

HOW TO MAKE IMMIGRATION LAW WORK FOR YOUR BUSINESS: A SMALL BUSINESS GUIDE



How to Make Immigration Law Work for Your Business

A SMALL BUSINESS GUIDE

2nd Edition



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PROSKAUER ROSE LLP

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September 2015

In his letter of June 2005 introducing this volume, my partner at Proskauer Rose, Larry Sandak, stated that for businesses large and small, keeping abreast of immigration law is essential to maintaining a competitive workforce. Standing at the crossroads of domestic labor policy, foreign relations and homeland security, the nation's immigration policy is undergoing unparalleled change. This continues to be true today as immigration policy and proposals to reform the immigration system arouse passions in what has become a national debate over executive authority. Today's businesses understandably find it difficult to adapt to this ever evolving area of the law.

Proskauer Rose LLP has been assisting businesses for over 130 years. As one of the few law firms that are a national member of the U.S. Chamber of Commerce, we combine our day to-day representation of businesses with activities that help shape U.S. immigration policy. The Firm's Immigration Law Practice Group assists U.S. businesses from coast to coast and around the world. In keeping with the Firm's commitment to the business community, we were honored to have been asked to sponsor and produce "How to Make Immigration Law Work for Your Business: A Small Business Guide" and we are honored as well to continue our collaboration with the U.S. Chamber of Commerce in updating this volume. We hope it will become an important resource that will help your company successfully navigate the complex and ever-changing array of immigration laws and regulations.

We greatly acknowledge the cooperation and support of the U.S. Chamber of Commerce, particularly the Chamber's Senior Vice-President, Labor, Immigration, and Employee Benefits, Randel K. Johnson, who was instrumental in initiating this project from its inception. We also acknowledge the work of Angelo Amador, who was the Director of Immigration Policy at the Chamber when the project was initiated originally, as well as Amy Nice, the Chamber's Executive Director of Immigration Policy, and Jonathan Baselice, its Director of Immigration Policy.

We acknowledge the original Editor of the volume, Christine Alber, Esq., and contributors to the original volume, including Peter M. Avery, Chris Cates, Christine Del-Rey Cone, Rosetta Ellis, Patricia Gannon, Elana Gilaad, Yvette Gordon Jennings, Judson Hand, Bre Injeski, Devora Lindeman, Erica Loomba, Avram Morell, Parisa Salimi, Mark Saloman, Frederick Strasser, and Marguerite S. Wynne.

“We are a nation of immigrants” is not a worn out cliché; it is the essence of the United States of America. It has been the subject of debate since our founding. We are honored and privileged to contribute to the discussion.

Sincerely yours,

David Grunblatt

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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September 2015

Dear Reader,

It is no mystery that our immigration laws and regulations are incredibly complex and oftentimes confusing. While commonsense immigration reforms have evaded the U.S. Congress, our immigration system has seen many regulatory and administrative changes since the first edition of this book was published 10 years ago. These administrative changes have had profound impacts on businesses of all sizes and knowing how to deal with this ever-changing environment directly impacts every business's bottom-line. Unfortunately, many businesses do not have a basic understanding of every way in which federal immigration law impacts their business.

The U.S. Chamber of Commerce is pleased to continue its collaborative effort with Proskauer Rose LLP in updating the publication "How to Make Immigration Law Work for Your Business: A Small Business Guide," originally published in June 2005. We believe that you will, through this publication, have the most up-to-date knowledge regarding the basic requirements imposed upon businesses by U.S. immigration law and that it will also provide you with a practical insight into how the law can be used to meet the needs of your company. We hope you find it useful.

Sincerely,

Randel K. Johnson
Senior Vice President
Labor, Immigration, and Employee Benefits

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FOREWORD

One could ask why we would bother to update a Guide published in 2005 addressing the question of how to make immigration law work for your business.

As we go to press, the immigration world is in chaos. President Obama, blaming the Republicans and House of Representatives for inaction on immigration reform, issued a sweeping set of executive actions and announced a series of initiatives to address flaws in the immigration system and in the enforcement of U.S. immigration laws. This is after attempts to pass comprehensive immigration reform have failed.

The only thing that all parties seem to be able to agree on is that the immigration system is “broken.” Businesses find it difficult to hire highly qualified foreign nationals because the H-1B visa is more often than not unavailable due to quota restrictions. The H-2 programs, used most often for lesser skilled workers, are cumbersome and unwieldy. The quota backlogs for applicants seeking permanent residence in the United States based upon the needs of businesses here are hopelessly backlogged.

Yet, despite all of the obstacles, American businesses seeking to grow locally and compete globally must make use of the existing immigration system, such as it is, and there are opportunities for those who make themselves knowledgeable.

Businesses large and small that have recruited and hired foreign nationals have secured a competitive edge.

To a small construction company recruiting laborers not available in its local workforce, a start-up technology firm in need of employees with highly - specialized knowledge and experience, a resort seeking seasonal workers, a biotechnology firm requiring the services of a particular internationally - known researcher, or a multinational conglomerate wishing to transfer key personnel to its U.S. operation, a working knowledge of immigration law is vital. This Guide will outline key immigration law concepts and explain the labyrinth of ever-changing laws and regulations. The Guide will identify the alphabet soup of federal agencies with jurisdiction over elements of the immigration process and provide a roadmap to assist U.S. businesses navigating through the process.

The Guide will not answer every question or apply to every situation. As this update was going to press, many employers could not make use of the H-1B visa classification because of over-subscription and find it difficult to bring intracompany transferees (L-1s) into the United States because of the restrictive interpretations of the regulatory definitions resulting in a high rate of adverse rulings by the United States Citizenship and Immigration Services. For day-to-day strategy, accounting for current agency practice may require businesses to make use of legal counsel.

This Guide is intended to provide basic information and, at the very least, a starting point for employers recruiting and hiring from the global workforce.

* * *

Nothing contained in this Guide is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This Guide is intended for educational and informational purposes only.



Part One

AN OVERVIEW OF U.S. IMMIGRATION

CHAPTER 1

A Brief History and Overview of U.S. Immigration

America's rich immigration history has been a central, if often overlooked, source of the nation's achievement and economic growth. For centuries, foreign nationals striving for better lives have looked to our shores for opportunity. It is the combination of economic opportunity and the human desire to succeed that has made the U.S. a destination for many foreign workers who, in turn, have helped build and sustain its economic and technological prowess.

Immigration legislation is a barometer of our society's acceptance of – and tolerance for – the admission of foreign nationals. During the nation's first one hundred years, Congress neither promoted nor discouraged the influx of foreign nationals; in practice, the law was virtually unrestrictive, thus giving literal meaning to the phrase, “a nation of immigrants.” But as economic, social, and cultural conditions changed, so did immigration law.

During the nineteenth century, immigration to the U.S. increased rapidly, with 10 million immigrants arriving in search of a better life; while Europe was witnessing the end of its Industrial Revolution, the U.S. Industrial Revolution was just beginning. Foreign nationals who faced depression, persecution, and war at home were lured by the flourishing labor markets in the cities of America's northeast. The introduction of such a large pool of competing labor caused unrest in the domestic labor force and strained employer/employee relations. In keeping with the predominant economic and cultural viewpoints of the time, Congress responded by enacting a series of qualitative restrictions on immigration, targeting the mentally, economically, morally, and criminally “suspect.”

On January 2, 1892, both immigration and deportation processing began at the new Federal Immigration Station on Ellis Island in New York Harbor. By 1905, as the number of new immigrants grew to exceed one million annually, Congress created the Dillingham Commission to make a full inquiry and examination of immigration to the U.S. The Commission's findings were partially embodied in the Immigration Act of 1917, which reflected both congressional opposition to unrestricted immigration and the nation's increasing hostility toward new immigrants who were believed to be resistant to assimilation. The Commission's recommendations to implement

numerical quotas were ratified by Congress in the Quota System Act of 1921 and the National Origins Act of 1924, establishing the centrality of national origin in the imposition of strict annual limitations on immigration. National origin would remain the foundation of basic immigration law until the passage of the Immigration and Nationality Act, also known as the McCarran-Walter Act in 1952.

The McCarran-Walter Act made several groundbreaking changes in immigration law. It eliminated race as a complete bar to immigration and established the foundation of the current employment-based preference system. The Act also gave new attention to the importance of the family unit; in codifying a preference for the familial relationship, it established a cornerstone of modern immigration law.

In 1965, the Immigration and Nationality Act was amended to eliminate the national origin quota system, although long-standing hemispheric quotas were effectively left intact. By 1976, the two hemispheres had been gradually equalized and combined into an annual worldwide quota of 290,000 visas. In recognition of the changing face of the global economy, foreign nationals seeking permission to work in the U.S. had to obtain a “labor certification” from the Secretary of Labor stating that U.S. workers were unavailable to fill their particular positions. This protected the U.S. labor market from foreign competition where U.S. workers were available, while permitting foreign nationals to fill open positions where U.S. workers were not available.

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA) which imposes penalties on employers who hire undocumented workers or fail to take mandatory steps to ascertain whether their employees have permission to work in the U.S.

In the last decade of the twentieth century, Congress enacted the Immigration Act of 1990 and the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 to harmonize the law with the globalization of the world economy. The new statutory provisions restructured the preference system, modified and established new nonimmigrant categories, and, notably, created the “outstanding researcher or professor immigrant” category and a national interest waiver exemption from the labor certification requirement.

As the twentieth century ended, immigration law again evolved to reflect the U.S. political climate. The Oklahoma City bombing was followed by congressional enactment of the Antiterrorism and Effective Death Penalty Act of 1996, which aimed at both domestic and international terrorism by expanding deportation grounds for foreign nationals with criminal

convictions and strengthening border controls. Again, after the September 11 attacks, sweeping antiterrorism legislation was enacted. These changes impacted the issuance of visas at U.S. Consulates abroad, the review of petitions and applications for immigration benefits, and inspections and admissions at the border. In an effort to exclude suspected terrorists at U.S. borders, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) added new grounds of inadmissibility and allocated additional funds for border security.

The 21st Century Department of Justice Appropriations Authorization Act, enacted on November 2, 2002, expanded availability of the H-1B visa classification and revised criteria for the EB-5 classification.

On November 25, 2002, the Homeland Security Act was signed into law. Although this Act primarily focused on security and enforcement to prevent terrorist attacks in the U.S., it also abolished the former Immigration and Naturalization Service (INS), created the Department of Homeland Security (DHS), and, as discussed in the following chapter, reallocated responsibility for immigration among various new and existing federal departments and agencies.

The L-1 Visa and H-1B Visa Reform Act of 2004, signed on December 8, 2004, modified requirements and restrictions on the L-1 and H-1B visa categories and exempted 20,000 visas per year from the H-1B cap for persons who have earned a master's or higher degree from a U.S. institution of higher education.

The REAL ID Act of 2005, signed into law on May 10, 2005, addressed asylum, withholding of removal, burden of proof, terrorism, judicial review, driver's licenses, and the H-2B visa classification. It also created the Australian Specialty Occupation (E-3) visa category.

Subsequent legislation addressed violence against women, child protection and safety (Adam Walsh Child Protection and Safety Act of 2006), Iraqi refugees, and human trafficking (William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008).

In the absence of legislative action implementing comprehensive immigration reform, a new era of initiatives began with the announcement in June of 2012 that President Obama was going to exercise his executive authority by creating an exemption from deportation with authorization to work, the Deferred Action for Childhood Arrivals (DACA) program, a benefit estimated to be available to 1.7 million people. The benefit, available to

individuals who entered the United States before their sixteenth birthday and subject to a continuous residence requirement, was characterized as using prosecutorial discretion to refocus the government's enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety.

On November 20, 2014, President Obama announced a series of executive actions that, among other things, expands the population eligible for DACA and allows parents of U.S. citizens and lawful permanent residents who have been present in the country since January 1, 2010 to request deferred action under the new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program. It was estimated that up to five million persons might be eligible for this benefit. This expansion of the President's deferred action policies has not been implemented as of the date of publication due to ongoing litigation. However, if these policies are implemented, they would generate many novel legal questions for employers with respect to their compliance with employment verification requirements, as well as what types of business practices may be held as unfair immigration-related employment practices. While there is no clear guidance as to what constitutes acceptable employer actions with respect to these programs, it is recommended that employers seek the advice of legal counsel to navigate these issues and avoid potential liability.

The effort to enact commonsense immigration reform will continue since much of the immigration system cannot be reformed by agency action. However, absent significant legislative action by both houses of Congress, many will shift focus from legislation to the limits of executive branch authority.

CHAPTER 2

Government Agencies Principally Responsible for Immigration

A. IMMIGRATION ADMINISTRATION AND ENFORCEMENT

Like immigration law itself, principal authority for the administration and enforcement of U.S. immigration law has shifted from one organ of government to another based on prevailing views concerning the benefits and risks of the admission of foreigners. At its inception, immigration law enforcement was handled by state boards under the direction of the federal Department of Treasury. Because of the government's overriding concerns about the economic impact on American workers of an influx of foreign labor, in 1903, the function was transferred to the newly created Department of Labor.

In 1940, prior to U.S. entry into World War II, President Roosevelt's Reorganization Plan recognized immigration as a matter of national security. Immigration functions were then transferred from the Department of Labor to the Department of Justice. Primary responsibility for the administration and enforcement of immigration laws remained with the Department of Justice until 2003.

With the enactment of the Homeland Security Act of 2002 (HSA), the Department of Homeland Security (DHS) was created as part of the largest U.S. government reorganization in more than 50 years. The HSA merged and reorganized the functions of 22 agencies which together employed 170,000 federal workers. On March 1, 2003, the Immigration and Naturalization Service (INS) ceased to exist and the functions previously handled by that agency were transferred to DHS. The transfer effectuated a deliberate separation of the sometimes conflicting functions previously performed by INS. Currently, the functions of the former INS are handled by the following agencies within DHS.

1. *United States Customs and Border Protection (CBP)*

CBP includes former INS inspectors, as well as agents of U.S. Customs, Agricultural Quarantine Inspections, and Border Patrol. CBP, the self-described "guardians of our nation's borders," focuses on the movement of people and goods across borders and ensures consistent

inspection procedures and coordinated border enforcement. It describes its mission as “keeping terrorists and their weapons out of the U.S.” and having responsibility for “facilitating lawful international travel and trade” while enforcing hundreds of U.S. regulations, including immigration and drug laws.

