a nonimmigrant bring his/her family to the U.S. or change the status of family members already in the U.S.?
- Can a foreign employer apply for a P-1 nonimmigrant to work in the U.S.?

Back to: P-1 Internationally Recognized Athletes Foreign National Living Abroad Hiring a Foreign National

Information about the Period of Authorized Stay

- How long can a nonimmigrant stay in P-1 status?

Information about a Change of Employers or Multiple Employers

- Can a P-1 nonimmigrant change employers?
- Can a P-1 nonimmigrant work for more than one employer?
- Can a P-1 Internationally Recognized Athlete be traded?
- What does the new organization or employer need to do so that the P-1 can continue working after being traded?

Information about Employer Responsibilities

- What is an employer liable for once a P-1 is in their employ?
- How can an employer cancel a nonimmigrant visa or status?

Information about Travel

- Can a nonimmigrant travel outside the U.S. and then reenter?

Other Questions

- Can a P-1 nonimmigrant intend to immigrate permanently to the U.S.?
- Can a P-1 nonimmigrant work in more than one location?

Back to: P-1 Internationally Recognized Athletes Foreign National Living Abroad Hiring a Foreign National

What is the definition of “internationally recognized”?

Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well known in more than one country.

What is the definition of “group”?

Group is defined as two or more persons established as one entity or unit to perform or to provide a service.

What is the definition of “team”?

Team is defined as two or more persons organized to perform together as a competitive unit in a competitive event.

What is considered a “competition, event, or performance”?

A competition, event, or performance is considered an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement.

What are the additional allowed types of P-1 athletes and entertainers?

The P-1 visa category was expanded to include several additional types of athletes and entertainers as follows:

- An individual athlete on an athletic team that is a member of an association of six (6) or more professional sports teams whose total combined revenues exceed $10 million per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage or any minor league team that is affiliated with such an association.
- Individual coaches and athletes performing with teams in the U.S. that are part of an international league or association of fifteen (15) or more amateur sports teams if 1) the league is operating at the highest level of amateur performance in the relevant foreign country, 2) participating in that league renders the players ineligible to get a scholarship in or participate in that sport at a collegiate level in the U.S. and, 3) a significant number of the players in the league get drafted to play for major or minor league teams in the U.S.
- Amateur and professional ice skaters that perform in theatrical ice skating productions seeking to enter the U.S. to skate in a competition or theatrical production.

Back to: P-1 Internationally Recognized Athletes Foreign National Living Abroad Hiring a Foreign National

What initial eligibility requirements must a P-1 Internationally Recognized Athlete meet?

The athlete must have an internationally recognized reputation as an international athlete. In addition, the athlete must be coming to the United States to participate in an athletic competition that has a distinguished reputation and that requires participation of an athlete who has an international reputation.

What initial eligibility requirements must P-1 Members of an Athletic Team meet?

The athletic team as a unit must be internationally recognized as outstanding in the discipline and must be coming to perform services that require an internationally recognized athletic team.

What initial eligibility requirements must P-1 Members of an Entertainment Group meet?

The entertainment group as a unit must be internationally recognized as outstanding in the discipline and must be coming to perform services that require an internationally recognized entertainment group.

What initial eligibility requirements must P-1 Essential Support Personnel meet?

The essential person must have been determined to be an integral part of the performance of a P-1 because he or she performs support services that cannot be readily performed by a U.S. worker and that are essential to the successful performance of services by the P-1.

The essential person must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1.

Back to: P-1 Internationally Recognized Athletes Foreign National Living Abroad Hiring a Foreign National

What kind of initial documentary evidence will a U.S. employer need to file for a P-1 Internationally Recognized Athlete or Members of an Athletic Team?

A United States employer seeking to bring an Internationally Recognized Athlete or Members of an Athletic Team to the U.S must supply the following:

- Copy of the contract with a major U.S. sports league or team or contract in an individual sport commensurate with national or international recognition in that sport.

- Copies of evidence of at least 2 of the following:
  a) Participation to a substantial extent in a prior season with a major U.S. sports league,
  b) Participation in international competition with a national team,
  c) Participation to a substantial extent in a prior season for a U.S. college or university in intercollegiate competition,
  d) A written statement from an official of a major U.S. sports league or an official of the governing body of the sport detailing how the alien or team is internationally recognized,
  e) A written statement from a member of the sports media or a recognized expert in the sport detailing how the alien or team is internationally recognized,
  f) The individual or team is ranked if the sport has international rankings, or
  g) The alien or team has received a significant honor or award in the sport.

What kind of initial documentary evidence will a U.S. employer need to file for P-1 Essential Support Personnel?

A United States employer seeking to bring Essential Support Personnel to the U.S must supply the following:

- A consultation from a labor organization with expertise in the area of the alien's skill;
- A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and
- A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

Back to: P-1 Internationally Recognized Athletes Foreign National Living Abroad Hiring a Foreign National

What kind of initial documentary evidence will a U.S. employer need to file for P-1 Members of an Entertainment Group?

A United States employer seeking to bring Members of an Entertainment Group to the U.S. must supply evidence that the group:

- Has been established and performing regularly for a period of at least 1 year;
- Has been internationally recognized in the discipline for a sustained and substantial period of time.
- International recognition for a sustained and substantial period of time may be demonstrated by the submission of evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievement in its field or by three of the following different types of documentation that demonstrate the group has:

  a) Performed, and will perform, as a starring or leading entertainment group in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

  b) Achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;

  c) Performed, and will perform, services as a leading or starring group for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

  d) A record of major commercial or critically acclaimed successes, as evidenced by such indicators as ratings; standing in the field; box office receipts; record, cassette, or video sales; and other achievements in the field as reported in trade journals, major newspapers, or other publications;

  e) Achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

  f) Either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to others similarly situated in the field as evidenced by contracts or other reliable evidence.

- A statement from the petitioner listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group.

Back to: P-1 Internationally Recognized Athletes Foreign National Living Abroad Hiring a Foreign National

How long can a nonimmigrant stay in P-1 status?

A beneficiary of an I-129 for a P-1 may be admitted to the U.S. for the validity period of the petition, plus a period of up to 10 (ten) days before the validity period begins and 10 (ten) days after the validity period ends. The beneficiary may not work except during the validity period of the petition. A P-1 Internationally Recognized Athlete can be granted a maximum period of stay of up to ten years. There is no maximum period of stay of other P-1s. However, extensions of stay for athletic teams, entertainment groups and their essential support personnel may only be authorized in one-year increments.

