

COMMONLY USED NON-IMMIGRANT VISAS

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INTRODUCTION

This memorandum is provided to assist with an understanding of the appropriate U.S. visa categories and procedures for its employees being transferred to the United States. This memorandum includes comprehensive materials including instructions on the visa application process for professional, managerial, and technical staff.

Only certain categories of individuals are authorized to receive compensation for work/services performed. Most visa categories that do provide for employment authorization limit the person to employment with ONLY the sponsoring employer. Attached as Exhibit 1 is a list of nonimmigrant visas.

Most foreign employees sent to the U.S. will fall under one of three categories: business personnel, professionals or technicians and executives or managers. Traditionally, the visa status used for technical professionals is the H-1B status or the intracompany L-1B status. The visa status for executives/managers is generally the intracompany L-1A visa status. Certain Canadian and Mexican employees are eligible for more lenient visa procedures pursuant to the North American Free Trade Agreement ("NAFTA"). Below, we will discuss the traditional application process and the benefits of the NAFTA.

The choice of the visa category best suited to individual circumstances would be made after a review of each employee's nationality, professional standing, work experience and position with the company.

B-1 VISA --BUSINESS/PROFESSIONAL VISITORS

Business visitors may enter the U.S. to (1) engage in commercial transactions, (2) participate in litigation, (3) participate in scientific, educational, professional or business conferences and (4) conduct independent research. Alien's coming to the U.S. with B-1 visas generally may not receive a salary from a U.S. source, with the exception of reimbursement for expenses incurred for travel, room and board.

Both the Department of State and the Immigration and Naturalization Service ("INS") have published proposed regulations to amend the current regulations on visas for temporary visitors (B-1, visitor for business and B-2, visitor for pleasure). The most significant proposal in the regulations pertains to the current B-1 in lieu of H-1B category. Currently, certain aliens who would normally be classified under the H-1B Professional or H-3 Trainee Visa categories may be permitted to enter the U.S. and engage in "employment" on a B-1 visa. A person is normally eligible for and H-1B professional visa if he or she has a professional degree and the job requires such a professional degree. An individual is eligible for an H-3 trainee visa, if the position involves primarily classroom type training and very little productive employment. The trainee must also be seeking the training in order to enhance his/her career abroad. If the

individual is employed by a subsidiary or parent company abroad, and will be coming to the U.S. for a temporary period, and will continue to be compensated from that source abroad, he/she may be allowed to use the B-1 visa. The proposed rule would eliminate the B-1 in lieu of H-1B category for professionals.

Current U.S. regulations provide that a commercial or industrial worker may enter the U.S. in B-1 status to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the U.S. The proposed regulations would more clearly define the circumstances of such entries by requiring the following:

1. The purchase contract must involve a physical product (machinery or equipment).
2. The foreign company must be regularly engaged in business of a commercial nature.
3. There can be no direct correlation between the payment to the foreign company from the U.S. company for the equipment and the salaries of the individuals coming to the U.S. to install the equipment.
4. The foreign company must control all aspects of the its employees activities.

The proposed regulations also seek to clarify the standards for the general use of the B-1 visa. The B-1 visa may be used for business visitors engaging in legitimate business activities of a commercial character as well as any other legitimate activity of a temporary business nature. The Department of State has decided against establishing a definitive definition of "business" and has proposed that applications be reviewed in light of Congressional intent to (1) refrain from impeding international commerce, and (2) protect the U.S. work force from unfair competition. Therefore, the business visitor must be engaged in an activity that would not be considered "labor for hire" --labor that a U.S. worker be qualified to perform.

L-1 VISA --INTRACOMPANY TRANSFEREE

The L-1 visa was created to allow international companies to transfer key employees from the company abroad to a parent company, wholly-owned subsidiary, affiliate, branch or certain joint ventures in the United States. The duration of stay is for an initial three-year period, one year if the U.S. company is a new, start-up company, with a maximum stay of seven years for a manager or executive (L-1A) or five years for an individual with "specialized knowledge"(L-1B). In order to qualify for an L-1 visa, an employee must:

1. Be employed by the company abroad (outside the U.S.) for one of the three years preceding the application for the L-1 visa.
2. Be in a managerial, executive, or "specialized knowledge" position.

An executive or manager is one who runs the company; supervises professionals; makes

discretionary decisions on behalf of the company; has the authority to hire and fire; controls a reasonably sizable budget; receives only general supervision or direction from higher level executives, the Board of Directors, or shareholders of the company; and spends virtually all of this time performing executive or managerial duties. Specifically excluded from these categories are first-line supervisors unless the persons being supervised are themselves managerial or professional employees (e.g., typing pool manager or mechanic foreman are unlikely to qualify).