2. *United States Immigration and Customs Enforcement (ICE)*

ICE is responsible for interior enforcement (as opposed to border enforcement), originally drawing employees from the former INS, U.S. Customs, and the Federal Protective Service. A significant function of ICE is the detention and removal of unauthorized foreign nationals. It describes its mission to “promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration.”

ICE also administers the Student and Exchange Visitor Program (SEVP) using the Internet-based Student and Exchange Visitor Information System (SEVIS).

3. *United States Citizenship and Immigration Service (USCIS)*

USCIS has jurisdiction over all immigration benefits previously conferred by the INS. These functions include the adjudication of visa and naturalization petitions, as well as asylum and refugee applications. In addition, USCIS is responsible for immigration field offices and has established a directorate for Fraud Detection & National Security (FDNS), which describes its mission “to enhance the integrity of the legal immigration system by identifying threats to national security and public safety, detecting and combating immigration benefit fraud, and removing systematic and other vulnerabilities.” To do so, FDNS performs fraud assessments, compliance reviews, and targeted site visits.

4. *The Office of the Citizenship and Immigration Services Ombudsman*

The CIS Ombudsman’s Office describes itself as “dedicated to improving the quality of citizenship and immigration services delivered to the public by providing individual case assistance, as well as making recommendations to improve the administration of immigration benefits.” The Ombudsman’s Office reports directly to the Secretary of Homeland Security as an impartial and confidential research office independent of USCIS.

Other components of the Department of Homeland Security include the United States Coast Guard, the Federal Emergency Management Agency (FEMA), the United States Secret Service (USSS), and the Transportation Security Administration (TSA).

B. ADDITIONAL FEDERAL AGENCIES HAVING A SIGNIFICANT ROLE IN THE IMMIGRATION PROCESS

The Department of Labor, the Department of State, and the Department of Justice play significant supporting roles in the administration of U.S. immigration laws.

1. *Department of Labor (DOL)*

The Department of Labor is charged with the administration and enforcement of various federal labor laws and enforcing and administering certain provisions of the Immigration and Nationality Act regarding foreign workers seeking admission to the U.S. for employment. DOL's Office of Foreign Labor Certification (OFLC) ensures that the admission of foreign workers to the U.S. will not adversely affect the job opportunities, wages, and working conditions of U.S. workers.

The Employment and Training Administration (ETA), which houses the OFLC, has responsibility for labor condition applications and a variety of other programs related to employment in the United States. The Board of Alien Labor Certification Appeals (BALCA) handles appeals from U.S. employers relating to denials of applications for labor certification and prevailing wage determinations. The Administrative Review Board (ARB) handles appeals from decisions of the Department of Labor Administrative Law Judges or the Administrator of the Wage and Hour Division (WHD), including the immigration-related provisions.

2. *Department of State (DOS)*

With few exceptions, foreign nationals seeking entry to the U.S. must first apply for a visa at a U.S. Consulate outside the U.S. In general, the DOS has authority over consulates and embassies abroad through its Bureau of Consular Affairs. The HSA removed and revised some duties formally held by DOS and transferred ultimate responsibility for visa issuance to DHS. The HSA charges the Secretary of State with the administration and enforcement of its provisions and all other immigration and nationality laws relating to diplomatic and consular officers of the U.S., except those relating to the granting or denial of visas.

DOS and DHS work in concert to grant or deny applications for nonimmigrant and immigrant visas at U.S. consular posts. Under the terms of a Memorandum of Understanding between DOS and DHS, DOS continues to process visa applications and the Secretary of State retains the authority to direct a consular officer to deny a visa to a foreign national in the interest of national security. A consular officer's decision to deny a visa is non-reviewable and final. However, DHS is ultimately responsible for

assuring that security concerns are sufficiently addressed. Therefore, consular officers will receive visa issuance training from DHS, and any and all visa approvals are subject to review by DHS employees assigned to consular posts by the Secretary of Homeland Security.

3. *Department of Justice (DOJ)*

a. *Executive Office of Immigration Review (EOIR)*

Within the Department of Justice, the Executive Office of Immigration Review (EOIR) administers and interprets federal immigration laws and regulations through immigration court proceedings, appellate reviews, and administrative hearings in individual cases. EOIR has three main components: the Board of Immigration Appeals (BIA), which hears appeals of decisions made in individual cases by Immigration Judges, DHS District Directors, or other immigration officials; the Office of the Chief Immigration Judge, which oversees all Immigration Courts and their proceedings; and the Office of the Chief Administrative Hearing Officer, which adjudicates cases concerning employer sanctions, document fraud, and immigration-related employment discrimination.

b. *Office of Special Counsel for Immigration-Related Unfair Employment Practices*

The Office of Special Counsel for Immigration-Related Unfair Employment Practices is situated within the Civil Rights Division of the Department of Justice. It is tasked with enforcing the antidiscrimination provisions of the Immigration and Nationality Act, specifically: the federal prohibitions against citizenship status discrimination in hiring, firing or recruitment or referral; national origin discrimination and hiring, firing or recruitment or referral for a fee; and document abuse, including unfair documentary practices during the employment eligibility verification process. It also addresses retaliation or intimidation associated with complaints filed relating to these categories.

CHAPTER 3

Entry into the United States – Generally

Underlying all policy, statutes, and regulations dealing with the issuance of visas and entry into the United States is a tension between the national concern of ensuring the security of our borders, while at the same time welcoming those nonimmigrants and immigrants that we, as a matter of policy, have chosen to admit into the United States.

Thus, applicants for visas at U.S. Embassies and Consulates are subject to fingerprinting and in some instances, extensive security checks and clearances. Applicants for admission at our ports of entry are also subject to fingerprinting and interview, and can be subject to delays in admission.

In an attempt to find the right balance, Customs and Border Protection (CBP) has initiated a series of trusted traveler programs for those who do not warrant extra security.

A. TRUSTED TRAVELER PROGRAMS

As of the date of publication, there are four Trusted Traveler Programs designed by CBP to approve international travelers for expedited entry into the United States. The four programs require applicants to be vetted prior to approval through the submission of applications through CBP's Global Online Enrollment System (GOES). The CBP's Vetting Center reviews the application to assess any potential risk factors and the applicant is vetted against a number of databases. Once the Center determines that the applicant is low-risk, it conditionally approves the application and the applicant is scheduled for an in-person interview at a trusted traveler enrollment center. If the application is denied, applicants may request reconsideration or reapply.

1. *Global Entry*

Currently, Global Entry allows expedited clearance at more than 40 U.S. airports and over a dozen preclearance locations outside of the U.S. for preapproved low-risk travelers. Select airports are equipped with automated kiosks that allow travelers to scan their machine-readable passports and fingertips, complete the Customs declaration, and retrieve a transaction receipt for presentation to the CBP Officer. Global Entry started as a pilot

program in 2008 and became permanent in 2012. Presently, citizens or permanent residents of the United States and citizens of the following countries are permitted to participate in the program: Germany, Mexico, the Netherlands, Panama, Qatar, the Republic of Korea, and the United Kingdom. At the time of publication, CBP continues to negotiate with more countries to join the program, including Israel, Saudi Arabia, Australia, and New Zealand.

2. *Secure Electronic Network for Travelers Rapid Inspection (SENTRI)*

The SENTRI program provides prescreened travelers with expedited CBP processing at land crossings on the U.S.-Mexico border and is available to citizens of any country. This program allows for expedited lanes to ease border crossings. The SENTRI program issues a Radio Frequency Identification Document (RFID) that identifies and records the status of its owner in the CBP database upon arrival in the U.S. In addition, a sticker decal is issued and may be affixed to the traveler's vehicle. When an approved international traveler approaches the border in the SENTRI lane, the system automatically identifies the vehicle and the occupants through the RFID card number. The number triggers the participant's data to appear on the CBP Officer's screen. The CBP Officer verifies the information prior to admission to the U.S.

3. *NEXUS*

The NEXUS program allows prescreened travelers expedited processing by United States and Canadian border officials at northern land, air and sea ports of entry. This program is available to citizens of the United States and Canada. NEXUS program participants are processed at kiosks and have the additional benefit of being able to use Global Entry kiosks for processing as well. Program participants are issued a photo-identification, proximity Radio Frequency Identification (RFID) card.

4. *Free and Secure Trade (FAST)*

The FAST program allows U.S./Canada and U.S./Mexico partnering importers expedited release of commercial shipments at certain southern and northern border ports of entry. FAST Driver cards are Western Hemisphere Travel Initiative-compliant documents for entry into the United States by land or sea and provide expedited admission to approved commercial truck drivers making fully qualified FAST trips between the U.S. and Canada or the U.S. and Mexico. Program participants must be citizens or legal permanent residents of the United States, Canada, or Mexico.

B. LOOKING AHEAD

It is expected that both the State Department and Department of Homeland Security will develop and implement other initiatives. The State Department has already expanded the category of visa applicants for whom personnel interviews may be waived, and it is anticipated that the Visa Waiver Program for visitors to the United States (described in Chapter 4) will be expanded as well.



Part Two

FOREIGN VISITORS AND
TEMPORARY WORKERS

CHAPTER 4

Nonimmigrant Visas – Generally

A. INTRODUCTION

The accelerating globalization and interconnectedness of the world economy has fundamentally changed U.S. labor markets and the manner in which U.S. employers conduct business. Domestic businesses and multinational companies operating in the U.S. are now competing on an international level for the most qualified candidates from around the world. In addition, U.S. employers often seek to overcome shortages among American workers in certain occupations by hiring highly skilled foreign nationals.

Whether or not U.S. companies actively seek foreign workers, U.S. immigration law compliance has become crucial to the success of many U.S. businesses. Companies that employ foreign workers in the U.S. may only employ those individuals who are authorized to work in the U.S. and are subject to fines and penalties if they fail to do so. Likewise, foreign national employees are responsible for maintaining authorized status while in the U.S. to avoid negative immigration repercussions.

Immigration law creates two classes of foreign nationals authorized to be in the United States, nonimmigrants and immigrants. Nonimmigrants are permitted a temporary stay in the U.S., while immigrants may remain indefinitely. U.S. immigration law has designated over twenty different types of nonimmigrant categories, ranging from ambassadors to tourists to students to temporary workers. Each nonimmigrant classification is assigned a letter between A and V, and has its own eligibility requirements and duration. To determine which visa category is most appropriate, a U.S. employer should assess the purpose of an individual's visit to the U.S., the position the foreign national will fill, and his or her qualifications.

B. NONIMMIGRANT VISA PROCESSING

A U.S. business may petition for a foreign national living either in the U.S. or abroad. A newly hired foreign national already in the U.S. may be eligible to remain here through a change of employer or nonimmigrant status. Typically, however, a foreign national's acceptance of employment in the U.S. includes applying for a visa at a U.S. Consulate abroad and admission

C. ADMISSION AT THE PORT OF ENTRY

Once the foreign national has received a visa stamp, the next step in the nonimmigrant process occurs upon arrival at the U.S. port of entry. At the port of entry, CBP inspects and admits the foreign national. CBP will create a record of admission for each arriving foreign national whereby it captures the date of admission, the status in which the foreign national is admitted, and the duration of his or her authorized stay in the U.S.

Effective May 2013, the arrival and departure of all foreign nationals entering by air and sea crossings is captured electronically via manifest information provided by the carrier or by CBP. CBP now directly stamps a foreign national's travel document (most often a passport) to show the date admitted to the U.S., the class of admission, and the date until which he or she may legally remain in the U.S. The foreign national may retrieve their full admission records via CBP's website at www.cbp.gov. At all land border crossings, CBP will continue to endorse a foreign national's Arrival/Departure Record, entitled Form I-94 (or Form I-94W for visa waiver applicants, discussed below), and attach it to the foreign national's passport.

Sample electronic I-94 Automatic Admission Record from www.cbp.gov:



The screenshot shows the U.S. Customs and Border Protection website interface. At the top, there is a header with the agency logo and the text "U.S. Customs and Border Protection" and "Securing America's Borders". Below the header, there is a navigation bar with "Get I-94 Number" and "I-94 FAQ". The main content area is titled "Admission (I-94) Number Retrieval" and displays the following information:

Admission (I-94) Record Number:	69000888062
Admit Until Date (MM/DD/YYYY):	10/10/2012
Details provided on Admission(I-94) form:	
Family Name:	LI
First (Given) Name:	LYDA
Birth Date (MM/DD/YYYY):	01/01/1990
Passport Number:	P123123213
Passport Country of Issuance:	Mexico
Date of Entry (MM/DD/YYYY):	04/11/2012
Class of Admission:	B1

Sample paper I-94 card:

Departure Number
813106636 11

Department of Homeland Security
CBP I-94 A (11/04)
Departure Record

L1
12345
09/17/2007

Family Name
SAMPLE

First (Given) Name
AHMET

Country of Citizenship
PAKISTAN

Birth Date (Day Mo. Yr)
22, 12, 50

20041122 US-VISIT 20050207 MULTIPLE

See Other Side **STAPLE HERE**

Regardless of whether an I-94 admission record is issued electronically or in paper form, the date on the record controls the duration of an individual's authorized stay in the U.S. Even though the visa used to travel to the U.S. has its own validity dates, those dates do not always directly correlate with the length of a foreign national's authorized stay in the U.S. For example, on January 1, 2015, a foreign national travels to the U.S. pursuant to a visitor for business visa (B-1) that expires on September 1, 2015. If the individual's admission record indicates a valid stay in B-1 status until March 1, 2015, the foreign national must leave by that date. By March 2, 2015, if the foreign national does nothing to extend his or her authorized stay, he/she has overstayed in the U.S. It is irrelevant that the foreign national's visa is valid until September 1, 2015. *See Appendix for CBP's I-94 Card Fact Sheet.*

D. NONIMMIGRANT VISITORS AND THE US-VISIT ENTRY/EXIT PROGRAM

United States Visitor and Immigrant Status Indicator Technology (US-VISIT) is a CBP system intended to improve the security of both the United States and worldwide travel by facilitating the sharing of biometric identity information. Users from federal, state, and local government agencies access US-VISIT. In 2013, the US-VISIT program officially became the Office of Biometric Identity Management (OBIM).