Can a P-1 Internationally Recognized Athlete be traded?

Yes. A P-1 Internationally Recognized Athlete could be traded.

What does the new organization or employer need to do so that the P-1 can continue working after being traded?

In the case of a P-1 Internationally Recognized Athlete who is traded from one organization to another organization, his/her ability to work will automatically continue for a period of 30 days after acquisition by the new organization or employer. However, the new organization or employer must file a new *Petition for Nonimmigrant Worker* (I-129) with the Vermont Service Center within 30 days after acquisition by the new employer. The new organization or employer can use the process at the following hyperlink: How to apply for a P nonimmigrant

Back to: P-1 Internationally Recognized Athletes Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

P-2 Artists or Entertainers in a Reciprocal Exchange Program and Essential Support Aliens

OVERVIEW

The purpose of the P-2 visa classification is to allow an alien to temporarily enter the U.S. to perform as an artist or entertainer individually or as part of a group under a reciprocal exchange program agreement between an organization in the U.S. and an organization(s) in a foreign country. Additionally, the P-2 classification allows essential support personnel to P-2 artists or entertainers to enter the U.S. temporarily as well.

What information are you seeking? (Please select one of the following options)

- Definitions
- Information about the Filing Process
- Information about the Period of Authorized Stay
- Information about a Change of Employers or Multiple Employers
- Information about Employer Responsibilities
- Information about Travel
- Other Questions

Back to: Foreign National Living Abroad Hiring a Foreign National

Definitions

- What is the definition of “arts”?
- What is the definition of “group”?
- What is considered an “event or performance”?

Information about the Filing Process

- How does an employer apply for a P-2 nonimmigrant employee?
- What initial requirements must the reciprocal exchange meet?
- What initial requirements must P-2 Essential Support Personnel meet?
- What kind of initial documentary evidence will a U.S. employer need to file for a P-2 Artist or Entertainer in a Reciprocal Exchange Program?
- What kind of initial documentary evidence will an U.S. employer need to file for a P-2 Essential Support Personnel?
- Who can provide a consultation or written advisory opinion?
- Can an employer include more than one worker on Form I-129?
- Do the I-129 filing procedures for multiple workers differ from those for one worker?
- Must the names of all workers be listed on Form I-129 if it is a blanket petition?
- Can a beneficiary or beneficiaries of a Form I-129 be substituted?
- Can essential support personnel be filed for on the same petition as the principal P-2?
- What is the filing fee for Form I-129?
- Is there an additional fee for a blanket petition?
- How can an employer expedite Form I-129?
- Where does the employer file Form I-129?
- How can a nonimmigrant bring his/her family to the U.S. or change the status of family members already in the U.S.?
- Can a foreign employer apply for a P-2 nonimmigrant to work in the U.S.?

Information about the Period of Authorized Stay

- How long can a nonimmigrant stay in P-2 status?

Information about a Change of Employers or Multiple Employers

- Can a P-2 nonimmigrant change employers?
- Can a P-2 nonimmigrant work for more than one employer?

Back to: P-2 Artists or Entertainers Foreign National Living Abroad Hiring a Foreign National

Information about Employer Responsibilities

- What is an employer held liable for once a P-2 nonimmigrant is in their employ?
- How can an employer cancel a P-2s visa or status?

Information about Travel

- Can a nonimmigrant travel outside the U.S. and then reenter?

Other Questions

- Can a P-2 nonimmigrant intend to immigrate permanently to the U.S.?
- Can a P-2 nonimmigrant work in more than one location?

Back to: P-2 Artists or Entertainers Foreign National Living Abroad Hiring a Foreign National

What is the definition of “arts”?

Arts is defined as fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

What is the definition of “group”?

Group is defined as two or more persons established as one entity or unit to perform or to provide a service.

What is considered an “event or performance”?

An event or performance is considered an activity such as a tour, exhibit, project, entertainment event, or engagement.

What initial requirements must the reciprocal exchange meet?

The exchange of artists or entertainers must be similar in terms of caliber of artists or entertainers, terms and conditions of employment, such as length of employment, and numbers of artists or entertainers involved in the exchange.

What initial requirements must P-2 Essential Support Personnel meet?

The essential support person must have been determined to be an integral part of the performance of a P-2 because he or she performs support services that cannot be readily performed by a U.S. worker and are essential to the successful performance of services by the P-2.

The essential support person must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-2.

Back to: P-2 Artists or Entertainers Foreign National Living Abroad Hiring a Foreign National

What kind of initial documentary evidence will an U.S. employer need to file for a P-2 Artist or Entertainer in a Reciprocal Exchange Program?

A U.S. employer or the sponsoring organization files the I-129 with:

- A written consultation by an appropriate labor organization;
- A copy of the formal reciprocal exchange agreement between the U.S. organization(s) or employer(s) sponsoring the alien and the organization(s) in a foreign country which will receive the U.S. artist or entertainer;
- A statement from the sponsoring organization describing the reciprocal exchange of U.S. artists or entertainers as it relates to the specific petition for which classification is sought;
- Evidence that the alien and the U.S. artist or entertainer subject to the reciprocal exchange agreement are artists or entertainers with comparable skills and that the terms and conditions of employment are similar; and
- Evidence that an appropriate labor organization in the U.S. was involved in negotiating, or has concurred with, the reciprocal exchange of U.S. and foreign artists or entertainers.

What kind of initial documentary evidence will a U.S. employer need to file for a P-2 Essential Support Personnel?

The U.S. employer files the petition with the following evidence:

- A written consultation with a labor organization in the skill in which the alien will be involved;
- A statement describing the alien's prior and current essentiality, critical skills and experience with principal alien;
- A copy of any written contract between the employer and the alien or a summary of the terms of the oral agreement under which the alien will be employed.

How long can a nonimmigrant stay in P-2 status?

A beneficiary of an I-129 for a P-2 may be admitted to the U.S. for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition. There is no maximum period of stay. However, extensions of stay may only be authorized in one-year increments.

Back to: P-2 Artists or Entertainers Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

P-3 Artists or Entertainers in a Culturally Unique Program and Essential Support Aliens

OVERVIEW

The purpose of the P-3 visa classification is to allow an alien to temporarily enter the U.S. as an artist or entertainer to perform, teach or coach, individually or as part of a group, in a program that is culturally unique.