A "specialized knowledge" employee is one who is employed primarily for his or her ability to carry out a key process or function which is important or essential to the company's operations. An employee who possesses knowledge of a proprietary or unique nature, such as a manufacturing process, business technique, or formula, has "specialized knowledge." The position which the employee will fill must involve knowledge central to the company's operation. The knowledge must be necessary for the company to compete or enhance its market position in the U.S. The knowledge should be narrowly held within the organization and unique.

The L-1 visa application is filed with the INS in the U.S. It can take anywhere from three to six weeks for adjudication. Upon approval, if the beneficiary is outside the U.S., he/she must take his/her approval notice to a U.S. consular post abroad for L-1 visa issuance. Alternatively, if the beneficiary is in the U.S. in another visa status, he/she may obtain a status change to L-1 that does not require visa issuance abroad. However, the L-1 visa will have to be obtained on the next trip abroad in order to re-enter the U.S. in L-1 status.

Perhaps a few examples would be helpful. If a Canadian company wishes to transfer to the U.S. a Vice President, Executive Director, Finance Manager or the like to direct professional employees or run a component or a part of the company's U.S. operations, the L-1 visa would probably be appropriate. It may also be a good choice for certain project managers who will come to the U.S. to lead a team of professionals in the completion of a project for the U.S. operation. The "specialized knowledge" dimension of this visa would allow for the transfer of an employee such as an engineer who possesses essential company knowledge or proprietary information, in order to work with that knowledge for the U.S. operation.

L-1 VISA --INTRACOMPANY TRANSFEREE AND NAFTA

For Canadian citizens (not landed immigrants), the L-1 visa application may be made to the INS at a major port of entry. The Toronto airport is commonly used for this purpose and adjudications normally take place the same day within two hours. Alternately, L-1A visa applications may be filed with the INS in the U.S. If the application is filed in the U.S., adjudication may take as long as four to six weeks. If the application is approved, the INS will issue an approval notice. As Canadian citizens are visa-exempt, they may enter the U.S. after receiving their approvals for L-1 status, without seeking visa issuance from a consular post.

H-1B -TEMPORARY SPECIALTY WORKER VISA

The H-1B visa is available to those individuals whose services are sought by a U.S. employer in a "specialty occupation." To qualify for H-1B temporary worker status, an alien must have at least a bachelor's level degree --or the foreign equivalent --in a field which is regarded by the INS as a profession or have the equivalent of a degree in professional work experience. If the employee has the equivalent of a U.S. bachelors degree and an employer requires his or her services in a professional position, the employee should be eligible for an H-1B temporary worker visa.

Prior to filing an H-1B petition with the INS, the employer must first attest to the Department of Labor that the alien will receive a salary commensurate with the prevailing wage for U.S. workers, in the same job category. The employer must also make certain attestations to show that U.S. workers are in no way disadvantaged by the hiring of the foreign national. The attestations must be posted internally along with the offered salary and the prevailing wage. The employer is required to obtain and maintain documentation to support each of the Labor Condition Statements made on the LCA.

When the LCA is approved by the Department of Labor, the LCA and H-1B visa petition are then filed with the INS. Depending upon the geographic location of the position offered, the adjudication of the H-1B can take three to six weeks. Upon approval, if the beneficiary is outside the U.S., he/she must take his/her approval notice to a U.S. Consulate abroad and have the H-1B visa issued prior to entry to the U.S. If the beneficiary is in the U.S. in another visa status, he/she may obtain a status change to H-1B that does not require visa issuance abroad. However, an H-1B visa will have to be obtained on the next trip abroad in order to re-enter the U.S. in H-1B status.

H-1B and NAFTA

Pursuant to NAFTA any Canadian national may present an approval notice for H-1B status at a the U.S. Canadian border for entry. As indicated above, Canadians will not require visa stamps.

TRADE NAFTA "TN" VISA STATUS

NAFTA has special provisions for professionals who are offered a position in the U.S. Exhibit 2. The professional visa status under NAFTA is called Trade NAFTA status or TN status. A Canadian national who fits within one of the TN occupational categories may present documentation at the border in order to obtain a TN. The documents that are generally required are: (1) documents to prove professional status, (e.g., diploma and transcript, license, letters verifying past work experience); (2) offer of employment in the U.S., and (3) a filing fee of US\$50. There are no special labor applications with regard to prevailing wage or formal petition documents for Canadians.

TN visa status is valid for one year and is indefinitely renewable. In addition to being able to make the application at the border, the employer need not file an attestation with Department of Labor.