When a foreign national, between the ages of 14 and 79, applies for a visa at a U.S. Consulate abroad, he/she is required to provide biometric information (10 digital fingerprints and a photograph). CBP then collects this information again upon the foreign national's entry to the U.S. to verify it matches the previously provided biometric information, and for security checks using the Interagency Border Inspection System, a database used to

track individuals deemed to be terrorists, criminals, and illegal immigrants. Initially, only visa holders were included in the US-VISIT program. However, the program has been expanded through the years and, currently, almost all non-U.S. citizens, including lawful permanent residents, are subject to its requirements. Only Canadians are exempt from US-VISIT's requirements due to an agreement between the U.S. and Canada that allows visa-free travel. Foreign nationals subject to US-VISIT who fail to comply with its procedures may be denied admission to the U.S.

E. EXTENSION OR CHANGE OF STATUS AFTER ADMISSION

Once a foreign national has entered the U.S., he or she may wish to extend or change nonimmigrant status. A nonimmigrant who wishes to extend or change status may, with limited exceptions, apply to a USCIS Service Center. The application must be made while the foreign national is within his or her authorized period of stay. Approval of an extension or change of status request is reflected on the USCIS Form I-797A, which contains a new Form I-94 admission record with updated information on the foreign national's visa classification and/or period of admission.

Sample Approval Notice from the USCIS:

Department of Homeland Security U.S. Citizenship and Immigration Services		I-797A, Notice of Action									
THE UNITED STATES OF AMERICA											
RECEIPT NUMBER WAC-15-345-67890	CASE TYPE I-129 PETITION FOR A NONIMMIGRANT WORKER										
RECEIPT DATE 10/17/2014	PRIORITY DATE 10/17/2014	PETITIONER ABC COMPANY									
NOTICE DATE OCTOBER 24, 2014	PAGE 1 OF 2	RESPONDARY WORKER, JOE									
PROSKAUER ROSE LLP RE: ABC COMPANY ONE NEWARK CTR FLR 18 NEWARK NJ 07102		Motion Type: APPROVAL NOTICE CLASS:H1B VALID FROM: 10/21/2014 TO 05/04/2017 CONSULATE:									
<p>The above petition for a change in the conditions of the employment or training that was previously authorized in this classification has been approved. To be valid for the period shown above, the named foreign national(s) are authorized to be employed for this period pursuant to the terms and conditions of the petition.</p> <p>If the petitioner requested that the temporary stay of the named foreign national(s) be extended, then the named national(s) must have been authorized for the period shown above.</p> <p>Since this employment or training authorization was not for the filing of this petition, separate employment or training authorization documentation is not required.</p> <p>This petitioner should give the lower portion of this notice to the named foreign national(s). The worker(s) must keep the lower portion with his or her previous Form I-94, and the worker(s) must show it, when requested by DHS or any other component of the U.S. Department of Homeland Security. The 2-4a portion should be given to the U.S. Customs and Border Control when he or she leaves the United States.</p> <p>The upper portion of this notice should be kept by the petitioner to show that employment or training of the named national(s) is authorized. It must be shown if requested by USCIS or any other component of the U.S. Department of Homeland Security.</p> <p>The petitioner may file Form I-924, Application for Extension of an Existing Application or Petition, to request to be held in a new consulate, port of entry or pre-flight inspection station (if applicable).</p> <p>Please read the back of this form carefully for more information. If you have questions regarding this authorization, please contact the Internal Revenue Service. Changes in employment or training may require you to</p>											
Please see the additional information on the back. You will be notified separately about any other cases you filed.											
U.S. CITIZENSHIP & IMMIGRATION SVC CALIFORNIA SERVICE CENTER P.O. BOX 30311 LAGUNA HILLS CA 92607-0111 Customer Service Telephone: (800) 375-5283 Form I-797A (Rev. 10/13/09)											
PLEASE TAKE ONE COPY FOR PRESENTED EMPLOYER AND OTHERS TO ORIGINAL LAWYER AVAILABLE											
Detach This Half for Personal Records Receipt# WAC-15-345-67890 I-94# 123456789 012 NAME WORKER, JOE CLASS H1B VALID FROM 10/21/2014 UNTIL 05/04/2017		371298410 30 Receipt Number WAC-15-345-67890 United States Citizenship and Immigration Services I-94 Departure Record Petitioner: ABC COMPANY									
PETITIONER: ABC COMPANY 125 MAIN STREET ANYTOWN NY 14205		<table border="1" style="width: 100%;"> <tr> <td>WORKER</td> <td>IN THIS CASE</td> </tr> <tr> <td>JOE</td> <td>08/17/1987</td> </tr> <tr> <td>COUNTRY OF ORIGIN</td> <td></td> </tr> <tr> <td>INDIA</td> <td></td> </tr> </table>		WORKER	IN THIS CASE	JOE	08/17/1987	COUNTRY OF ORIGIN		INDIA	
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Form I-797A (Rev. 10/13/09) N											

F. APPLICATIONS FOR LAWFUL PERMANENT RESIDENCE BY NONIMMIGRANTS

Generally, nonimmigrants have the burden of demonstrating a genuine intent to depart the U.S. at the conclusion of one's authorized stay, commonly referred to as "nonimmigrant intent." Certain nonimmigrant categories require that the foreign national maintain a residence in a foreign country which he/she has no intention of abandoning to demonstrate nonimmigrant intent. Accordingly, such nonimmigrants may not enter the United States in these classifications with the intent to change status to permanent residence after entry.

An exception to the nonimmigrant intent rule applies to "H-1" and "L-1" workers who are allowed to possess the "dual intent" to work in the U.S. pursuant to a temporary visa while pursuing permanent residency. This also applies to a lesser degree to "E" and "O" nonimmigrants who seek lawful permanent residence in the U.S.

G. NONIMMIGRANT CLASSIFICATIONS FOR BUSINESSES PURPOSES

U.S. businesses commonly encounter nonimmigrant visa categories carved out for temporary business and work authorization, as well as for students, trainees, or exchange visitors. Foreign nationals traveling to the U.S. to conduct business most often use the B-1 visa and the Visa Waiver Program. However, foreign nationals traveling to work in the U.S. will most often enter in one of the following categories: E-1 and E-2 (treaty traders and investors) and E-3 (Australian specialty occupation workers); H-1B and H-1B1 (specialty occupation workers); H-2B (temporary workers); L-1 (intracompany transferees); O (aliens with extraordinary ability and essential support personnel); and TN (NAFTA professionals). Certain categories of nonimmigrants are authorized to work incident to their primary status in the U.S. Statuses that permit entry to the U.S. for specific purposes, which might also allow employment, include students and foreign exchange visitors. A U.S. company may also sponsor a foreign national for the purpose of providing training. The ensuing chapters provide guidance on the range of nonimmigrant classifications, including eligibility criteria, procedures, and special characteristics applicable to each.

CHAPTER 5

B-1 Classification – Visitors for Business

The most common types of nonimmigrant visas are those issued to temporary visitors for tourism or business. Business travelers often come to the U.S. to attend conferences or company meetings and are usually permitted to remain for the duration of their business purpose. However, to safeguard the jobs of American workers, B-1 visitors are not permitted to be employed in the U.S.

A. PROCEDURE FOR B-1 CLASSIFICATION

A B-1 visitor who seeks admission to the U.S. must undergo two separate reviews, one abroad and the other at the U.S. port of entry. He or she must first file an application for a visa with the U.S. Consulate abroad. A consular officer will issue a B-1 visa to a business visitor if the officer believes that the individual:

- Intends to leave the U.S. at the end of the temporary stay;
- Has permission to enter a foreign country at the end of the temporary stay;
- Has the financial means to enable him or her to carry out the purpose of the visit and depart from the U.S. without engaging in unlawful employment; and
- Has a legitimate temporary business purpose that does not involve productive employment.

The foreign national must present sufficient documentation to satisfy each criterion. Most notably, the foreign national must show that he or she intends to depart the U.S. by demonstrating that he or she has an unabandoned foreign residence to return to after the U.S. visit. If a business visitor meets the above requirements, a consular officer may issue a B-1 visa for a length of time in accordance with reciprocity schedules set by agreement between the U.S. and foreign nations, up to a maximum of 10 years. Current reciprocity information for each country and visa classification is available on the Department of State's website. (See: <http://travel.state.gov>.) The consular officer has sole discretion to decide the length of visa validity. In the event that the consular officer denies a

foreign national's visa application, there is no procedure for appeal. The foreign national may, however, reapply if he or she so chooses and may present additional documentation to address the consular official's concerns about his or her qualifications for the visa.

Once the B-1 visa has been issued by the U.S. Consulate abroad, the foreign national business visitor may travel to the U.S., where he/she must submit to the second review. Upon arriving at a U.S. port of entry, the foreign visitor undergoes "inspection" by a CBP officer. The CBP officer reviews the visitor's visa and will question the applicant for admission regarding the purpose and proposed duration of the visit. If the CBP officer believes that the visitor's trip is consistent with the B-1 classification, the visitor will be admitted to the U.S. in B-1 status for a length of time necessary to carry out the purpose of the trip. Although a visa may be issued by a consular officer for up to 10 years, visa validity does not determine the period of admission granted by the CBP officer at the port of entry. Typically, a B-1 visitor is admitted for 90 days or up to six months with a maximum allowable period of one year during any one trip. Extension requests must include evidence supporting the need for the additional period of stay.

B. CHARACTERISTICS SPECIFIC TO THE B-1 CLASSIFICATION

B-1 visas are available to foreign nationals engaged in legitimate commercial or professional activities, as opposed to employment or labor for hire (*i.e.*, performing services for which a U.S. worker could be hired). B-1 visas are issued to individuals whose activities in the U.S. are incidental to international trade and commerce. Therefore, the visitor's foreign employer would normally direct and supervise the B-1 visitor's employment, and a B-1 visitor generally receives remuneration from that foreign employer. Examples of permissible activities include taking orders for goods manufactured abroad, negotiating contracts, consulting with associates, involvement in litigation, participating in conferences or research projects, as well as attending meetings of the Board of Directors of a U.S. corporation. Participating in scientific, educational, professional, religious, and business conventions are also considered acceptable B-1 activities.

In addition, there are individuals who elude easy classification under our current immigration system, yet the Department of Homeland Security and the Department of State have deemed these people appropriate for admission into the United States as business visitors, even if what they do seems to be more like work than visiting. This includes certain crewmen, athletes, Peace Corps trainers, musicians and individuals who normally might be classifiable in the H-1B and H-3 categories, but are engaged in the United States for the benefit of an overseas entity. This treatment is also

afforded to the household employees of nonimmigrants temporarily in the United States, which is discussed further in Chapter 15.

C. DEPENDENTS

The spouse and children (under age 21) of a B-1 nonimmigrant may accompany their family member to the U.S. by obtaining B-2 status. B-2 status may be granted for the duration of the principal B-1's stay. Dependents in B-2 status may not accept employment in the U.S.

D. B-2 CLASSIFICATION – VISITORS FOR PLEASURE

The B-2 classification can be used by foreign nationals who enter the U.S. for pleasure or for medical treatment. The term “pleasure” has been defined by the DOS as legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature. Participation in conferences with fraternal, social, or service organizations also would be considered proper B-2 activities. Visitors for pleasure may not engage in employment.

A consular officer will issue a B-2 visa to a visitor for pleasure if the officer believes that the individual:

- Intends to leave the U.S. at the end of the temporary stay;
- Has permission to enter a foreign country at the end of the temporary stay;
- Has the financial means to carry out the purpose of the visit and depart from the U.S. without engaging in unlawful employment; and
- Has shown that the purpose of the trip is for pleasure.

If a visitor for pleasure meets the above requirements, a consular officer may issue a B-2 visa for a length of time in accordance with reciprocity schedules agreed to by the United States and foreign nations, up to a maximum of 10 years. The consular officer has sole discretion to decide the length of visa validity. Similar to the B-1, if the consular officer denies a foreign national's visa application, there is no procedure for appeal, but the foreign national may refile and may present documentation to address the consular official's concerns regarding his or her qualifications for the visa. Once the B-2 visa has been issued, the applicant must submit to a second review at a U.S. port of entry, just as an applicant for B-1 visa would under similar circumstances. Visitors under B-2 classification are generally admitted for six months.

E. VISA WAIVER PROGRAM

Although most business visitors apply for a B-1 visa at a U.S. Consulate abroad, citizens of Canada and Mexico are exempt from visa requirements. Furthermore, foreign nationals from certain designated countries are allowed to travel to the U.S. without a visa for a period of 90 days or less, pursuant to the Visa Waiver Program (VWP). The VWP eliminates the need to appear before a U.S. Consulate abroad and apply for a visa, simplifying the process of traveling to the U.S. Business visitors admitted to the U.S. under the VWP are authorized to conduct the same commercial activities as B-1 foreign nationals. Countries are designated for participation in the VWP by DHS in consultation with the State Department. VWP countries must have low visa denial rates, must reciprocally admit U.S. citizens without visas, and they must enter into information sharing agreements with the U.S. to ensure that the entry of individuals through the VWP will not pose a risk to U.S. national security or public safety. According to the U.S. Travel Association, 20.3 million people (60 percent of all overseas visitors) arrived to the U.S. through the VWP. DOS's website at <http://travel.state.gov/content/visas/english/visit/visa-waiver-program.html> lists the visa waiver countries that include, at the time of publication, the following 38 nations:

A	H	P
Andorra	Hungary	Portugal
Australia	I	S
Austria	Iceland	San Marino
B	Ireland	Singapore
Belgium	Italy	Slovakia
Brunei	J	Slovenia
C	Japan	South Korea
Chile	L	Spain
Czech Republic	Latvia	Sweden
D	Liechtenstein	Switzerland
Denmark	Lithuania	T
E	Luxembourg	Taiwan
Estonia	M	U
F	Malta	United Kingdom
Finland	Monaco	
France	N	
G	Netherlands	
Germany	New Zealand	
Greece	Norway	

CHAPTER 6

E Classification – Treaty Traders and Treaty Investors

The E visa category is only available to nationals of a country where a Treaty of Friendship, Commerce and Navigation (FCN), or a Bilateral Investment Treaty (BIT), exists between the country and the U.S. There are two types of E visas available: E-1 for Treaty Traders and E-2 for Treaty Investors. In addition, there is a special subset for nationals of Australia, called the E-3 visa, described in Chapter 7.