What information are you seeking? (Please select one of the following options)

- Definitions
- Information about the Filing Process
- Information about the Period of Authorized Stay
- Information about a Change of Employers or Multiple Employers
- Information about Employer Responsibilities
- Information about Travel
- Other Questions

Back to: Foreign National Living Abroad Hiring a Foreign National

Definitions

- What is the definition of “culturally unique”?
- What is the definition of “arts”?
- What is the definition of “group”?
- What is considered an “event or performance”?

Information about the Filing Process

- How does an employer apply for a P-3 nonimmigrant employee?
- What initial requirements must P-3 Artists or Entertainers in a Culturally Unique Program meet?
- What initial requirements must P-3 Essential Support Personnel meet?
- What kind of initial documentary evidence will a U.S. employer need to file for a P-3 Artist or Entertainer?
- What kind of initial documentary evidence will a U.S. employer need to file for a P-3 Essential Support Personnel?
- From whom can a consultation or written advisory opinion be obtained?
- Can an employer include more than one worker on Form I-129?
- Do the I-129 filing procedures for multiple workers differ from those for one worker?
- Must the names of all workers be listed on Form I-129 if it is a blanket petition?
- Can a beneficiary or beneficiaries be substituted on Form I-129?
- Can essential support personnel be filed for on the same petition as the principal P-3?
- What is the filling fee for Form I-129?
- Does an employer have to pay an additional fee for a blanket petition?
- How can an employer expedite Form I-129?
- Where does the employer file Form I-129?
- How can a nonimmigrant bring his/her family to the U.S. or change the status of family members already in the U.S.?
- Can a foreign employer apply for a P-3 nonimmigrant to work in the U.S.?

Information about the Period of Authorized Stay

- How long can a nonimmigrant stay in P-3 status?

Back to: P-3 Artists or Entertainers Foreign National Living Abroad Hiring a Foreign National

Information about a Change of Employers or Multiple Employers

- Can a P-3 nonimmigrant change employers?
- Can a P-3 nonimmigrant work for more than one employer?

Information about Employer Responsibilities

- What is an employer liable for once a P-3 nonimmigrant is in their employ?
- How can an employer cancel a P-3 visa or status?

Information about Travel

- Can a nonimmigrant travel outside the U.S. and then reenter?

Other Questions

- Can a P-3 nonimmigrant intend to immigrate permanently to the U.S.?
- Can a P-3 nonimmigrant work in more than one location?

Back to: P-3 Artists or Entertainers Foreign National Living Abroad Hiring a Foreign National

What is the definition of “culturally unique”?

Culturally unique means a style of artistic expression, methodology, or medium that is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

What is the definition of “arts”?

Arts is defined as fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

What is the definition of “group”?

Group is defined as two or more persons established as one entity or unit to perform or to provide a service.

What is considered an “event or performance”?

An event or performance is considered an activity such as a tour, exhibit, project, entertainment event, or engagement.

What initial requirements must P-3 Artists or Entertainers in a Culturally Unique Program meet?

The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form.

The event or events must be for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.

What initial requirements must P-3 Essential Support Personnel meet?

The essential person must have been determined to be an integral part of the performance of a P-3 because he or she performs support services that cannot be readily performed by a U.S. worker and are essential to the successful performance of services by the P-3.

The essential person must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-3.

Back to: P-3 Artists or Entertainers Foreign National Living Abroad Hiring a Foreign National

What kind of initial documentary evidence will a U.S. employer need to file for a P-3 Artist or Entertainer?

A U.S. employer or the sponsoring organization files the I-129 with:

- A written consultation from an appropriate labor organization;
- Affidavits, testimonials or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching or teaching the unique and traditional art forms and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skills.
- Documentation that all of the performances or presentations will be culturally unique events, and;
- Documentation the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals or other published materials.

What kind of initial documentary evidence will a U.S. employer need to file for a P-3 Essential Support Personnel?

The U.S. employer files the petition with the following evidence:

- A written consultation with a labor organization in the skill in which the alien will be involved;
- A statement describing the alien's prior and current essentiality, critical skills and experience with principal alien;
- A copy of any written contract between the employer and the alien or a summary of the terms of the oral agreement under which the alien will be employed.

How long can a nonimmigrant stay in P-3 status?

A beneficiary may be admitted to the U.S. for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition. There is no maximum period of stay. However, extensions of stay may only be granted in one-year increments.

Back to: P-3 Artists or Entertainers Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

Q-1 International Cultural Exchange Visitor

OVERVIEW

The purpose of the Q-1 International Cultural Exchange Visitor classification is to allow participants in an international cultural exchange program to obtain employment and training in the United States while sharing their history, culture, and the traditions of their home country with the American public.

What information are you seeking? (Please select one of the following options)

- Definitions
- Information about the Filing Process
- Information about the Period of Authorized Stay
- Information about a Change of Employers or Multiple Employers
- Information about Employer Responsibilities
- Information about Travel
- Other Questions

Back to: Foreign National Living Abroad Hiring a Foreign National

Definitions

- Who is considered an “international cultural exchange visitor”?
- What is the definition of “doing business”?
- What is the definition of “duration of program”?

Information about the Filing Process

- How does an employer apply for a Q-1 nonimmigrant employee?
- What initial requirements must the international cultural exchange program meet?
- What initial eligibility requirements must the beneficiary of a Q-1 petition meet?
- What kind of initial documentary evidence will a U.S. employer need to file with Form I-129?
- What is the filing fee for Form I-129?
- Can an employer include more than one worker on Form I-129?
- Do the I-129 filing procedures for multiple workers differ from those for one worker?
- Must the names of all workers be listed on Form I-129 if it is a blanket petition?
- Can a beneficiary or beneficiaries of a Form I-129 be substituted?
- Is there an additional fee for a blanket petition?
- Can an employer expedite Form I-129?
- Where does the employer file Form I-129?
- Can the dependents of a Q-1 nonimmigrant accompany or follow-to-join the Q-1?
- Can a foreign employer apply for a Q-1 nonimmigrant to work in the U.S.?

Information about the Period of Authorized Stay

- How long can a nonimmigrant stay in Q-1 status?

Information about a Change of Employers or Multiple Employers

- Can a Q-1 nonimmigrant change employers?
- Can a Q-1 nonimmigrant work for more than one employer?

Back to: Q-1 International Cultural Exchange Visitor Foreign National Living Abroad Hiring a Foreign National

Information about Employer Responsibilities

- What is an employer held liable for once a Q-1 is in their employ?
- How can an employer cancel a Q-1 visa or status?

