

“Alphabet Aerobics”: An Exercise in United States Non-Immigrant Visas

Non-Immigrant Visa Categories

B-1 (Business Visitor):

Key Points:

- Foreign National must demonstrate ties abroad (i.e. employment abroad).
- Foreign National must not be employed in productive capacity in the U.S.
- No remuneration from U.S. source.
- Examples of B visa purposes:
 - conducting research for an enterprise in another country;
 - completing commercial transactions for an enterprise in another country;
 - engaging in market research for a foreign company looking to expand; or
 - attending conventions and meetings to consult with business associates.
- B-1 in lieu of H-1B: special version of B Visa that allows for productive work on short duration projects.

Time Limit:

- Usually maximum of 6 months per entry. Possible to obtain longer period of admission in some circumstances, but must document purpose of travel and demonstrate that trip is finite in duration.

Reference:

- 8 C.F.R. § 214.2(b); 9 FAM 402.2

E-1/E-2 (Treaty Trader / Treaty Investor):

Key Points:

- Underlying Treaty Agreement between U.S. and Nation of corporate's nationality.
- Business in U.S. must be at least 50% owned by Foreign National(s) of Treaty Country.
- Business in U.S. must demonstrate:
 - Substantial Trade with Foreign National's country (E-1).
 - Substantial Investment in United States (E-2).
- Spouses can apply for employment authorization.

Time Limit:

- Unlimited (issued in up to 5-year increments).

Reference:

- 8 C.F.R. § 214.2(e); 9 FAM 402.9

E-3 (Free Trade Worker):

Key Points:

- Foreign National must be a citizen of Australia.
- Specialty Occupation requiring a U.S. Baccalaureate Degree (or foreign equivalent).
- Field of study must be related to intended position.
- Wage must be set by requirements determined by the Department of Labor (prevailing wage).
- 100% Non-Immigrant intent.
- Cap Limit: 10,500/year (*Has never been reached*).

Time Limit:

- Unlimited increments of 2 years (as long as Non-Immigrant intent remains).

Reference:

- 8 C.F.R. § 214.2(e); 9 FAM 402.9

F-1 (Optional Practical Training):

Key Points:

- Completion of U.S. studies pursuant to valid F-1 status. (Must complete at least one full academic year.)
- Intended position must be related to field of study.
- Must obtain Employment Authorization Card (EAD) to commence employment.

Time Limit:

- 12 months (allowed to obtain 24 month extension if Foreign National holds a Science, Technology, Engineering, or Mathematics [STEM] Degree, Training Program, AND employer is enrolled in E-Verify).

Reference:

- 8 C.F.R. § 214.2(f)(1); 9 FAM 402.5-5(N)(5)

H-1B (“Specialty”/Professional Worker):

Key Points:

- Specialty Occupation requiring a U.S. Baccalaureate Degree (or equivalent education and/or experience).
- Field of study must be related to intended position.
- Wage must be set by requirements determined by the Department of Labor (prevailing wage).
- Cap Limit: 65,000/year (additional 20,000 for Foreign Nationals with U.S. Master’s Degree). Essentially, filings must be made no later than first week of April.
- Expensive: \$750/\$1,500 ACWIA Training Fee (depends on number of full-time employees), \$500 Fraud Fee, and \$460 Base Fee.
- H-1B Visa manifests “dual-intent” (while it is a non-immigrant visa, can still apply for permanent residency simultaneously).
- Spouses can apply for employment authorization in limited circumstances.

Time Limit:

- 6-Year Maximum (can acquire up to 3 years at a time); if in Permanent Residency process, there are means for exceeding this limit until permanent residency is reached.

Reference:

- 8 C.F.R. § 214.2(h); 9 FAM 402.10

H-1B FTA:

Key Points:

- Very similar to H-1B, except Foreign National must be a citizen of Singapore or Chile and must also demonstrate 100% Non-Immigrant intent.
- Cap Limit: 1,400 (Chile), 5,400 (Singapore); set aside within the H-1B Cap Limit.

Time Limit:

- Unlimited (issued in 18-month increments as long as Non-Immigrant intent remains).

Reference:

- 8 C.F.R. § 214.2(h); 9 FAM 402.10-5

H-2B (Temporary Non-Agricultural Employees):

Key Points:

- Foreign National employed temporarily in one of four capacities:
 1. Seasonal | 2. Intermittent | 3. Peak-load | 4. One-time occurrence
- Must acquire a “Temporary Labor Certification” from the Department of Labor and provide evidence that U.S. workers are in short supply within the designated industry.
- Cap Limit: 33,000/half-year.

Time Limit:

- 364 days (usually last less than 10 months), except if “1 time occurrence” (can request up to 3 years).

Reference:

- 8 C.F.R. § 214.2(h); 9 FAM 402.10-4(E)

J-1 (Trainee/Exchange Visitor):

Key Points:

- Two applicable versions of J-1 Visa:
 1. J-1 Trainee: Foreign National must have completed a degree or professional certificate from a foreign post-secondary academic institution with at least one year of prior related work experience outside of the U.S. OR 5 years of qualifying experience.
 2. J-1 Intern: Foreign National must be currently enrolled in a post-secondary academic institution outside of the U.S., preferably studying in a related field, OR have graduated from such an institution no more than 12 months prior to start date.
- Certain J-1 Programs have “2-year home residency requirement” when J-visa ends.
- Foreign National must not be employed in a productive capacity while on J-visa.
- Spouses can apply for employment authorization.

Time Limit:

- J-1 Trainee: minimum of 6 weeks; maximum of 18 months.
- J-1 Intern: minimum of 6 weeks; maximum of 12 months.

Reference:

- 8 C.F.R. § 214.2(j); 9 FAM 402.5

L-1A/L-1B (Intra-Company Transferees):

Key Points:

- U.S. and Foreign entities must share a qualifying relationship (>50% common ownership).
- Foreign National must have qualifying 1 year of employment with Foreign affiliate (w/in past 3 yrs).
- L-1A: Intended position is Managerial or Executive in nature (fast path to permanent residency).
- L-1B: Intended position requires Specialized Knowledge of company’s products, policies, or procedures.
- L Visa manifests “dual-intent” (while it is a non-immigrant visa, can still apply for permanent residency while holding an L visa).
- Spouses can apply for employment authorization.

Time Limit:

- L-1A: 7-Year Maximum (3-year initial period with 2-year extensions).
- L-1B: 5-Year Maximum (3-year initial period with a 2-year extension).

Reference:

- 8 C.F.R. § 214.2(l); 9 FAM 402.12

O-1 (Extraordinary Ability Foreign Nationals):

Key Points:

- Professional has extraordinary credentials of “sustained national or international acclaim.”
- Can self-petition through Agents.
- Need discrete project or itinerary.
- Lower threshold standard for artists as opposed to those in Science or Business industries, as well as Athletes.

Time Limit:

- Unlimited (3-year initial period with 1-year extensions with same employer).

Reference:

- 8 C.F.R. § 214.2(o); 9 FAM 402.13

TN (NAFTA):

Key Points:

- Professional is a citizen of Mexico or Canada.
- Intended Position is listed in the NAFTA Schedule (Limited – not every occupation will qualify).
- 100% Non-Immigrant intent.
- Canadians apply for admission at the border.
- Mexicans apply for visa at U.S. Embassy/Consulate.

Time Limit:

- Unlimited (available in 3-year increments).

Reference:

- 8 C.F.R. § 214.2(s); 9 FAM 402.17