An individual visa applicant must be a national of a treaty country, and the individual's nationality must be the same as the majority owner(s) of the company sponsoring the visitor. Majority ownership is defined as "at least fifty percent of the shares" of the company. The individual may be the principal treaty trader or treaty investor, or an employee of the U.S.-sponsoring company.

Personnel may qualify for treaty visa status as executives or managerial employees or if they have "specialized or essential skills and/or knowledge" of the company's products, marketing strategies, international system of operations, or other knowledge not readily available in the U.S. job market.

The individual must intend to depart the U.S. upon the completion of the E visa activities, but does not need to show an unabandoned residence in the home country. An E visa holder may extend status in the U.S. without limitation and may be the beneficiary of an immigrant visa petition.

The E visa category is intended to facilitate commercial interactions and investment between treaty countries and the United States. This classification is available only for citizens of those particular countries that have entered into a requisite treaty with the U.S. to qualify for E-1 or E-2 treaty trader or investor status. See Appendix for the current list of eligible E Treaty Countries.

A. PROCEDURE FOR E CLASSIFICATION

E visa applicants generally must apply for a visa at the U.S. Consulate with jurisdiction over their place of residence. Once the E visa has been issued, the foreign national must apply for admission at a U.S. port of entry and

may be granted admission for a period of two years. E nonimmigrants may reside in the U.S. as long as they remain investors, traders, or employees of the sponsoring company.

B. CHARACTERISTICS SPECIFIC TO THE E CLASSIFICATION

1. Intention to Depart the United States

A foreign national in E status must demonstrate an intention to depart the U.S. at the completion of his or her E activities. However, unlike the B classification, the foreign national does not have to establish an intention to remain in the U.S. for a specific amount of time or demonstrate an unabandoned foreign residence. Nonimmigrant intent can be demonstrated through a written statement.

2. Eligibility Requirements

Both categories of E visas are nationality-specific. The nationality of a business is determined based on the nationality of its owner(s). If more than one individual owns a company, the sponsoring employer's nationality is determined by the nationality of the majority (50 percent or more) owners of the company. Determining ownership for publicly traded companies can be problematic in today's increasingly interconnected financial markets, but is generally determined by the nationality of the stock exchange where it is primarily traded. An E employee must possess the same nationality as the employer. Individuals may be granted E status if they are the trader or investor, or sponsored as an employee who is an executive, manager or individual with essential skills.

3. E-1 Treaty Trader

In addition to the general eligibility requirements for the intended employee, a sponsoring employer must meet certain criteria to qualify as an E-1 Treaty Trader organization. The company must be engaged in "substantial trade" principally between the treaty country and the U.S. Substantial trade means the systematic exchange, purchase or sale of goods and/or services. Factors that are analyzed to determine the substantiality of the trade include trade volume, value, continuity, and the size of transactions. Trade may be binding contracts that call for a future exchange. Services include international banking, insurance, transportation, communications, data processing and advertising. The exchange should be traceable and identifiable, and title to the trade item must pass from one treaty party to the other. Regulations require that over 50 percent of the total volume of international trade conducted by the sponsoring employer is between the U.S. and the treaty country.

4. *E-2 Treaty Investors*

In addition to the general eligibility requirements for the intended employee, a sponsoring employer must meet certain criteria to qualify as an E-2 Treaty Investor organization. Specifically, the investment in the U.S. sponsoring company must be “substantial,” and the source of investment must have been lawfully acquired and traceable.

Substantial investment is defined as an “at-risk” committed capital investment made to generate a profit. At-risk capital is that which is susceptible to loss, and may be an investor’s unsecured business capital, or capital secured by the business’s assets. Further, noncash assets such as intellectual property, inventory, and real estate also may be considered as invested capital for E-2 purposes. The investment must be a substantial portion of the total value of the business or start-up costs of the business in the U.S. There is no minimum dollar investment requirement for E-2 eligibility, and the test for whether the actual investment made is “substantial” will be determined by the type of business conducted by the U.S. entity. The investment must either have already been made, or be actively in progress at the time of the visa application. That is, a qualifying E-2 entity must show the actual commitment of the investment funds.

Finally, the investment made in the U.S. sponsoring company cannot be solely to provide income for an individual treaty investor. This means that income generated by the U.S. company must surpass the level required for the living expenses of the investor and his or her family.

5. *E Dependents*

The spouse and children (under age 21) of an E nonimmigrant may accompany their family member to the U.S. by obtaining derivative E status. Derivative status is granted for the duration of the principal E’s stay.

Dependent spouses may apply for permission to accept employment. They must apply for an Employment Authorization Document at a USCIS Service Center. The dependent spouse should include proof of the marital relationship, authorized admission to the U.S. and his or her spouse’s status. Employment Authorization Documents (EADs) may be issued for up to two years, but not longer than the period of the principal E’s status.

CHAPTER 7

H-1B, H-1B1 and E-3 Classifications – Specialty Occupation Workers

The H-1B specialty occupation program is one of the most critical nonimmigrant classifications used by U.S. employers to employ foreign professionals. It covers “specialty occupations,” defined as positions for which a U.S. bachelor’s degree in a related field is the minimum educational requirement. Prior to the filing of a petition an employer must submit a Labor Condition Application (LCA) to the Department of Labor which includes, among other things, a confirmation that the prevailing wage or actual wage, whichever is higher, will be paid to the beneficiary. Any costs associated with the H-1 petition process are deemed by DOL to be employers’ costs and certain filing fees must be paid by the employer.

A. PROCEDURE FOR H-1B CLASSIFICATION

Two separate U.S. government agencies have responsibility for the H-1B program: DOL and USCIS. First, DOL evaluates and certifies the employer’s LCA, in which the employer makes four attestations regarding wages and working conditions. After obtaining a certified LCA, the employer may file the H-1B petition with the USCIS Service Center with jurisdiction over the work location. USCIS adjudicates an employer’s H-1B petition on behalf of the foreign professional, which describes the job to be performed and the foreign national’s qualifications.

Under current law, a foreign national may remain in the U.S. for a total of six years in H-1B status. Time previously spent in L-1 or H-3 status (if applicable) is counted toward this six-year limit. Initial H-1B petitions normally are granted for three years and they can be extended for a maximum of three additional years. After the sixth year, a foreign national must leave and remain outside the U.S. for one year before another H-1B petition can be approved. Certain foreign specialty occupation workers may extend their status beyond the six-year limit in one-year increments if an application for permanent labor certification or an immigrant visa petition has been filed on their behalf and at least 365 days have passed since the date of filing. Other foreign specialty occupation workers may extend their status in three-year increments if an immigrant visa petition has been approved on their behalf, but they are not yet eligible to file for an

adjustment of their status. Furthermore, certain foreign nationals working on Department of Defense projects may hold H-1B status for 10 years.

B. CHARACTERISTICS SPECIFIC TO THE H-1B CLASSIFICATION

1. Specialty Occupation

A specialty occupation is a job that requires the theoretical and practical application of a body of highly specialized knowledge, evidenced by attainment of a bachelor's degree or higher in the particular specialty, as a minimum requirement for entry into the occupation in the U.S.

To establish that the job offered to the foreign national qualifies as a specialty occupation, the employer must show the following:

- A bachelor's or higher degree (or its equivalent) in a field related to the duties is the minimum educational requirement for the position;
- The degree required is common to the industry, or the job is so unique that it can only be executed by a person with the requisite degree;
- The employer normally requires a degree for this position; or
- The specific duties of the position are so specialized and complex that the knowledge is usually associated with the attainment of a bachelor's or higher degree.

The foreign national, in turn, must demonstrate that he/she has the required education, or its equivalent, for the job offered. USCIS regulations permit a foreign national to qualify for the specialty occupation based on a foreign degree and/or experience that is equivalent to the required bachelor's degree. The USCIS will accept a foreign university degree if it has been evaluated as equal to a U.S. degree by an independent credentials evaluator.

For a foreign national to qualify for a specialty occupation based on experience that is equivalent to a bachelor's degree, the foreign national must show that he or she gained experience through "progressively responsible positions relating to the specialty." Specialized training and/or work experience may wholly substitute for a bachelor's degree. Equivalency may be determined by USCIS through application of the "three-for-one" rule in which three years of specialized training and/or work experience may be substituted for each year of college-level education that the foreign national lacks.

2. *Numerical Limit on H-1B Nonimmigrants*

The issuance of new H-1B visas is capped at an annual limit of 65,000, of which 6,800 visas are reserved for citizens of Singapore and Chile. Once the cap has been reached, applications for the following fiscal year (beginning October 1) may not be submitted until April 1, which is six months prior to the beginning of the next fiscal year.

Certain H-1B petitions are not subject to the cap, and therefore can be approved in addition to the 65,000 already allocated for the classification. Exemptions from the cap include H-1B petitions for amendments, extensions, and transfers of status. The cap also does not apply to petitions filed by government research organizations, institutions of higher education, nonprofit research organizations, and not-for-profit entities related or affiliated to an institution of higher education. Furthermore, doctors employed pursuant to “State 30” or beneficiaries of federal government agency waivers to work in underserved communities are exempt from the numerical cap.

An additional 20,000 H-1B visas are available for graduates of U.S. master’s or higher degree programs. In order to qualify for this H-1B visa, the individual’s school must be properly accredited by a nationally recognized accrediting agency or association and the school must be a public or other nonprofit institution.

3. *Labor Condition Application (LCA)*

The LCA is a prerequisite to the filing of any H-1B petition with USCIS. The LCA includes basic information regarding employment, such as title and salary for the position and the work location. The LCA also contains four attestations that the employer must make:

- It will pay all H-1B foreign nationals the higher of either the actual wage paid to others with similar experience and qualifications for the specific job or the prevailing wage for the occupational classification in the geographical area;
- It will provide working conditions for the H-1B employee that will not adversely affect the working conditions of workers similarly employed in the area;
- There is no strike or labor dispute in the occupation at the place of employment; and
- It has provided a notice of the filing to the bargaining representative (if the position is covered by union representation), or if there is no bargaining representative, it has posted a notice of filing in at least two conspicuous locations at the place of employment for a period of 10 business days.

The employer must make available, at its offices for public examination, a copy of the LCA and necessary supporting documentation. This public access folder must contain:

- A copy of the LCA filed with DOL (once the LCA has been certified by DOL, a copy of the certified LCA also should be placed in the folder);
- The documents showing the source of the employer's prevailing wage determination;
- A statement of the wage rate to be paid to the H-1B worker;
- Documentation summarizing the system used to set the actual wage for the occupation;
- Copies of the posting notices (or notice given to the bargaining representative); and
- A summary of the benefits offered to the H-1B employee showing that they are the same as those offered to U.S. employees.

On or before the H-1B employee's first day of work, a copy of the certified LCA should be provided to the employee. In addition, certain documentation may be added to the public access file after LCA certification. For example, where an employer undergoes a change in corporate structure and the new organization chooses to assume LCA liability for the H-1B employee, a statement regarding the assumption of liability must be added to the public access file. In addition, statements regarding changes in the H-1B employee's wage rate should be reflected in the file.

4. *Violations and Penalties*

Violations of LCA regulations may result in assessment of back pay wages, civil monetary penalties and debarment from filing any immigrant or nonimmigrant petitions for at least one year.

5. *Employer Obligation upon Dismissal of Employee during H-1B Period*

If the employment of an H-1B employee is terminated before the end of the H-1B authorized stay, the employer is liable for the reasonable cost of return transportation to the foreign national's last place of foreign residence. Limited exceptions to this rule are the foreign national's voluntary termination of employment or dismissal for cause. If an H-1B worker's employment is terminated before the end of the H-1B petition approval period, the employer should notify the USCIS of the termination and withdraw the H-1B petition to effectuate a bona fide termination.

6. *Change of Employer – H-1B Portability*

The American Competitiveness in the Twenty-first Century Act (AC21) facilitated the process of changing employers for H-1B foreign nationals. Pursuant to AC21, an H-1B professional may begin working for a new employer once that employer has filed an H-1B petition requesting extension of valid H-1B status with USCIS. In the past, an H-1B nonimmigrant was required to wait for the petition to be approved by USCIS before he or she could begin working for the new employer. H-1B portability is available only to foreign workers who were lawfully admitted to the U.S. and who have not engaged in unauthorized employment.

C. H-1B DEPENDENTS

The spouse and children (under age 21) of an H-1B nonimmigrant may accompany their family member to the U.S. by obtaining H-4 status. H-4 status is granted for the duration of the principal H-1B's stay. Generally, the H-4 dependent spouses and minor children of H-1B nonimmigrants are ineligible to apply for employment authorization in the U.S. However, a new rule went into effect on May 26, 2015, that allows H-4 dependent spouses to apply for employment authorization under certain circumstances. When an H-1B nonimmigrant is either the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140) or has been allowed to extend his or her H-1B status beyond the general 6-year limit because he or she is seeking lawful permanent residency in the U.S., then his or her H-4 dependent spouse may apply for employment authorization in the U.S.

D. ADDITIONAL H-1B REQUIREMENTS

1. *H-1B Dependent Employer Attestations*

H-1B dependent employers are defined as those employers whose workforces, in terms of full-time equivalent employees, are composed of at least 15% H-1B professionals. Dependent employers are required to make attestations that affirm they have attempted to recruit U.S. workers and have not displaced U.S. workers during defined periods prior and subsequent to the filing of the LCA.