Information about Travel

- Can a nonimmigrant travel outside the U.S. and then reenter?

Other Questions

- Can a Q-1 nonimmigrant work in more than one location?
- Can a Q-1 nonimmigrant intend to immigrate permanently to the U.S.?
- What is VIBE?

Back to: Q-1 International Cultural Exchange Visitor Foreign National Living Abroad Hiring a Foreign National

What initial requirements must the international cultural exchange program meet?

In order to qualify as an international cultural exchange program the international cultural exchange program must:

- Be accessible to the public by taking place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program;
- Have a cultural component, which is an essential and integral part of the international cultural exchange visitor's employment or training; and
- The international cultural exchange visitor's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component.

Note: The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality.

Who is considered an “international cultural exchange visitor”?

An international cultural exchange visitor is considered a person who has a residence in a foreign country that he or she has no intention of abandoning, and who is coming temporarily to the United States to take part in an international cultural exchange program approved by the Attorney General.

What is the definition of “doing business”?

Doing business means the regular, systematic, and continuous provision of goods and/or services (including lectures, seminars and other types of cultural programs) by a qualified employer that has employees, and does not include the mere presence of an agent or office of the qualifying employer.

What is the definition of “duration of program”?

Duration of program means the time in which a qualified employer is conducting an approved international cultural exchange program in the manner as established by the employer's petition for program approval, provided that the period of time does not exceed 15 months.

Back to: Q-1 International Cultural Exchange Visitor Foreign National Living Abroad Hiring a Foreign National

What kind of initial documentary evidence will an U.S. employer need to file with the Petition for a Nonimmigrant Worker (I-129)?

The petition must be filed with evidence that the employer:

- Maintains an established international cultural exchange program.

  This may be demonstrated by submitting copies of catalogs, brochures or other types of materials that illustrate:

  a) The cultural component of the program is designed to give an overview of the attitude, customs, history, heritage, philosophy, tradition and/or other cultural attributes of the participant's home country, and;
  b) The program activities take place in a public setting where the sharing of culture can be achieved through direct interaction with the American public or a segment thereof.

- Has designated a qualified employee as a representative who will be responsible for administering the international cultural exchange program and who will serve as liaison with the U.S. Citizenship and Immigration Services;

- Is actively doing business in the United States;

- Will offer the alien(s) wages and working conditions comparable to those accorded local domestic workers similarly employed; and

- Has the financial ability to remunerate the participant(s).

What initial eligibility requirements must the beneficiary of a Q-1 petition meet?

In order to qualify initially for a Q-1 the beneficiary must meet the following:

- Is at least 18 years of age at the time the petition is filed;
- Is qualified to perform the service or labor or receive the type of training stated in the petition;
- Has the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public; and
- Has resided and been physically present outside of the United States for the immediate prior year, if he or she was previously admitted as an international cultural exchange visitor.

Back to: Q-1 International Cultural Exchange Visitor Foreign National Living Abroad Hiring a Foreign National

Can the dependents of a Q-1 nonimmigrant accompany or follow-to-join the Q-1?

No. The dependents of Q-1 International Cultural Exchange Visitor cannot accompany or follow-to-join a Q-1. There is no nonimmigrant classification for the dependents of a Q-1.

How long can a nonimmigrant stay in Q-1 status?

The period of admission is the duration of the approved petition for the Q-1 International Cultural Exchange Visitor or fifteen (15) months, whichever is shorter. A Q-1 visitor may remain in status for a maximum period not to exceed fifteen months.

Can a beneficiary or beneficiaries of a Form I-129 be substituted?

Yes. A petitioner may request substitution by submitting a letter with the request along with a copy of the petitioner's approval notice to the consular office at which the alien will apply for a visa, or port of entry where the alien will apply for admission.

The Petitioner must state the date of birth, county of nationality, level of education, and position title of each prospective beneficiary and must certify that each is qualified to perform the service, or receive the training described in the approved petition. The petitioner must also certify each beneficiary's wages and that the offered wages and working conditions are comparable to those of domestic workers.

Back to: Q-1 International Cultural Exchange Visitor Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

R-1 Religious Workers

OVERVIEW

The purpose of the R-1 Religious Worker nonimmigrant visa classification is to afford bona fide nonprofit religious organizations the ability to temporarily bring foreign workers to the U.S., who for two years immediately preceding the application, have been members of the religious denomination, to work in one of the following capacities:

- as a minister of religion;
- as a professional in a religious occupation, or;
- for a bona fide nonprofit religious organization in a religious occupation which relates to a traditional religious function.

Frequently Asked Questions

(FAQs continued on next page)

- What is a religious organization held liable for once an R-1 nonimmigrant is in their employ?
- How can a religious organization cancel an R-1 visa or status?
- Can an R-1 nonimmigrant change employers?
- Can an R-1 nonimmigrant work for more than one religious organization?
- Can a nonimmigrant travel outside the U.S. and then reenter?
- Can an R-1 nonimmigrant intend to immigrate permanently to the U.S.?
- What are the employer's notification requirements when an R-1 worker is terminated or working less than the required number of hours?
- What is VIBE?

Back to: Foreign National Living Abroad Hiring a Foreign National

How does a bona fide nonprofit religious organization apply for an R-1 Religious Worker?

A foreign national seeking a nonimmigrant R-1 status cannot self-petition, but must have a qualifying employer submit a Form I-129, Petition for a Nonimmigrant Worker, on his or her behalf. If the beneficiary is already in the U.S. in a valid nonimmigrant status and is seeking a change to R-1 status, the employer must still submit Form I-129.

Must a bona fide nonprofit religious organization file Form I-129, Petition for a Nonimmigrant Worker, to get an R-1 status for an employee?

Yes. It is necessary to file Form I-129 to obtain initial R-1 status. It is also necessary to file Form I-129 if the individual is already in the United States in a valid nonimmigrant status seeking a change to R-1 status or an extension of an R-1 status.

What is considered a bona fide nonprofit religious organization?

A bona fide nonprofit religious organization is a religious organization that is exempt from taxation. A bona fide nonprofit religious organization must apply for and receive an IRS section 501(c)(3) determination letter to demonstrate non-profit status.