If a Canadian national does not fit within one of the given professions identified in the NAFTA, he/she still may qualify for the standard H-1B category for specialty occupations. The choice of visa best suited to individual circumstances would be made after a review of each employee's nationality, professional standing, work experience and position with the company.

Mexican nationals may qualify for TN status. However, there is a limit of 5,500 Mexican TN visas per year. In addition, Mexican nationals must first obtain an labor condition attestation from the Department of Labor and be pre-approved by the INS within the U.S.

PRACTICAL TRAINING

College graduates, who hold valid F-1 status, are eligible for post completion practical training with an employer in the U.S. upon the completion of his/her degree. Pursuant to the practical training authorization, the student is only eligible for a one-year temporary period of employment. The employment must relate to the field that the student studied in college. At the end of the one-year period, if the company would like to extend the employment of the student, an H-1B petition can be filed with the INS requesting that the student's nonimmigrant visa status be changed from F-1 to H-1B. The H-1B petition must be approved prior to the expiration of the practical training period. If the H-1B petition is not approved prior to the expiration, the student must be removed from the company's payroll until the H-1B petition has been approved. In this regard, we recommend filing an H-1B change of status application at least three months prior to the expiration of the practical training period.

NONIMMIGRANT VISAS TO THE U.S.

1. A-1 and A-2 -Foreign government officials and their dependents. Some dependents are granted work authorization.
2. B-1 and B-2 -Business visitors and visitors for pleasure. No work authorization.
3. C-1 -Transit visa. No work authorization.
4. D-1 -Foreign crewmen. Work authorized for the sponsoring employer.
5. E-1 -Treaty trader. Work authorized for the sponsoring employer.
E-2 -Treaty investor. Work authorized for the sponsoring employer.
6. F-1 -Students. Work authorized under very limited circumstances.
F-2 -Dependents of students. No work authorization.
7. G-1, G-2, G-3 and G-4 -Employees of international organizations. Some dependents are granted work authorization.
8. H-1B -Professionals. Work authorized for the sponsoring employer.
H-2A -Temporary Agricultural Workers. Work authorized for the sponsoring employer.
H-2B -Temporary workers. Work authorized for the sponsoring employer.
H-3 -Trainee. Work authorized for the sponsoring employer.
H-4 -Dependents of H visa holders. No work authorization.
9. I-1 -Foreign Journalists. Work authorized for the sponsoring employer. Dependents are not work authorized.
10. J-1 -Exchange Visitors including students, scholars and trainees. Work authorized under certain circumstances.
J-2 -Dependents. Work authorized under certain circumstances.
11. K-1 -Fiancé of U.S. citizen. Work authorized.
12. L-1A -Intra-company executive or managerial transferee. Work authorized for the sponsoring employer.
L-1B -Intra-company specialized knowledge transferee. Work authorized for the sponsoring employer.
L-2 -Dependents. No work authorization.
13. M-1 -Vocational student. Work authorized under certain circumstances.
M-2 -Dependents. No work authorization.

14. O-1 -Individual of Extraordinary Ability in the sciences, education, business, athletics or the arts. Work authorized for the sponsoring employer.
O-2 -Accompanying workers. Work authorized for the sponsoring employer.
O-3 -Dependents. No work authorization.
15. P-1 -Internationally known athletes and entertainment groups. Work authorized for the sponsoring employer.
P-2 -Performing artists under a reciprocal exchange program. Work authorized for the sponsoring employer.
P-3 -Culturally unique entertainers. Work authorized for the sponsoring employer.
P-4 -Dependents. No work authorization.
16. Q-1 -International Cultural Exchange. Work authorized for the sponsoring employer.
17. R-1 -Religious Workers. Work authorized for the sponsoring employer.
R-2 -Dependents. No work authorization.
18. TN -Trade NAFTA. Work authorized for the sponsoring employer
TD -Trade NAFTA Dependent. No work authorization.

NAFTA PROFESSIONALS

1. Accountant --Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A., or C.M.A.N

A business person seeking temporary employment under this Appendix may also perform training functions relating to the profession, including conducting seminars.

2. Architect --Baccalaureate or Licenciatura Degree; or state/provincial license.

The terms "state/provincial license" and "state/provincial/federal license" mean any document issued by a state, provincial, or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

3. Computer Systems Analyst --Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post Secondary Certificate and three years experience.

(a) "Post Secondary Diploma" means a credential issued, on completion of two or more years of post secondary education, by an accredited academic institution in Canada or the United States.

(b) "Post Secondary Certificate" means a certificate issued, on completion of two or more years of post secondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.

4. Disaster Relief Insurance Claims Adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster) --Baccalaureate or Licenciatura Degree and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims.