2. *Education and Training Fee for H-1B Filings*

In 1998, Congress imposed an education and training fee of \$500 for H-1B employers. The fee is now \$1,500 for most H-1B employers, except those with fewer than 25 full-time equivalent employees; those employers only pay \$750. The total number of employees must be determined by including all of an employer's affiliates and subsidiaries. The education and training fee is applicable to an employer's initial petition and first extension on behalf of a foreign worker. Exempted from the fee requirement are

certain petitioners, including government research organizations, institutions of higher education and nonprofit research institutes. In 2010, the law changed the requirements for some employers to pay additional fees for their H-1B petitions. If an employer has at least 50 employees and more than 50% of their employees are H-1B or L-1 visa holders, the employer must pay an additional \$2,000 for an H-1B petition and an additional \$2,250 for an L-1 petition.

3. *Antifraud Fee*

An H-1B employer must also pay a \$500 anti-fraud fee at the time of the filing of all initial H-1B petitions. The fee applies only to the principal foreign national, not to his or her derivative family members, and is not required upon extension of the H-1B classification. However, the fee is required where a new petition is filed due to a change of employer. The revenue from the fee is divided equally among DOL, DHS, and DOS for use in anti fraud activities, including the hiring of additional personnel.

4. *Prevailing Wage Determinations*

All employers filing new H-1B petitions (including requests for extensions) and labor certification applications must offer the beneficiary 100% of the prevailing wage. The DOL provides four tiers for prevailing wage surveys, which must be commensurate with experience, education, and level of supervision of the H-1B beneficiary.

E. H-1B WORKPLACE SITE VISITS

In 2009, USCIS' Fraud Detection and National Security (FDNS) Directorate started conducting unannounced site visits at H-1B employer worksites in an effort to root out fraud and abuse in the visa system. A visit typically involves an investigator arriving at the work location stated on the H-1B petition to verify the information submitted on the H-1B petition and to confirm the legitimacy of the petitioning employer. The visits usually last between 15 minutes to an hour and can take place at any time during the workday. Site inspectors may ask to review documents, speak with company representatives, and interview the beneficiary of the petition and his or her manager. FDNS officers also may request a tour of the employer's premises and the beneficiary's workspace. In many cases, the site visit may involve only an email request, particularly after FDNS has visited the site previously in relation to a prior H-1B petition. Some of the documentation the officer may ask for includes a copy of the foreign national's identity documents, a business card, most recent paystub, and last Form W-2.

F. H-1B1 CLASSIFICATION – CHILEAN AND SINGAPOREAN SPECIALITY WORKERS

The H-1B1 category, created by Free Trade Agreements signed with Chile and Singapore in 2003, allocates 6,800 H-1B1 visas for citizens of Singapore (5,400 visas) and Chile (1,400) from the 65,000 worldwide H-1B visas available each fiscal year. The requirements for the H-1B1 are largely identical to those of the H-1B.

The H-1B1 visa, similar to the H-1B visa, requires the visa holder to come to the U.S. to work in a specialty occupation and he or she must have attained a bachelor's degree or higher in the specialty field. Additionally, H-1B1s offered employment in certain positions such as Disaster Relief Claims Adjusters, Management Consultants, Agricultural Managers and Physical Therapists may use alternate criteria for eligibility. The U.S. employer must provide a Labor Condition Application certified by the DOL. After obtaining a certified LCA, the employer may file the H-1B1 petition with the USCIS Service Center with jurisdiction over the work location if the individual is physically in the U.S. If the individual is outside of the U.S., the employer may utilize the standard option uniquely available for the H-1B1 visa by having the foreign national apply directly at a U.S. Consulate abroad. When applying at the consulate abroad, the foreign national need only present the certified LCA and an offer of employment from the U.S. employer, which describes the job to be performed and the foreign national's qualifications.

A foreign national is typically granted admission in H-1B1 status for a period of one year, and extensions in one-year increments may be granted indefinitely. Unlike the H-1B, there is no six-year limitation on the duration of stay. However, the H-1B1 worker may not utilize the "portability" provision of AC21 to commence employment with a new employer upon the filing of an H-1B1 petition on his or her behalf. The H-1B1 foreign national must wait until the new petition is approved to commence employment with the new employer.

Unlike H-1B and L visas, H-1B1 visas are not considered dual intent visas. Therefore, a person in H-1B1 status must always demonstrate the intent to remain in the U.S. on a temporary basis, and seeking lawful permanent residence in the U.S. may jeopardize their continued H-1B1 status.

The spouse and children of H-1B1 employees are permitted to travel and live in the United States in H-4 status. H-4 dependents may study while in the U.S., but are not permitted to work.

G. E-3 CLASSIFICATION – AUSTRALIAN SPECIALTY WORKERS

On May 12, 2005, President Bush signed into law the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005. The Act created a new nonimmigrant visa category – the E-3 – for Australian professionals.

The E-3 visa allows Australians to enter the U.S. to perform a specialty occupation. The E-3 visa is a hybrid of an H-1B and an E visa. Like the H-1B visa, the E-3 visa holder must be coming to work in a specialty occupation and must have attained a bachelor's (or higher) degree in the specialty field. In addition, the employer is required to file a Labor Condition Application with the DOL. Like the E visa, the E-3 can be renewed indefinitely, with admission periods of up to two years. E-3 visa holders can work for any U.S. employer, unlike the E classification where an employee must work for a treaty employer that is majority-owned by the citizens of his or her home country. The number of E-3 visas is limited to 10,500 each year. Dependent visas issued to spouses and children are not included in the E-3 quota and spouses and children do not need to be Australian citizens. E-3 spouses are entitled to work in the U.S. and may apply for an Employment Authorization Document through a USCIS Service Center.

CHAPTER 8

H-2B Classification – Skilled and Unskilled Workers in Temporary Jobs (Nonagricultural Workers)

H-2B visas are used by employers who seek to fill temporary, seasonal, peak load or intermittent employment needs in industries like hospitality, construction, lodging, and professional sports. A key characteristic of the H-2B classification is that it requires the employer to file a temporary labor certification application, which, unlike the Labor Condition Application (LCA) used with the H-1B, H-1B1 and E-3 petitions, requires the employer to conduct recruitment to test the U.S. labor market. Additionally, only a limited number of H-2B visas are issued each year and only nationals of certain annually designated countries are eligible for H-2B visas in any particular year.

On February 21, 2012, the U.S. Department of Labor's (DOL) Employment and Training Administration and Wage and Hour Division issued a Final Rule on the H-2B program that amended the regulations governing the certification of H-2B employment and revised the DOL's process by which employers obtain a temporary labor certification. However, the U.S. District Court for the Northern District of Florida issued a permanent injunction against the Final Rule in December 2014. As a result, it was never implemented. Employers continued to file their H-2B labor certification applications under the preexisting regulation until March 4, 2015, when the Northern District of Florida invalidated the 2008 rule issued by DOL that governed certain operations of the H-2B program. Both DOL and DHS had temporarily suspended their processing of H-2B petitions as a result of the decision. Both agencies would temporarily resume processing of H-2B petitions under the 2008 rule when the court issued a temporary stay on the enforcement of its ruling. On April 29, 2015, DOL and DHS jointly issued an Interim Final Rule to govern the future operation of the program, which contained many substantive changes to the requirements imposed upon businesses that hire H-2B workers. Employers interested in seeking H-2B workers should consult with legal counsel in order to best navigate the changing legal environment surrounding the H-2B program.

A. PROCEDURE FOR H-2B CLASSIFICATION

Filing an H-2B application is a multi-step process involving the DOL and USCIS that has undergone many changes recently with the promulgation of the new Interim Final Rule. The H-2B process requires the employer to register with DOL as an H-2B employer, obtain a prevailing wage determination from DOL, file a Temporary Employment Certification for the workers they desire to hire, and upon receipt of an approval of the certification, conduct recruitment in the U.S. and file the recruitment report with the Labor Department. After an employer has gone through all of these steps and has been unable to find domestic workers to fill these positions, the employer is eligible to file a nonimmigrant petition with the USCIS for H-2B workers.

The length of stay permitted for H-2B foreign nationals is limited by the duration of the employer's temporary need for additional workers, as specified in the labor certification. The new rule issued in April of 2015 redefined the maximum duration for a temporary need to 9 months (except in the case of a one-time occurrence), which is a decrease from the 10 month duration allowed under the 2008 rule. Extensions of status may be issued by USCIS provided that an employer submits a new labor certification that covers the requested time period stated in the extension application. The maximum length of stay in the U.S. on an H-2B visa is three years. After the third year, a foreign national must leave and remain outside the U.S. for three months before another H or L petition can be approved.

B. CHARACTERISTICS SPECIFIC TO THE H-2B CLASSIFICATION

1. *Temporary Employment Certification*

In order for the DOL to certify the application, the employer must demonstrate and attest on the labor certification that there are no qualified, able, and willing U.S. workers available for the job, that the employment of the foreign national will not affect the wage rate and working conditions of similarly situated U.S. workers, and that the employers' need for the job is either one-time, seasonal, peak load, or intermittent.

Under the new regulatory construct created on April 29, 2015, the process the employer must undertake is much more cumbersome than the process used to be. First, the employer must register as an H-2B employer that establishes their temporary need for services or labor in the U.S. Once the employer has received an approved registration, the employer has to obtain a prevailing wage determination from DOL. The employer is required to pay

the highest wage required by an applicable federal, state, or local law, and the wage rate must be included in the employer's recruitment efforts.

Once the employer receives an approved PWD from DOL, the employer submits the Temporary Employment Certification application to the National Processing Center, along with a copy of the valid PWD, a copy of the job order (which must concurrently be submitted to the State Workforce Agency in the area of intended employment), and copies of any contracts/agreements with any agents or recruiters executed in connection with these job opportunities. When the employer receives a notice of acceptance of the certification application, the employer must then commence other recruitment efforts, which include, among other things, publishing two print advertisements (one of which must be on a Sunday, with limited exceptions) and contacting certain former U.S. employees about the job opportunity. These recruitment activities must be completed by the employer within 14 days of receiving the notice of acceptance from DOL and then the employer must file a recruitment report with the agency. After all of these steps, if DOL approves the certification application, then the employer can proceed to filing the petitions to USCIS to hire foreign workers under the H-2B program.

2. *The Standard for Determining the Temporary Nature of the Job Offer*

A job opportunity is considered temporary under the H-2B classification if the employer's need for the duties to be performed is temporary, whether or not the underlying job is permanent or temporary. It is the nature of the employer's need, not the nature of the duties, that is controlling. Part-time employment does not qualify for temporary labor certification under the H-2B program. Only full-time employment can be certified. A temporary job opportunity is limited to one of the following types of labor: a one-time occurrence, a seasonal need, a peak load need, or an intermittent need.

A one-time occurrence is temporary employment for which the employer has not employed workers in the past and will not need to employ workers to perform the services in the future. A one-time occurrence also may arise when an employer temporarily must fill a position that is otherwise permanent, but a temporary event of short duration has created the need for an H-2B worker.

A seasonal need for a temporary worker traditionally is tied to a season of the year and is of a recurring nature. Jobs available in the hospitality industry, such as resort workers, are often designated as "seasonal employment."

An employer with a peak load need must establish that it normally employs permanent workers to perform services and that it temporarily needs to supplement its staff with H-2B workers due to a short-term demand. An intermittent need arises when an employer occasionally or intermittently requires temporary workers for services or labor for short periods of time.

When hiring an H-2B worker, the employer must demonstrate that the request for labor is based on one of the above listed categories of temporary employment.

If the DOL approves the labor certification, the employer may file the approved labor certification with its petition to the USCIS. USCIS assesses whether there is an actual need for the worker, whether the job offer is genuine, and whether the foreign national is qualified for the position.

3. *Eligible Countries*

The Secretary of Homeland Security, with the concurrence of the Secretary of State, annually designates which countries are eligible to participate in the H-2B program and publishes a list in the *Federal Register*. Designation of eligible countries is valid for one year from publication. Under certain circumstances, a beneficiary from a non-designated country may be considered eligible for an H-2B visa.

4. *The Numerical Cap*

H-2B visas are subject to an annual numerical limit, or “cap”, on the total number of foreign nationals who may be issued a visa or otherwise provided H-2B status (for example, through a change of status) during a fiscal year. Currently, the H-2B cap set by Congress is 66,000 per fiscal year, with 33,000 to be allocated for employment beginning in the first half of the fiscal year (October 1 - March 31) and 33,000 to be allocated for employment beginning in the second half of the fiscal year (April 1 - September 30). Any unused numbers from the first half of the fiscal year are made available during the second half of the fiscal year; however, there is no “carryover” of unused H-2B numbers from one fiscal year to the next.

Once the H-2B cap is reached, USCIS may accept only petitions for H-2B workers who are exempt from the H-2B cap. With some limited exceptions, an H-2B worker who extends his or her stay in H-2B status will not be counted again against the H-2B cap. Similarly, the spouse and children of H-2B workers classified as H-4 nonimmigrants are not counted against this cap.

C. H-2B DEPENDENTS

The spouse and children (under age 21) of an H-2B nonimmigrant may accompany their family member to the U.S. by obtaining H-4 status. H-4 status is granted for the duration of the principal H-2B's stay. Dependents of H-2B visa holders may not accept employment in the U.S.

CHAPTER 9

L-1 Classification – Intracompany Transferees

The L-1 visa classification is available to employers seeking to transfer employees from an affiliate, parent, branch, or subsidiary office abroad to its operations in the United States. Foreign nationals in L-1 classification, commonly referred to as intracompany transferees, must qualify as executives or managers (L-1A) or as “specialized knowledge” employees (L-1B). Specialized knowledge employees being transferred under the L-1 blanket program also must qualify as “specialized knowledge professionals.”

A. PROCEDURE FOR L-1 CLASSIFICATION

1. *L-1 Petitions*

An individual seeking classification under the L-1 visa category must have an approved L-1 petition submitted by the employer and approved by USCIS. The foreign national must then apply at an appropriate United States Embassy or Consulate for the appropriate L-1A or L-1B visa. Applicants can expect that their applications will be scrutinized carefully, even if the USCIS has already approved petitions on their behalf. L-1 status may be granted for an initial period of three years with two possible extensions in two-year increments for managers or executives and one possible two-year extension for specialized knowledge employees. The employer’s petition to USCIS is submitted on Form I-129, Petition for a Nonimmigrant Worker. Applicants for admission under the L-1 Blanket Program need not have an individual L-1 petition approval and can instead apply directly to the U.S. Consulate for the visa classification. Please see section 3 of part B below for a full description of the blanket program.