Affiliated organizations or petitioning organizations that are not classified as religious organizations by the IRS must establish that they are tax-exempt and provide documentation that demonstrates their religious nature and purpose as well as a certification by a tax-exempt religious organization in their denomination. Such organizations may establish that they are affiliated with the religious denomination by submitting the *Religious Denomination Certification* in the revised Form I-129 (with an edition date of November 26, 2008, or later).

What is the definition of “minister”?

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion.

What is the definition of “professional capacity”?

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

How long can a nonimmigrant stay in R-1 Religious Worker status?

The initial admission of a religious worker, spouse and unmarried children under 21 years of age, cannot exceed 30 months. After this an extension may be granted for an additional period not to exceed 30 months. A religious worker’s total period of stay may not exceed 60 months or 5 years.

Back to: R-1 Religious Workers Foreign National Living Abroad Hiring a Foreign National

What kind of initial documentary evidence will a qualifying employer need to apply for an R-1 nonimmigrant worker?

The bona fide nonprofit religious organization must submit documentary evidence that demonstrates the following:

- That the organization qualifies as a nonprofit organization in the form of:

  a) A determination letter from the Internal Revenue Service (IRS) showing the tax exempt status of the petitioning religious organization under Internal Revenue Code 501(c)(3).

  Affiliated organizations or petitioning organizations that are not classified as religious organizations by the IRS must establish that they are tax-exempt and provide documentation that demonstrates their religious nature and purpose as well as a certification by a tax-exempt religious organization in their denomination. Such organizations may establish that they are affiliated with the religious denomination by submitting the *Religious Denomination Certification* in the revised Form I-129.

- According to Form I-129 and Supplement R to the Form, the petitioning religious organization must submit an attestation and evidence as required by the Form. The attestation must include the following:

  a) That the prospective employer is a bona fide non-profit religious organization or a religious organization which is affiliated with the religious denomination and is exempt from taxation;
  b) The number of members of the prospective employer's organization and the number of aliens holding religious worker status (both immigrant and nonimmigrant) and the number of petitions filed by the employer for such status within the preceding 5 years;
  c) The complete package of salaried or non-salaried compensation being offered and a detailed description of the alien's proposed daily duties;
  d) That an alien seeking nonimmigrant R-1 status will be employed for at least 20 hours per week;
  e) That immediately prior to the filing of the petition the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work;
  f) That the alien is qualified for the religious worker position he or she seeks.

Will USCIS be conducting on-site inspections of religious organizations?

Yes. USCIS will be conducting on-site inspections of religious organizations as part of the Administrative Site Visit and Verification Program (ASVVP). The ASVVP is designed to supplement existing DHS and USCIS anti-fraud initiatives. As part of the process, site inspections are conducted to verify that a location of employment exists and to validate information provided on the petition. Religious worker site visits will take place both before and after adjudication of the petition. Inspections may include a tour of the organization's facilities, interviews with organization officials, a review of selected organization records relating to the organization's compliance with immigration laws and regulations, and interviews with any other individuals or review of any other records that USCIS considers relevant to the integrity of the organization.

Note: For more information about USCIS on-site inspections, please call our toll-free number at 1-800-375-5283.

Back to: R-1 Religious Workers Foreign National Living Abroad Hiring a Foreign National

Who will be conducting the site visits?

USCIS Immigration Officers will be conducting site visits through the Administrative Site Visit and Verification Program. Site inspectors receive specialized training specific to conducting site visits. These individuals will be operating under the authority delegated to USCIS by the Secretary of Homeland Security to perform functions under U.S. immigration laws, including verifying information associated with applications or petitions.

What specific tasks will the site inspectors perform?

Site inspectors will verify the existence of a petitioning entity, take digital photos, obtain documents, and speak with organizational representatives to confirm the beneficiary's work location, employment workspace, hours, salary, and duties to assist USCIS in determining whether they are in compliance with the terms and conditions stated in the petition.

What are the compensation requirements for R-1 workers?

The beneficiary of an initial petition for R-1 nonimmigrant status must be compensated either by salaried or non-salaried compensation and the petitioner must provide verifiable evidence of such compensation. If there is to be no compensation, the petitioner must provide verifiable evidence that such non-compensated religious workers will be participating in an established, traditionally non-compensated, missionary program within the denomination, which is part of a broader international program of missionary work sponsored by the denomination. The petitioner must also provide evidence of how the aliens will be supported while participating in that program. Petitioners must also provide evidence of past compensation or support for nonimmigrants with any extensions of status request for such nonimmigrants.

Back to: R-1 Religious Workers Foreign National Living Abroad Hiring a Foreign National

What are the employer's notification requirements when an R-1 worker is terminated or is working less than the required number of hours?

The petitioning employer must notify USCIS within 14 days when an R-1 worker is working less than the required number of hours or has been terminated or released from employment before the expiration of the period of authorized stay. The petitioner must include the following information in the notification:

- Reason for the notification or a reason for late notification (if applicable);
- USCIS receipt number of the approved R-1 petition;
- Petitioning employer's information (name, address, telephone number and employer identification number (EIN), if applicable;
- R-1 worker information (full name, date of birth, country of birth, last known physical address and phone number).

The employer should provide notification to USCIS via e-mail at:
CSCR-1EarlyTerminationNotif@uscis.dhs.gov

Notification to USCIS via e-mail is strongly encouraged; however, notification by regular mail can also be made before the end of the 14 days to the following address:

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
California Service Center
Attn: Div X/BCU ACD
P.O. Box 30050
Laguna Niguel, CA 92607-3004

Back to: R-1 Religious Workers Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is living abroad or get information about a specific employment-based nonimmigrant visa category

TN Professionals (NAFTA)

OVERVIEW

The primary purpose of the TN nonimmigrant visa category is to allow Canadian and Mexican professionals to temporarily work in the United States under the 1994 North American Free Trade Agreement (NAFTA). In order to qualify, the Canadian or Mexican professional seeking this status must meet the following criteria:

- The profession is on the NAFTA list;
- The professional possesses the specific requirements for that profession;
- The prospective position requires someone in that professional capacity, and;
- The professional is going to work for a U.S. employer.

NAFTA made obtaining temporary employment in the U.S. and the classification necessary to engage in such employment, easier than previously possible for certain Canadian and Mexican professionals.

What information are you seeking? (Please select one of the following options)

- List of Professional Occupations covered by NAFTA
- Frequently Asked Questions for Canadians seeking TN status
- Frequently Asked Questions for Mexicans seeking TN status
- Other Frequently Asked Questions regarding TN status in General

Back to: Foreign National Living Abroad Hiring a Foreign National

Frequently Asked Questions for Canadians seeking TN status

- How does a Canadian citizen apply for TN status?
- Is it possible to substitute education with experience?