5. Economist --Baccalaureate or Licenciatura Degree.

6. Engineer --Baccalaureate or Licenciatura Degree; or state/provincial license.

7. Forester --Baccalaureate or Licenciatura Degree; or state/provincial license.

8. Graphic Designer --Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate and three years experience.
9. Hotel Manager --Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post Secondary Certificate in hotel/restaurant management and three years experience in hotel/restaurant management.
10. Industrial Designer --Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post Secondary Certificate, and three years experience.
11. Interior Designer --Baccalaureate or Licenciatura Degree or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
12. Land Surveyor --Baccalaureate or Licenciatura Degree or state/provincial/federal license.
13. Landscape Architect --Baccalaureate or Licenciatura Degree.
14. Lawyer (including Notary in the province of Quebec) --L.L.B., J.D., L.L.L., B.C.L., or Licenciatura degree (five years); or membership in a state/provincial bar.
15. Librarian --M.L.S., or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite).
16. Management Consultant --Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement.
17. Mathematician (including Statistician) --Baccalaureate or Licenciatura Degree.
18. Range Manager/Range Conservationist --Baccalaureate or Licenciatura Degree.
19. Research Assistant (working in a post-secondary educational institution) --Baccalaureate or Licenciatura Degree.
20. Scientific Technician/Technologist --Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research.

A business person in this category must be seeking temporary entry for work in

direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.

21. Social Worker --Baccalaureate or Licenciatura Degree.
22. Sylviculturist (including Forestry Specialist) --Baccalaureate or Licenciatura Degree.
23. Technical Publications Writer --Baccalaureate or Licenciatura Degree, or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
24. Urban Planner (including Geographer) --Baccalaureate or Licenciatura Degree.
25. Vocational Counselor --Baccalaureate or Licenciatura Degree.

MEDICAL/ALLIED PROFESSIONALS

1. Dentist --D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or state/provincial license.
2. Dietitian --Baccalaureate or Licenciatura Degree; or state/provincial license.
3. Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States) --Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.

A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment, or prevention of diseases.

4. Nutritionist --Baccalaureate or Licenciatura Degree.
5. Occupational Therapist --Baccalaureate or Licenciatura Degree; or state/provincial license.
6. Pharmacist --Baccalaureate or Licenciatura Degree; or state/provincial license.
7. Physician (teaching or research only) --M.D. Doctor en Medicina; or state/provincial license.
8. Physiotherapist/Physical Therapist --Baccalaureate or Licenciatura Degree; or state/provincial license.
9. Psychologist --State/provincial license; or Licenciatura Degree.

10. Recreational Therapist --Baccalaureate or Licenciatura Degree.
11. Registered Nurse --State/provincial license or Licenciatura Degree.
12. Veterinarian --D.V.M., D.M.V., or Doctor en Veterinaria; or state/provincial license.

SCIENTIST

1. Agriculturist (including Agronomist) --Baccalaureate or Licenciatura Degree.
2. Animal Breeder --Baccalaureate or Licenciatura Degree.
3. Animal Scientist --Baccalaureate or Licenciatura Degree.
4. Apiculturist --Baccalaureate or Licenciatura Degree.
5. Astronomer --Baccalaureate or Licenciatura Degree.
6. Biochemist --Baccalaureate or Licenciatura Degree.
7. Biologist --Baccalaureate or Licenciatura Degree.
8. Chemist --Baccalaureate or Licenciatura Degree.
9. Dairy Scientist --Baccalaureate or Licenciatura Degree.
10. Entomologist --Baccalaureate or Licenciatura Degree.
11. Epidemiologist --Baccalaureate or Licenciatura Degree.
12. Geneticist --Baccalaureate or Licenciatura Degree.
13. Geochemist --Baccalaureate or Licenciatura Degree.
14. Geologist --Baccalaureate or Licenciatura Degree.
15. Geophysicist (including Oceanographer in Mexico and the United States) -
--Baccalaureate or Licenciatura Degree.
16. Horticulturist --Baccalaureate or Licenciatura Degree.
17. Meteorologist --Baccalaureate or Licenciatura Degree.
18. Pharmacologist --Baccalaureate or Licenciatura Degree.
19. Physicist (including Oceanographer in Canada --Baccalaureate or Licenciatura Degree.

20. Plant Breeder --Baccalaureate or Licenciatura Degree.
21. Poultry Scientist --Baccalaureate or Licenciatura Degree.
22. Soil Scientist --Baccalaureate or Licenciatura Degree.
23. Zoologist --Baccalaureate or Licenciatura Degree.

TEACHER

1. College --Baccalaureate or Licenciatura Degree.
2. Seminary --Baccalaureate or Licenciatura Degree.
3. University --Baccalaureate or Licenciatura Degree.