2. *New Office Transferees*

A petition for L-1A or L-1B classification may be made for an individual who is being transferred to a “new office” in the United States, defined as any parent, branch, affiliate or subsidiary which has been operating in the United States for less than one year. More latitude is provided to the petitioner with reference to documenting the U.S. enterprise. However, the new office visa is limited to a one-year duration with the understanding that full documentation should be available as to company operations at the time of renewal.

B. CHARACTERISTICS SPECIFIC TO THE L-1 CLASSIFICATION

1. *Qualifying Corporate Relationship*

Before transferring to the U.S., the foreign national must have been employed abroad continuously for one out of the past three years by an affiliate, branch, parent or subsidiary of the petitioning U.S. company. Furthermore, the U.S. and foreign entities must continue to do business for the duration of the L-1 nonimmigrant's stay in the U.S.

2. *One-Year Employment Requirement*

Prior to the U.S. transfer, an L-1 beneficiary must have worked abroad for a qualifying entity for one continuous year within the preceding three years in a “managerial,” “executive” or “specialized knowledge” position. The position in the U.S. also must be in a “managerial,” “executive,” or “specialized knowledge” capacity.

The term “executive capacity” is defined as an assignment with the organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes goals or 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, board of directors, or stockholders.

The term “managerial capacity” means an assignment with the organization in which the employee primarily manages the organization, or a department, subdivision, function or component; supervises and controls the work of other supervisory, professional or managerial employees or manages an essential function within the organization or subdivision of the organization; has the authority to hire and fire, or recommend personnel actions, and functions at a senior level within the organizational hierarchy; and exercises discretion over day-to-day operations of the activity or function for which the employee has authority.

The term “specialized knowledge” is defined as either noteworthy or uncommon knowledge possessed of the petitioning company's product, service, research and its application in international markets, or advanced knowledge of a company's internal processes and procedures. The beneficiary should possess knowledge that is different from that common to the particular industry.

3. *L-1 Blanket Program*

For large companies that utilize the L-1 classification frequently, a more-streamlined L-1 option is available. The regulations allow an

employer to file a preliminary petition, requesting that the DHS approve a company's corporate relationships (*i.e.*, subsidiaries, affiliates) as qualifying for L-1 treatment. Once its corporate relationships are approved by DHS, a company is granted L-1 blanket designation. A company that is granted this designation no longer needs to file individual petitions with USCIS. Its employees can apply directly to a U.S. Consulate abroad for an L-1 visa. A specialized knowledge employee must possess a bachelor's degree, or its equivalent, in order to be eligible for L-1B classification under a company's L-1 blanket to qualify as a "specialized knowledge professional."

A company is eligible for an L-1 blanket if it can show that it has been doing business in the U.S. for at least one year; it has three or more domestic and foreign branches, subsidiaries or affiliates; qualifying relationships exist with all related entities; and the petitioner meets one of the following tests: (i) obtained approval of at least 10 L-1 petitions during the previous 12 months; (ii) has U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or (iii) has a U.S. workforce of at least 1,000.

C. L-1 DEPENDENTS

The spouse and children (under age 21) of an L-1 nonimmigrant may accompany their family member to the U.S. by obtaining L-2 status. L-2 status is granted for the duration of the principal L-1's stay.

Spouses in L-2 status may apply for permission to accept employment. They must apply for an Employment Authorization Document at a USCIS Service Center. The dependent spouse should include proof of the marital relationship, authorized admission to the U.S., and his or her spouse's status. Employment Authorization Documents (EADs) may be issued for up to two years, but not longer than the period of the principal L's status.

D. RECENT L-1 DEVELOPMENTS

1. *Changes Affecting L-1B Specialized Knowledge Category*

In recent years, layoffs of American workers in the technology field and other perceived concerns in connection with the L-1 category have been widely reported. As a result, Congress passed the Consolidated Appropriations Act of 2005, limiting and restructuring the business activities of certain L-1 workers, effective June 28, 2005.

The Act prohibits an L-1B employee from being stationed primarily at the worksite of a third party where: (i) the L-1B employee will be supervised and controlled by a third party who is not affiliated with the employer for whom the petition was granted; and/or (ii) the L-1B employee will

be placed with an unaffiliated employer to provide labor that does not involve the specialized knowledge of a product or service specific to the petitioning employer. The Act also struck down an INA section permitting the qualifying employment abroad requirement for L blanket applicants to be satisfied by six months of employment, and restores the original one year requirement.

In addition, the Act introduced a new \$500 anti fraud fee. The fee must be paid by the employer at the time of the filing of all initial L-1 visa petitions, including applications pursuant to L-1 blanket petitions at U.S. Consulates abroad. The fee applies only to the principal foreign national, not to his or her dependent family members, and is not required upon extension of the L-1 visa classification. However, the fee is required where a new petition is filed due to a change of employer. The revenue from the fee is divided equally among DOL, DHS, and DOS for use in anti fraud activities, including the hiring of additional personnel.

Another more recent development at USCIS involves the agency revisiting its L-1B policy. This process began at USCIS in March 2015 when the agency issued a proposed memorandum on L-1B adjudications. This agency development coincided with publication of data that reflected that in the prior year, more than 35% of L-1B petitions filed and more than 50% of those filed for Indian nationals were denied. Given that the adjudicatory process of L-1B petitions is likely to evolve, it is suggested that you seek the advice of legal counsel if you are interested in utilizing this program.

2. *L-1 Workplace Site Visits*

Following the model for H-1B site visits described in Chapter 7, USCIS' FDNS division has begun conducting unannounced workplace site visits at L-1 employers. In order to root out fraud and abuse, the investigations are aimed at confirming that the stated job duties are in line with the beneficiary's classification as a manager or executive (L-1A) or an employee with "specialized knowledge" (L-1B), and verify that the wage of the employee is at least at the level noted in the petition and is consistent with the listed duties and level of experience.

CHAPTER 10

O Classification – Individuals of Extraordinary Ability

The O-1 category is for nonimmigrants of extraordinary ability in the sciences, arts, education, business, or athletics. The O category is often used by artists, athletes, entertainers, world-renowned chefs, and extraordinary business people.

A. PROCEDURE FOR O CLASSIFICATION

An employer is generally required to file the O-1 petition with USCIS on behalf of the nonimmigrant. However, in the case of artists, athletes and entertainers, the foreign national's agent may be the petitioner. If an O-1 nonimmigrant's services are to be rendered in more than one location, the employer or agent must include an itinerary in the petition with the dates and locations of work.

In approving an O-1 petition, an Immigration Officer should grant the petition with a length of status that coincides with the duration of the "event," *i.e.*, the proposed activities to be performed in the U.S. An initial period of stay may be granted for up to three years. Subsequent extensions in one year increments may be available.

If an O-1 nonimmigrant employee is terminated prior to the end of his or her authorized stay, the employer or agent will be held jointly and severally liable for the foreign national's return transportation to his or her last residence abroad.

B. CHARACTERISTICS SPECIFIC TO THE O CLASSIFICATION

1. *Proving Extraordinary Ability in Science, Education, Business, or Athletics*

To obtain an O-1 visa to work in the sciences, education, business or athletics, a beneficiary must demonstrate that he or she possesses "a level of expertise indicating that the person is one of the small percent who have risen to the top of the field of endeavor." Evidence of the individual's qualifications may include receipt of a major internationally recognized award, or documentation satisfying at least three of the following categories:

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- Membership in associations in the field which require outstanding achievements of their members;
- Published material about the foreign national;
- Participation as a judge of the work of others in the same or allied fields;
- Evidence of original contributions of significance in the field;
- Authorship of scholarly articles;
- Evidence of employment in a critical or essential capacity for organizations with a distinguished reputation; or
- Evidence that the foreign national commands a high salary.

These criteria are closely related to those applicable to employment-based first preference petitions for individuals of “extraordinary ability.”

2. *Proving Extraordinary Ability in the Arts*

Extraordinary ability in the arts implies that the foreign national has attained “distinction.” Distinction is defined as “a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered.” Distinction has also been defined as prominence in the field of endeavor and may be evidenced by nomination for, or receipt of, an important national or international prize or by satisfying at least three of the following:

- Evidence that the foreign national has performed, and 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;
- Evidence that the foreign national has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
- Evidence that the foreign national has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
- Evidence that the foreign national has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

- Evidence that the foreign national has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field, in which the foreign national is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the foreign national's achievements; or
- Evidence that the foreign national has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

This category is interpreted broadly, encompassing occupations beyond just performers, such as choreographers, set designers, essential technical personnel, or music coaches.

3. *Essential Support Personnel*

In many cases, individuals in O-1 status require the assistance of specially trained support staff. O-2 foreign nationals accompany O-1 principals and must be petitioned for in conjunction with the services of the O-1 foreign national. O-2 foreign nationals must enter for the purpose of assisting the O-1's performance and have critical skills and experience with the O-1 foreign national that cannot be performed by a U.S. worker. Individuals petitioning for O-2 status must have a foreign residence that they do not intend to abandon.

4. *Consultation Requirement*

Prior to adjudication of either an O-1 or O-2 petition, USCIS requires a consultation with a U.S. organization, such as a labor union representing workers in the occupation or a peer group with expertise in the field. If there is no such organization, the requirement may be waived. A consultation letter may state the opinion of the organization regarding the beneficiary's qualifications or it may simply reflect no objection. Objection by the organization to the foreign national's admission is not binding on USCIS. Consultations for O-2 beneficiaries should outline the essential role to be played by the support personnel, as well as their relationship to the O-1 visa holder. They should also state whether there are available U.S. workers.

C. O DEPENDENTS

The spouse and children (under age 21) of an O nonimmigrant may accompany their family member to the U.S. by obtaining O-3 status. O-3 status is granted for the duration of the principal O visa holder's stay. Dependents in O-3 status may not accept employment in the U.S.

CHAPTER 11

TN Classification – NAFTA Professional Workers

In December 1993, the U.S., Canada, and Mexico jointly enacted the North American Free Trade Agreement (NAFTA). NAFTA established a singular, reciprocal trading relationship among the three nations and allowed nonimmigrant classes of admission exclusively for the following business people: temporary business visitors, treaty traders, investors, temporary workers, intracompany transferees and professionals. Entries under NAFTA began in February 1994. This section focuses on professional workers, the TN (Trade NAFTA) classification.

A. PROCEDURE FOR TN CLASSIFICATION

The TN classification is favored by U.S. companies for its expediency. A TN applicant does not need prior USCIS petition approval, although Canadians can apply for it if desired. TN applicants may present documentation showing eligibility directly at the U.S. Consulate for Mexican citizens, or at the port of entry or pre-flight inspection for Canadian citizens. Upon entry, a TN applicant must demonstrate his or her nonimmigrant intent to the CBP officer. The individual must demonstrate that he or she will remain in the U.S. for a finite period of time to engage in one of the professions listed in Appendix 1603.D.1 of the NAFTA treaty. In order for a NAFTA professional to enter the U.S., he or she must have a job offer to perform temporary services for a U.S. employer. The foreign national must also prove that he or she has the relevant educational training or work experience to meet the job requirements.

B. CHARACTERISTICS SPECIFIC TO THE TN CLASSIFICATION

TN professionals were initially allowed entry into the United States for a period of only 1 year. This meant that workers would have to apply for extensions of their status annually, which is costly and burdensome. In late 2008, USCIS changed its policy through the regulatory process and allowed for an initial admission period of 3 years. TN status of both Canadian and Mexican nationals may be extended by having their U.S. employer file a petition with the USCIS. Alternately, Canadians may apply for an extension of TN status at a port of entry. The Department of State recently amended its regulation pertaining to NAFTA by removing the petition requirement for

citizens of Mexico applying for nonimmigrant visa classification as NAFTA professionals. Mexican citizens may apply for an extension of TN status at the port of entry after receiving a new visa at a U.S. Consulate.

1. *Permissible TN Activities in the U.S.*

TN status is available for professions specified in the NAFTA treaty only at Appendix 1603.D.1 (Designated Profession List for TN Status). The foreign national must be seeking entry into the U.S. to work in one of the professions listed and possess the necessary degree and/or work experience for the occupation. The applicant must fall into one of the very specific TN categories in order to be eligible for the classification. Please see the Appendix for the complete NAFTA professions list.

2. *Entry Process under NAFTA*

TN application procedures are different for Canadian and Mexican nationals.

a. Canadian Nationals

A Canadian national applying for TN status may apply directly at certain ports of entry or via petition. At the port of entry, the foreign national must present the following documentation:

- Proof of Canadian citizenship;
- Letter offering employment in a professional occupation listed in the NAFTA treaty;
- Evidence of professional qualifications;
- Confirmation of salary and its source; and
- Letter confirming the temporary length of employment (not to exceed three years).

Once admitted to the U.S., the foreign national will receive an I-94 card that is valid for up to three years. The admission card will allow multiple entries.

b. Mexican Nationals

Mexican nationals may apply for a TN visa at a U.S. Consulate in Mexico before arriving at a U.S. port of entry. They must submit to the consulate documentation similar to that submitted by Canadian nationals. Upon issuance of the visa, the TN visa holder may apply for admission to the U.S. The procedure after admission mirrors that for Canadians.

C. DEPENDENTS

The spouse and children (under age 21) of a TN nonimmigrant may accompany their family member to the U.S. by obtaining Trade Dependent (TD) status. TD status is granted for the duration of the principal TN's stay. Dependents in TD status may not accept employment in the U.S.

CHAPTER 12

F-1 Classification – Students

Businesses, whether they recruit on campus or not, may hire nonimmigrant students who have entered the United States, most often in F-1 classification, but occasionally in M-1 classification as well. F-1 classification is available to students who have entered the United States temporarily and solely for the purpose of pursuing a course of study at an established institution of learning approved by Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security. The F-1 category includes students in colleges, universities, seminaries, conservatories, academic high schools, and other academic institutions. Nonimmigrants enter the United States in M-1 visa classification to attend vocational schools, technical schools, and English language programs.