Frequently Asked Questions for Mexicans seeking TN status

- How does a Mexican citizen apply for TN status?
- Is it possible to substitute education with experience?

Other Frequently Asked Questions regarding TN status

- How can a TN nonimmigrant bring his/her family to the U.S. or change the status of family members in the U.S.?
- How long can a nonimmigrant stay in TN status?
- What is an employer liable for once a TN nonimmigrant is in their employ?
- How can an employer cancel a TN visa or status?
- Can a TN nonimmigrant change employers or work for more than one employer?
- When can the TN nonimmigrant begin to work for the new employer?
- Can a TN nonimmigrant travel outside the U.S. and then reenter?
- Can a TN nonimmigrant intend to immigrate permanently to the U.S.?
- What is VIBE?

Back to: TN Professionals (NAFTA) Foreign National Living Abroad Hiring a Foreign National

List of Professional Occupations covered by NAFTA?

The following professions, divided into 4 categories, are covered by NAFTA for TN status. There are minimal educational and/or experience requirements associated with each profession. This information can be obtained from the Department of State TN visa information website.

Profession	**Teacher**	**Scientist**
Accountant	College	Agricultural (Agronomist)
Architect	Seminary	Animal Breeder
Computer Systems Analyst	University	Animal Scientist
Disaster Relief Insurance Claims Adjuster		Apiculturist
Economist	**Medical/Allied Professionals**	Astronomer
Engineer	Dentist	Biochemist
Forester	Dietitian	Biologist
Graphic Designer	Medical Laboratory Technologist (Canada)	Chemist
Hotel Manager	Medical Technologist (Mexico and the U.S.)	Dairy Scientist
Industrial Designer	Nutritionist	Entomologist
Interior Designer	Occupational Therapist	Epidemiologist
Land Surveyor	Pharmacist	Geneticist
Landscape Architect	Physician (teaching or research only)	Geochemist
Lawyer	Physiotherapist/Physical Therapist	Geologist
Librarian	Psychologist	Geophysicist
Management Consultant	Recreational Therapist	Horticulturist
Mathematician	Registered Nurse	Meteorologist
Range Manager/Range Conservationist	Veterinarian	Pharmacologist
Research Assistant		Physicist
Scientific Technician/ Technologist		Plant Breeder
Social Worker		Poultry Scientist
Sylviculturist (including forestry)		Soil Scientist
Technical Publications Writer		Zoologist
Urban Planner (including Geographer)		
Vocational Counselor		

Back to: TN Professionals (NAFTA) Foreign National Living Abroad Hiring a Foreign National

How does a Canadian citizen apply for TN status?

A Canadian citizen seeking admission as a TN nonimmigrant needs to show evidence of Canadian citizenship, a job offer letter from a U.S. employer offering a job included on the NAFTA list. The Canadian citizen may also need to provide a credentials evaluation establishing qualification for the offered job. The prospective employee can apply for admission to the U.S. with an immigration officer at a U.S. port of entry.

A prospective U.S. based employer does not have to file any paperwork on behalf of a Canadian citizen seeking TN status; they only need to supply a letter offering the prospective employee a job in the United States, which is included on the NAFTA job list.

Alternatively, effective October 1, 2012, employers also have the option of filing a Form I-129, Petition for Nonimmigrant Worker, with USCIS on behalf of Canadian citizens seeking TN status who are outside the U.S. Please see our TN NAFTA Professionals webpage for more information.

How does a Mexican citizen apply for TN status?

A Mexican citizen seeking admission as a TN nonimmigrant needs to apply for a TN visa at a U.S. consulate with evidence of Mexican citizenship and a job offer letter from a U.S. employer offering a job included on the NAFTA list. The Mexican citizen may also need to provide a credentials evaluation establishing qualification for the offered job.

A prospective U.S. based employer does not have to file any paperwork on behalf of a Mexican citizen seeking TN status; they only need to supply a letter offering the prospective employee a job in the United States, which is included on the NAFTA job list.

Is it possible to substitute education with experience?

Where a bachelor's degree is specifically required, experience cannot be substituted for the degree. Please refer to the NAFTA job list for the educational requirements for each profession.

Back to: TN Professionals (NAFTA) Foreign National Living Abroad Hiring a Foreign National

How can a TN nonimmigrant bring his/her family to the U.S. or change the status of family members in the U.S.?

A dependent of a TN nonimmigrant will need to obtain a TD nonimmigrant classification to be admitted to the U.S. The TD applicant should apply with an immigration officer at a U.S. port-of-entry. If the dependents are already in a valid status in the U.S., but would like to change their status to the TD nonimmigrant classification, they should file Form I-539, Application to Extend or Change Nonimmigrant Status, with USCIS. If they are out of status in the U.S., they must return to Canada or Mexico and apply at a port-of-entry.

Note: The term "dependents" as used in this question is defined as the spouse and unmarried children under the age of 21 of a TN nonimmigrant. In addition, they may not work in the U.S. as TD nonimmigrants.

When can the TN nonimmigrant begin to work for that new employer?

Employment with a different or with an additional employer is not authorized until USCIS approves the Form I-129, Petition for a Nonimmigrant Worker. A TN nonimmigrant may also change employers by applying at the port-of-entry by presenting the same documentation from the new employer as was required for the initial application for TN status.

How long can a nonimmigrant stay in TN status?

A qualifying TN nonimmigrant shall be admitted to the U.S. for a period not to exceed three years. There is no specific limit on the total maximum period of time a citizen of Canada or Mexico may remain in TN status. However, the TN classification is a nonimmigrant classification and is not to be used as a way in which to immigrate permanently to the U.S.

Can a TN nonimmigrant change employers or work for more than one employer?

Yes. TN nonimmigrants can change employers and work for more than one employer provided the new U.S. employer files a Form I-129, Petition for Nonimmigrant Worker, with USCIS.

Back to: TN Professionals (NAFTA) Foreign National Living Abroad Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to temporarily employ a foreign national who is already in the U.S. in another nonimmigrant category

OVERVIEW

Employing a foreign national who is already in the U.S. in another nonimmigrant status requires a change of status for the prospective employee. In general, i the prospective employee was admitted as a nonimmigrant, he/she may be able to change to another nonimmigrant status. However, there are a number of requirements, and a change of status is not available to all nonimmigrant categories or in all circumstances.

Frequently Asked Questions

- What are the terms and conditions of the various nonimmigrant employment categories?
- How do you change the status of someone who is already in another nonimmigrant status?

Back to: Hiring a Foreign National

What are the terms and conditions of the various employment-based nonimmigrant categories?

For information about a particular visa category, please select the relevant category below.

H-1B	H-2A	H-2B	H-3	L-1	O-1
P-1	P-2	P-3	Q-1	R-1	TN

How do you change the status of someone who is already in another nonimmigrant status?

If the beneficiary is NOT in C, D, K, S, or J status, then the process for changing status is the same as for applying for initial status. For information on this process, please select the relevant visa category below.

H-1B	H-2A	H-2B	H-3	L-1	O-1
P-1	P-2	P-3	Q-1	R-1	TN Canadian
TN Mexican					

Note: Information if the beneficiary is in C, D, K, S, or J visa categories.

Back to: Foreign National in U.S. Hiring a Foreign National

Note: If the beneficiary is in C, D, K, S, or J visa categories, please see the applicable visa category information below:

C Visa: The beneficiary cannot change status.

D Visa: The beneficiary cannot change status.

K-1/K-2: The beneficiary cannot change status.
K-3/K-4: The beneficiary cannot change status while physically present in the U.S.

S Visa: The beneficiary cannot change status.

J Visa: The beneficiary cannot change status if subject to the two-year foreign residency requirement, unless he/she returns home and physically resides in his/her country for 2 years following departure from the U.S., or obtains a waiver of the two-year residency requirement.

As noted below, most J-1 waiver applications require filing Form DS-3035 with the Department of State (DOS). For more information on the requirements for filing Form DS-3035, please see the DOS J-1 visa waiver website.
There are 5 kinds of J-1 waivers:

- Persecution – You would be subject to persecution on account of race, religion, or political opinion if you were to return to your country of residence. To apply, you would file Form DS-3035 with the DOS, then file Form I-612 with USCIS.
- Hardship – Departure from the U.S. would impose exceptional hardship on your USC/LPR spouse or child. To apply, you would file Form DS-3035 with the DOS, then file Form I-612 with USCIS.
- No objection – Your country issues a "no objection statement" that states that your country does not object to the waiver. To apply, first you would file Form DS-3035 with the DOS or U.S. consulate abroad.
- Request by U.S. agency – This waiver is initiated by a U.S. agency showing that the waiver is in the public interest and that requiring the J-1 to return to his/her country for 2 years would be "clearly detrimental" to the official interest of the agency. Filing Form DS-3035 with the DOS is also required for this waiver.
- Conrad State 30 Program – For medical graduates who have agreed to practice medicine for at least 3 years in a medically underserved area. For this waiver, the J-1 applicant would apply with the state public health department, then file Form I-612 with USCIS.

Waiver applications and eligibility requirements are complex. It may be in your best interest to seek legal advice from a licensed immigration attorney or from a not-for-profit agency accredited by the Board of Immigration Appeals.

Back to: Foreign National in U.S. Hiring a Foreign National

Information about Temporary Employment of Nonimmigrant Workers and Extending or Changing a Worker's Status

How to extend the stay of a temporary foreign nonimmigrant worker

OVERVIEW

In certain circumstances a nonimmigrant can apply for, and receive, an extension of stay. However, there are a number of requirements, and an extension of stay is not available to all nonimmigrant categories or in all circumstances.

To extend the stay of a nonimmigrant worker, usually the employer must file Form I-129.

Frequently Asked Questions

- How can an employer extend the status of a nonimmigrant worker if their status is expiring?
- If I already filed a petition for an extension of status for my employee, can I continue employing him/her?

Back to: Hiring a Foreign National

How can an employer extend the status of a nonimmigrant worker if their status is expiring?

To extend status, refer to the process for applying for intial status. For information on this process, please select the relevant visa category below.

H-1B	H-2A	H-2B	H-3	L-1	O-1
P-1	P-2	P-3	Q-1	R-1	TN Canadian
TN Mexican					

If I already filed a petition for an extension of status for my employee, can I continue employing him/her?

A nonimmigrant employee whose status has expired but who had an I-129 petition filed for them to extend his/her stay BEFORE their status expired, is authorized to continue employment with the same employer for a period not to exceed 240 days beginning on the date of the expiration of the previous authorized period of stay. Such authorization shall be subject to any conditions and limitations noted on the initial authorization.

If the petition for extension is denied, the employment authorization automatically terminates upon notification of the denial decision, even if this occurs prior to the expiration of the 240 days.

Back to: Extending the Stay Hiring a Foreign National

Information about Intracompany Transferees (L-1 Nonimmigrants)

OVERVIEW

An employer may submit a Form I-129, "Petition for Non-immigrant Worker," on behalf of a foreign national who works outside the United States for a business that has a parent company, subsidiary, branch, or affiliate in the U.S. These workers, called "intracompany-transferees," come to the United States temporarily to perform services. Those who perform services in a managerial or executive capacity are called "L-1A Non-immigrants." Those who possess specialized knowledge are called "L-1B Non-immigrants." The foreign national must be coming to the United States to work for a parent company, branch, subsidiary or affiliate of the same business that employed the individual abroad. In order to qualify, the individual must have been employed abroad by the corporation, firm, other legal entity, affiliate, or subsidiary on a full-time basis for at least one continuous year during the last three-year period.

What information are you seeking? (Please select one of the following options)

- Definitions
- Information about the Filing Process
- Information about the Period of Authorized Stay
- Information about a Change of Employers or Multiple Employers
- Information about Employer Responsibilities
- Information about Travel
- Other Questions

Back to: Hiring a Foreign National

Definitions

- What is the definition of “intracompany transferee”?
- What is the definition of “managerial capacity”?
- What is the definition of “executive capacity”?
- What is the definition of “specialized knowledge”?

Information about the Filing Process

- How does an employer apply for an L-1 nonimmigrant employee?
- What kind of initial evidence or documents will a U.S. employer need to file with Form I-129 for an L-1 nonimmigrant?
- Can a U.S. employer petition for more than one L-1 worker on the Petition for a Nonimmigrant Worker (I-129)?
- Do the I-129 filing procedures for multiple workers differ from those for one worker?
- Must the names of all workers be listed on the I-129 if it is a blanket petition?
- Is there any numerical limitation on the number of workers a U.S. employer can petition for based on an approved blanket petition?
- What is the filing fee for Form I-129?
- Does the employer have to pay an additional fee for a blanket petition?
- How can an employer expedite Form I-129?
- Where does the employer file Form I-129?
- How do I fill out Part 6 of Form I-129?
- How can a nonimmigrant bring their family to the U.S. or change the status of family members already in the U.S.?
- Can a foreign employer apply for an L-1 nonimmigrant to work in the U.S.?