A. PROCEDURE FOR F-1 CLASSIFICATION

In most countries, student visa applicants are required to appear for an in-person interview at a U.S. Consulate with jurisdiction over the foreign national's place of residence. The consular officer must verify the applicant's data in an information database, as well as the student's SEVIS Form I-20. The SEVIS Form I-20 indicates the course of study, expected program duration, and the amount of money the foreign national will need to pay for living expenses, as well as for his or her academic studies. Documents that an F-1 student might be required to present include:

- The letter of admission from the school where the foreign national plans to study;
- Signed SEVIS Form I-20;
- A statement by the foreign national that he or she will leave the U.S. after the completion of his or her studies;
- Proof of permanent residence in the foreign national's home country, which he or she does not intend to abandon; and
- Evidence that the student has sufficient funds for tuition and living expenses.

Students are generally admitted for “duration of status.” Duration of status is defined to include the program of study, any period of practical training authorized, plus an additional sixty day grace period. The SEVIS Form I-20

indicates the expected length of time the foreign national will need to finish his or her course of study.

B. CHARACTERISTICS SPECIFIC TO THE F-1 CLASSIFICATION

1. SEVIS – Student and Exchange Visitor Information System

The Student and Exchange Visitor Information System, or SEVIS, is a computer database administered by the Student and Exchange Visitor Program, which is a part of the National Security Investigations Division within ICE. SEVIS maintains information on international students and exchange visitors, and their family members, including personal information, such as current address and status at the academic institution. Pursuant to immigration regulations, institutions must inform ICE of the following changes in circumstances: a student begins with a full course of study and then drops below the required amount of credits to be considered for full-time enrollment; a student transfers schools; a student fails to report to school within 30 days of registration; and a student engages in off-campus employment.

The Designated School Official (DSO) at a college or university interacts with the SEVIS system to keep ICE up-to-date in real time as to the status and location of each nonimmigrant student in the United States from the time the student applies for admission to the school program to such time as he or she departs the United States.

The school official inputs all the necessary data for each potential new student into the SEVIS system in order to issue and print out a Form I-20 Certificate of Eligibility, which serves as the basis for each nonimmigrant student's application for a visa and admission into the United States.

2. Employment of F-1 Students

F-1 students must obtain permission from a DSO before accepting employment. Authorization for part-time employment is issued in limited circumstances, either based upon unforeseen financial hardship or for practical training. A limited period of practical training authorization may also be obtained at the conclusion of a bona fide educational program and during the student's course of study.

Students may be employed in the following circumstances:

a. On-Campus Employment

On-campus work must be performed on the school's premises, including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria, or at an off-campus

location which is educationally affiliated with the school and is associated with the school's established curriculum or contractually funded research projects at the post-graduate level. Student employment may not displace any U.S. citizens or residents. Students may work up to 20 hours per week during the school term and full-time during vacation breaks. No special documentation is needed for employment, although authorization from the DSO is required.

b. Off-Campus Employment

To be eligible for off-campus employment, F-1 students must complete at least one academic year (usually 9 months) of study, be in good academic standing, demonstrate that such work would not interfere with their studies, and show a severe economic hardship occurring after the student's enrollment or emergent circumstances. Students may work up to 20 hours per week during the academic term and full-time during vacation breaks only with proper authorization from the DSO. If approved, the DSO must note the authorization on the student's I-20 Form and notify SEVIS.

Students may also qualify for employment off-campus using practical training in a field related to the student's course of study. There are two types of practical training:

- (i) Curricular Practical Training (CPT) - also referred to as cooperative education, alternate work/study, internship, "or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school." CPT is authorized by the DSO on the Form I-20.
- (ii) Optional Practical Training (OPT) - a student may choose to engage in OPT either prior to or upon completion of his or her academic program. The student must apply to and obtain permission from the DSO and USCIS prior to commencing OPT. The student may request either full-time or part-time OPT employment. Employment must not interfere with the student's ability to carry a regular full course of study. There are two ways to extend OPT:
 - OPT extension for STEM students - An F-1 student currently on OPT after completion of a Bachelors, Masters, or Ph.D Degree in a STEM field, *i.e.*, science, technology, engineering, mathematics, can apply for a one-time 17 month extension of their regular 12 month OPT period if their employer is enrolled in the E-Verify system. The extension request allows for continued

employment while the extension request is pending until there is a decision on the employment authorization application or for 180 days, whichever comes first.

- **H-1B Cap-Gap Extension** – An extension of post-completion OPT is available to students that have had a timely H-1B change of status petition with an October 1 start date, filed on their behalf. This can provide work authorization for the “gap” between the OPT expiration and the October 1 start date of the H-1B. A student granted a cap-gap extension is advised against international travel, since he or she may not return to the United States during the cap-gap extension period. The student will need to apply for an H-1B visa at a consular post abroad prior to returning. As the H-1B petition is for an October 1 start date, the student should be prepared to adjust his or her travel plans, accordingly.

Students must complete at least one academic year before they are eligible to participate in any type of practical training, except for graduate students in programs which require immediate participation in CPT. Students who complete one or more years of full-time (or full-time equivalent) CPT are not eligible for post-completion OPT. However, if CPT was for less than one year, the student remains eligible for 12 months of OPT, at the discretion of the DSO. OPT is limited to a total of 12 months, whether used before or after completion of studies. Any OPT performed prior to completion of studies is subtracted from available post-completion OPT.

3. *FICA – Federal Insurance Compensation Act*

F-1 students are exempt from the Federal Insurance Compensation Act (FICA) as long as they are categorized as “non-residents” for purposes of U.S. tax regulations. Generally, F-1 students are considered “residents” for income tax purposes if they have resided in the U.S. for five years. Full-time students may retain non-resident status beyond five years in some circumstances. The designation of “resident” for tax purposes has no bearing on or relation to a foreign national’s immigration status as a lawful permanent resident.

F-1 students may also be exempt from FICA if an applicable tax treaty exists between the foreign national’s home country and the United States. FICA exemptions do not extend to F-2 dependents.

C. F-1 DEPENDENTS

The spouse and children (under age 21) of an F-1 nonimmigrant may accompany their family member to the U.S. by obtaining F-2 status. F-2 status is granted for the duration of the principal F-1 visa holder's stay. Dependents in F-2 status may not accept employment in the U.S.

CHAPTER 13

H-3 Classification – Trainees

An H-3 trainee is a foreign national coming temporarily to the U.S. for training in any field of endeavor. The petitioner must describe the type of training to be given, the source of remuneration for the trainee and whether any benefit will accrue to the petitioner, and must demonstrate why it is necessary for the foreign national to be trained in the U.S. The trainee is not permitted to engage in productive employment unless it is incidental and necessary to the training, and may not accept employment that will displace a U.S. worker.

A. PROCEDURE FOR H-3 CLASSIFICATION

A sponsoring organization submits the H-3 visa petition to the USCIS Regional Service Center with jurisdiction over the location where the training will be conducted. Following petition approval, the foreign national applies for the H-3 visa at a U.S. Consulate abroad. The foreign national must show that:

- He or she is not receiving graduate medical education or training in the U.S.;
- He or she does not have the opportunity to receive similar training in his or her home country;
- He or she needs the training to advance his or her career outside the U.S.;
- He or she will not be productively employed unless it is necessary to the training; and
- The training offered does not displace U.S. citizen and resident workers.

An H-3 trainee's duration of status is determined by the length of the program he or she is attending in the U.S. Extensions of stay may not exceed the two year program period. An H-3 trainee who has remained in H-3 status for two years may not seek an extension or change of status to H or L unless he or she has resided outside the U.S. for at least 6 months following the training period.

B. H-3 DEPENDENTS

The spouse and children (under age 21) of an H-3 nonimmigrant may accompany their family member to the U.S. by obtaining H-4 status. H-4 status is granted for the duration of the principal H-3's stay. Dependents in H-4 status may not accept employment in the U.S.

CHAPTER 14

J-1 Classification – Exchange Visitors

The J-1 visa classification was implemented to promote educational and cultural exchange. A foreign national qualifies for J-1 classification if he or she is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, coming temporarily to participate in a program designated by the State Department's Bureau of Educational and Cultural Affairs for the purpose of teaching, instructing, lecturing, studying, observing, conducting research or practical training, in an approved exchange program. In carrying out the responsibilities of the Exchange Visitor Program, the Department of State designates public and private entities to act as exchange sponsors. These programs are designed to promote the interchange of persons, knowledge, and skills in the fields of education, arts, and science.

U.S. businesses will often make use of the exchange visitor program to hire interns or trainees who will be undertaking career enhancement programs, as more fully described below.

A. PROCEDURE FOR J-1 CLASSIFICATION

A foreign national may submit his or her J-1 visa application to a U.S. Consulate in his or her home country. As in the case of the F-1 student visa, the consular officer must verify the applicant's data in the SEVIS database, as well as verify the information on the exchange visitor's SEVIS Form DS-2019. Exchange visitor programs are monitored by ICE under the SEVIS program (described more fully in Chapter 13). The DS-2019 is a certificate of eligibility for exchange visitor status issued by a DOS-designated sponsor. The DS-2019 contains information regarding the applicant, the program sponsor, and the dates authorized in the program.

The J-1 nonimmigrant is authorized to work incident to his or her status for either the exchange visitor program sponsor or appropriate designee and only for employment that is within the guidelines of the program as approved by DOS.

The J-1 visa holder may enter the U.S. up to 30 days before the designated start date of the program. When the foreign national enters the U.S. on a

J-1 visa, he or she will usually be admitted for the “duration of status.” That duration is determined by the parameters of the program, and a 30-day grace period following completion of the program. A foreign national may apply for a J-1 visa extension, which may be granted as long as is necessary to complete the program. In certain cases, DOS must approve an extension of a J-1 program.

B. CHARACTERISTICS SPECIFIC TO THE J-1 CLASSIFICATION

1. *Eligibility Requirements*

Applicants eligible for J-1 visas are:

- Students at all academic levels;
- Trainees obtaining on-the-job training with firms, institutions, and agencies;
- Interns;
- Teachers of primary, secondary, and specialized schools;
- Professors coming to teach or perform research at institutions of higher learning;
- Research scholars;
- Professional trainees in the medical and allied fields;
- International visitors coming for the purpose of travel, observation, consultation, research, training, sharing, or demonstrating specialized knowledge or skills, or participating in organized people-to-people programs; and
- Foreign medical graduates coming for post-graduate medical training.

2. *Two-Year Foreign Residency Requirement*

Some exchange visitors are subject to a two year foreign residency requirement that requires them to return to their home country or country of last residence for a period of two years before they may return to the U.S. as lawful permanent residents or as nonimmigrants in the H or L classifications. This requirement extends to: a) foreign medical graduates entering the U.S. for training; b) those whose program was funded in whole or in part by the U.S. government or the foreign national’s government; and c) foreign nationals who possess skills determined by their government to be in short supply in their home country (“Skill’s List”). This requirement attaches to accompanying dependents as well as the primary J-1 holder.

Under certain limited circumstances, a foreign national may be able to obtain a waiver of the two-year foreign residency requirement.

C. J-1 DEPENDENTS

The spouse and children (under age 21) of a J-1 nonimmigrant may accompany their family member to the U.S. by obtaining J-2 status. J-2 status is granted for the duration of the principal J-1's stay.

Spouses in J-2 status may apply for permission to accept employment. They must apply for an Employment Authorization Document at a USCIS Service Center. The dependent spouse should include proof of the following: the marital relationship, authorized admission to the U.S., and his or her spouse's status. J-2 employment may be authorized for the duration of the J-1 principal's stay, or four years, whichever is shorter. Income from the dependent's employment may not be used to financially support the J-1 principal.

CHAPTER 15

Nonimmigrant Household Members Outside the Nuclear Family

All of the nonimmigrant employment visa categories provide for dependents, defined as spouses and children under the age of 21, to accompany the principals to the United States. However, extended family members beyond the nuclear family, cohabiting partners, and household employees are not specifically accounted for. It has become established policy, confirmed by the Department of Homeland Security and Department of State, to accommodate these household members in the B-2, visitors for pleasure, and B-1, visitors for business, categories.

A. OUTSIDE THE NUCLEAR FAMILY: PARENTS, ADULT CHILDREN, AND COHABITATING PARTNERS

The Foreign Affairs Manual of the Department of State (FAM) lists as appropriate B-2 classification for cohabiting partners, extended family members, and other household members such as parents and adult children who are not eligible for derivative status as dependents outlined in the previous chapters.

While these household members may accompany the principal nonimmigrant for the duration of his or her temporary time in the U.S., they will not be granted admission in the same increments as the principal. The maximum initial stay that can be requested is only 1 year, and as a practical matter, these household members are often only admitted for 6 months. As a result, in order to remain in valid B-2 status, such household members usually find themselves in an endless cycle, filing applications for extensions of stay or departing the United States and re-entering to trigger a new period of authorization.

These family members, partners, and household members, by virtue of being in B-2 visa classification, are not authorized to work. In addition, they are generally not able to obtain Social Security numbers, and in many states, are unable to obtain drivers' licenses as well.

In July of 2001, the State Department posted a detailed directive making it clear that the B-2 visitor visa classification was appropriate for cohabitating

partners. The State Department cable to consulates worldwide instructed that as long as the partner's primary purpose is to accompany a significant other who is temporarily working or studying in the U.S., the partner's visit to the U.S. should be considered travel for pleasure, and as such, is consistent with the B-2 classification. It affirmed the principle that "extended stays can qualify as temporary," even though the cohabitating partner may be living in the U.S. for a much longer period than the typical 6 month visitor. The State Department, in conjunction with the Department of Homeland Security, pushed the visitor's visa classification to its limits in accommodating such "nontraditional" family members. These principles apply equally to extended family members such as parents, siblings, and children over the age of 21 who are part of the household.

B. HOUSEHOLD EMPLOYEES

Certain household employees of foreign nationals in nonimmigrant status are also permitted to come to the U.S. in B-1 business visitor visa status. In fact, these "visitors" are doing more than business in the United States and must apply for Employment Authorization Documents (EADs) to facilitate the issuance of Social Security numbers and the reporting of their income earned while in the United States to U.S. and local tax authorities. Although the B-1 visa category is not for formal employment in the United States, it is hard to characterize what these domestic employees do as other than "ordinary labor for hire."