Information about the Period of Authorized Stay

- How long can a nonimmigrant remain in L-1 status?

Back to: L-1: Intracompany Transferees Hiring a Foreign National

Information about a Change of Employers or Multiple Employers

- Can a nonimmigrant change employers?
- Can a nonimmigrant work for more than one employer?
- Can an L-1B work at a site other than that of the petitioning employer?

Information about Employer Responsibilities

- What is an employer liable for once an L-1 is in their employ?
- How can an employer cancel an L-1 visa or status?

Information about Travel

- Can a nonimmigrant travel outside the U.S. and then reenter?

Other Questions

- Can an L-1 nonimmigrant intend to immigrate permanently to the U.S.?
- Must an L-1 nonimmigrant work full-time?
- Can the dependents of an L-1 nonimmigrant work in the United States?
- What is VIBE?

Back to: L-1: Intracompany Transferees Hiring a Foreign National

What kind of initial evidence or documents will a U.S. employer need to file with Form I-129) for an L-1 nonimmigrant?

A U.S. employer who wants to file a petition for L-1, as required by regulations, should initially file the petition with the following evidence:

- Evidence of the qualifying relationship between the U.S. and the foreign employer that addresses ownership and control, such as an annual report, copies of articles of incorporation, financial statements, or stock certificates;
- A letter from the alien's foreign qualifying employer detailing his or her dates of employment, job duties, qualifications and salary and demonstrating that the alien worked for the employer abroad for at least one continuous year within the three-year period before the filing of the petition in an executive or managerial capacity or in a position involving specialized knowledge; and
- A detailed description of the proposed job duties and qualifications and evidence the proposed employment is in an executive or managerial capacity or in a position involving specialized knowledge.

What is the definition of “intracompany transferee”?

An "intracompany transferee” is an employee of a company abroad who is to be transferred to a U.S. affiliate, parent, or subsidiary entity on a temporary work basis. In order to be eligible, the employee must have worked for the company abroad for one continuous year out of the preceding three years. The employee must be coming to the U.S. in order to continue working for the same employer or the affiliate, subsidiary, or parent company.

Back to: L-1: Intracompany Transferees Hiring a Foreign National

What is the definition of “managerial capacity”?

Managerial capacity means an assignment within an organization in which the employee primarily:

- Manages the organization, or a department, subdivision, function, or component of the organization;
- Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

What is the definition of “executive capacity”?

Executive capacity means an assignment within an organization in which the employee primarily:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making; and
- Receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

What is the definition of “specialized knowledge”?

Specialized knowledge means special knowledge possessed by an individual of 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.

Back to: L-1: Intracompany Transferees Hiring a Foreign National

Can a U.S. employer petition for more than one L-1 worker on the Petition for a Nonimmigrant Worker (I-129)?

Yes. An employer can petition for more than one L-1 worker on the *Petition for a Nonimmigrant Worker* (I-129), which is called a blanket petition.

Must the name of all workers be listed on Form I-129 if it is a blanket petition?

Yes. However the name of the worker only appears on the individual I-129S or I-129, not on the blanket petition itself, because the blanket petition is for the employer.

Is there a numerical limitation on the number of workers a U.S. employer can petition for based on an approved blanket petition?

No. There is no numerical limitation on the number of people an employer could petition for based on an approved blanket petition. However, the employer must first demonstrate the need for the amount of employees being petitioned for.

Does the employer have to pay an additional fee for a blanket petition?

No. The employer does not have to pay any additional fee when filing the I-129 on behalf of more than one worker. However, a $500 anti-fraud fee is charged for an alien filing a visa application abroad for an L blanket petition.

How long can a nonimmigrant stay in L-1 status?

Effective February 14, 2012, L visas will be issued with a validity period that is based upon a U.S. Department of State reciprocity schedule. The reciprocity schedule will reflect the reciprocal treatment the U.S. receives from the applicant's home country. To see the State Department visa reciprocity schedule for your country, please visit the U.S. Department of State's website.

The State Department's visa reciprocity schedule shows the maximum length of time for which the L visa can be issued.

Can a foreign employer apply for an L-1 nonimmigrant to work in the U.S?

Yes. A foreign employer can apply for an L-1 to work in the U.S. if the foreign employer has a legal business entity in the U.S.

Must an L-1 nonimmigrant work full-time?

An L-1 nonimmigrant is not required to work full-time, but must dedicate a significant portion of his or her time on a regular and systematic basis.

Back to: L-1: Intracompany Transferees Hiring a Foreign National

Can the dependents of an L-1 nonimmigrant work in the United States?

Yes. The L-2 spouse of an L–1 can work in the United States by filing Form I-765, Application for Employment Authorization, with USCIS. However, minor children may not be employed under the L-2 classification.

Note: The employer should have either the employee or the employee's spouse call the National Customer Service Center toll-free number at 1-800-375-5283 for more specific information regarding this issue.

Can an L-1B nonimmigrant work at a site other than that of the petitioning employer?

No. An L-1B temporary worker can no longer work primarily at a worksite other than that of their petitioning employer if the work will be controlled or supervised by a different employer or if the offsite work arrangement is essentially to provide labor for hire, rather than service related to the specialized knowledge of the petitioning employer.

Back to: L-1: Intracompany Transferees Hiring a Foreign National

Disclaimer

The information contained here is a basic guide to help you become generally familiar with many of our rules and procedures. Immigration law can be complex, and it is impossible to describe every aspect of every process. After using this guide, the conclusion reached, based on your information, may not take certain factors such as arrests, convictions, deportations, removals or inadmissibility into consideration. If you have any such issue, this guide may not fully address your situation, as the full and correct answer may be significantly different.

This guide is not intended to provide legal advice. If you believe you may have an issue such as any described above, it may be beneficial to consider seeking legal advice from a reputable immigration practitioner such as a licensed attorney or nonprofit agency accredited by the Board of Immigration Appeals before seeking this or any immigration benefit.

For more information about immigration law and regulations, please see our website at www.uscis.gov.

Back to: Hiring a Foreign National