To qualify, the individual must meet the following requirements:

- The employee has a residence abroad which he or she has no intention of abandoning;
- The employee can show at least one year's experience as a personal or domestic employee;
- The employer/employee relationship for a personal or domestic employee existed for at least one year prior to the date of the employer's admission to the United States;

OR

- If the relationship existed immediately prior to the time of visa application, the employer can demonstrate a practice of regularly employing personal or domestic employees over a period of several years preceding the domestic employee's visa application for a nonimmigrant B-1 visa;
- A signed employment contract between the employer and employee which guarantees the minimum or prevailing wages, whichever is

greater, free room and board, and that the employer will be the only provider of employment to the employee; and

- The employer must also pay the domestic's initial travel expenses to the United States and ultimate departure from the U.S.

The same timing constraints of the B-2 visa also apply to the B-1 household employee. Issues that arise with regard to their visa authorization are further complicated by the need to apply for employment authorization. The domestic employee should be admitted for 1 year, but probably will be admitted only for 6 months. After entering the United States, the domestic employee must then apply for an EAD, which will be issued 80-90 days later, at which time he or she actually gains legal permission to begin working in the home of the employer. By the time the domestic employee receives the EAD, he or she is at the next phase of applying for an extension of visitor status and of renewing their EAD. As such, it is a continuous cycle of renewals once the employee makes the initial entry.



Part Three

LAWFUL PERMANENT RESIDENCE –
OBTAINING A GREEN CARD

CHAPTER 16

The Green Card Process – Generally

A. INTRODUCTION



*A copy of a Lawful Permanent Resident Card, available at:
<https://e-verify.uscis.gov/esp/help/EvHelpPermResCardNumber.htm>*

A lawful permanent resident, commonly referred to as the holder of a “green card” (see above), is a non-citizen who intends to permanently reside in the U.S. and has obtained authorization to do so. In order to qualify to immigrate to the United States or adjust status while in the United States to that of a lawful permanent resident, most foreign nationals must be sponsored by a specific family member (family reunification) or an employer. Only those foreign nationals who fit within a specific category enumerated in the Immigration and Nationality Act may seek to qualify for permanent residence. Employers may encounter foreign nationals seeking or in the process of applying for residence in the following categories:

- **Family-Based Immigration:** Petition by a U.S. citizen or lawful permanent resident for certain relatives.
- **Employment-Based Immigration:** Petition by a sponsoring employer, certain religious workers, certain employees of international organizations, or due to a major investment in the U.S.
- **Diversity Lottery Program:** Application by a foreign national for enrollment in a computer-generated random lottery drawing for permanent residence. The Diversity Lottery Program is only available to individuals from specified countries.

- **Asylees, Refugees, Applicants for Cancellation of Removal:** Personal applications, often while in administrative removal proceedings.

Once the foreign national's basis for permanent residence is established, the individual may apply for permanent resident status. To do so, the foreign national must not be barred by any of the inadmissibility categories specified in immigration law. These categories include criminal, health-related, financial, national security, public interest grounds, and prior immigration violations.

This Guide concentrates on business-related immigration, and therefore the chapters that follow provide information only on employment-based immigration.

B. THE EMPLOYMENT-BASED PREFERENCE CATEGORIES

The Immigration Act defines five preference categories for employment-based (EB) immigration. The five EB preference categories are:

First Preference (EB-1): foreign nationals with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers.

Second Preference (EB-2): foreign nationals who are members of the professions holding advanced degrees or their equivalent and foreign nationals who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit the national economic, cultural, or educational interests or welfare of the U.S.

Third Preference (EB-3): professional positions requiring at least a Bachelor's degree, foreign nationals filling skilled worker positions requiring at least two years of experience, and unskilled workers.

Fourth Preference (EB-4): various "special immigrants," including certain religious workers and employees or former employees of international organizations.

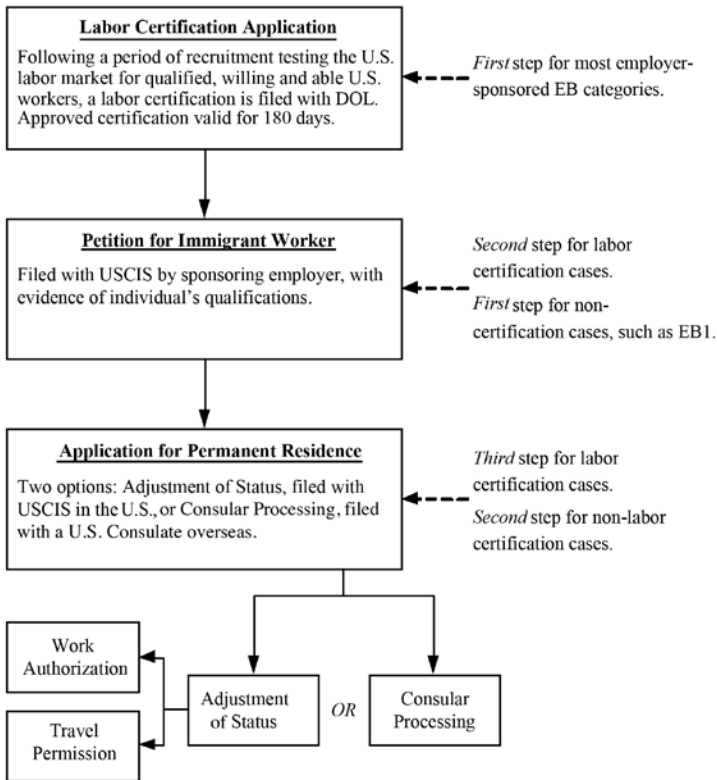
Fifth Preference (EB-5): foreign nationals who invest \$1,000,000 (or under some circumstances \$500,000) in a new commercial enterprise that will create full-time new jobs for resident alien workers or U.S. citizens and will be actively engaged in the business through day-to-day management or policy formation.

Employers typically use the EB-1, EB-2, and EB-3 preference categories to sponsor foreign national employees for permanent residence. The EB-4 category does not always require employer sponsorship.

C. STEPS IN THE PERMANENT RESIDENCE PROCESS

The steps required in an employer-sponsored permanent residence process depend on the requirements of the position offered to or held by the foreign national, and the individual's experience and/or education. In most cases, processing entails three distinct steps – labor certification application, petition for the immigrant worker, and application for permanent residence.

Below is an overview of an employer-sponsored permanent residence process.



In some instances, an employee may qualify under a category permitting a two-step process, avoiding the initial labor certification application. Eliminating the labor certification process is important to an employer because, as set forth below, the process is time consuming and costly. Therefore, an employer seeking a “green card” for an employee should assess whether an employee can fit into the EB categories shown in the chart below.

	Category	Labor Certification Application
EB-1	Extraordinary Ability	Not required
EB-1	Outstanding Professors and Researchers	Not required
EB-1	Multinational Executives and Managers	Not required
EB-2	Advanced Degree Professionals	Required, unless National Interest Waiver requested
EB-2	Exceptional Ability	Required, unless National Interest Waiver requested
EB-3	Professionals	Required
EB-3	Skilled Workers	Required
EB-3	Other/Lesser Skilled Workers	Required
Other	Schedule A: Group 1 (medical personnel, such as physical therapists and nurses)	Not required
Other	Schedule A: Group 2 (“exceptional ability” in science or arts [except for university teachers])	Not required
Other	Special Handling Cases: College/university teachers, professional athletes, etc.	Required (Special Handling)

1. *Labor Certification Application*

The labor certification process formally begins with an application filed by an employer with DOL. The application specifies the position offered to the foreign national employee and the terms of employment, such as work location, remuneration, minimum requirements for the position, and work schedule. In the application, the employer attests that it has conducted a test of the labor market for the position through a recruitment campaign. DOL is charged with certifying that there are not sufficient U.S. workers who are able, willing, qualified and available to fill the position, based on the employer's recruitment results. In addition, DOL must determine that the employment of the foreign national will not adversely affect the wages and working conditions of similarly employed U.S. workers. Once the DOL certification is made, the labor certification step is completed.

2. *Petition for Immigrant Worker*

The Petition for Immigrant Worker (Form I-140) is filed with USCIS by a sponsoring employer to establish the basis for its employee to obtain permanent resident status. The petition is a statement of the employer's intention to employ the foreign national when permanent residence is granted. It must be accompanied by evidence that the employer is an operating business capable of employing the beneficiary, the employer requires his or her services, and the employer has the ability to pay the prevailing wage for the position. It also must be accompanied by evidence that the employee is qualified for the position offered. Once the petition is approved by USCIS, the foreign national may complete the permanent residence process. A foreign national may select between two methods for the final step: Adjustment of Status or Immigrant Visa Consular Processing.

3. *Adjustment of Status*

A foreign national may elect to complete the final step of permanent resident processing through an application to the USCIS requesting adjustment of his or her immigration status from nonimmigrant to permanent resident. This application must be accompanied by evidence that the foreign national is eligible for the adjustment of status. In some circumstances, the adjustment application may be filed concurrently with the employer's Petition for Immigrant Worker. The employer's Petition for Immigrant Worker must be approved before the individual's adjustment may be granted. Adjustment applicants are eligible for interim work and travel documents.

4. *Immigrant Visa Consular Processing*

Alternatively, a foreign national may elect to complete the final step of processing at a U.S. consular post in his or her home country or country of last residence before coming to the U.S. The application must be

accompanied by evidence that the foreign national is eligible for the status. The employer's Petition for Immigrant Worker must be approved before the application may be submitted. The foreign national must personally appear for a final interview at the U.S. Consulate. The foreign national must maintain nonimmigrant status throughout the process.

D. PRIORITY DATES

Immigration law limits the number of green cards that may be issued each year in most family and employment preference categories. Allocation of the limited green cards available is based on the preference category and place of birth. Since every country is given the same maximum percentage of allocation of the worldwide quota, backlogs may develop when more foreign nationals apply for a green card in a category than are available for their country of birth. Therefore, foreign nationals from countries with large populations immigrating to the U.S. can be subject to significantly longer wait times before a visa is available.

A priority date is assigned when the first step of the permanent residence process, whether it is the labor certification application or the Petition for Immigrant Worker, is filed with DOL or USCIS, respectively. The priority date must be current – meaning, a green card must be available for the individual – for a foreign national to complete the process to obtain permanent resident status. Cutoffs for priority dates and other information relating to the priority dates and visa process are published monthly in the Department of State's Visa Bulletin, which can be found on the website of the Department of State, www.travel.state.gov.

CHAPTER 17

Labor Certification Under Program Electronic Review Management

A. INTRODUCTION TO PERM

Labor certification is a prerequisite for most employer-sponsored petitions. Applications for labor certification are reviewed and adjudicated by DOL through a process called Program Electronic Review Management (PERM).

PERM was implemented to streamline and automate the permanent labor certification process. Labor certification applications (Form ETA 9089) can be filed online at a dedicated DOL website (<http://www.plc.doleta.gov>) or mailed to the national processing center in Atlanta, Georgia. If mailed, DOL personnel will input the form into their electronic database and future interaction will be conducted as if the application were electronically filed.

Before DOL will review a labor application, the employer is required to tender a wage offer for the position that meets the prevailing wage. All prevailing wage determinations (PWDs) are issued by the National Prevailing Wage Center (NPWC) via the iCERT Visa Portal System available at <https://icert.doleta.gov/>. In addition, appropriate recruitment for the position must be conducted prior to filing.

B. SETTING JOB REQUIREMENTS

1. *Minimum Job Requirements*

DOL regulations mandate that the education, training, experience, and special skills requirements for the job offered on the labor application be the minimum requirements a prospective employee would normally need to perform the job. An employer may not list job requirements that are higher than the actual minimum requirements, simply because it prefers higher-qualified candidates. For example, if the position normally requires a bachelor's degree and it is the employer's normal practice to hire applicants with bachelor's degrees in the job, the minimum academic requirements should specify that a bachelor's degree is required, despite the employer's preference for someone with a master's degree. Similarly, the employer may prefer four years experience, but if two years is standard for the position and normal in the context of the employer's business, then only two years

experience can be required. With limited exceptions, the regulations also prohibit employers from requiring any experience, education, or training that the foreign national gained with the petitioning employer. For example, if the job offered is for a computer programmer and the employer requires that all applicants for the position have experience with the C++ programming language, then the foreign national must have had experience with C++ prior to being hired for the job offered.

Likewise, requirements for special skills (*e.g.*, computer skills) must be reasonable and in keeping with industry standards for the occupation. A job offer for a computer programmer position using Java is expected to require Java because it is inherent to perform the job duties. However, nonessential skills that can be learned on the job within a reasonable period of time should not be required. The meaning of “reasonable period of time” will depend upon the industry and position.

The position may not be tailored to a particular foreign national’s qualifications even if the foreign national is ideal for the position. The benchmark for the employer’s job requirements is that they be reasonable and in keeping with the employer’s past hiring practices and industry standards for the occupation.

To assist the employer in determining whether the job’s minimum requirements are aligned with industry standards, PERM requires use of O*NET (Occupational Information Network, at www.online.onetcenter.org), a DOL resource that categorizes all occupations into five Job Zones. The O*NET replaces the Dictionary of Occupational Titles (DOT), which was previously used for definitive information on the minimum requirements for a particular position. The O*NET provides the following categories of information within each occupational group: Tasks, Tools & Technology Knowledge, Skills, Abilities, Work Activities, Work Context, Interests, Work Values, Education, and Job Zone. The Job Zone section of the O*NET indicates the amount of preparation needed to perform the job in a normal manner and at an average skill level. Part of the definition of preparation is the assignment to the occupation of a Specific Vocational Preparation (SVP) value, discussed below.

DOL regulations specify that job requirements cannot exceed the SVP level for the occupation as established by the O*NET. The only exception to this rule arises if the employer can demonstrate business necessity for the requirement.

The SVP is the amount of time required for an individual to learn the skills to perform the job at an average level, inclusive of education and/

or experience. The SVP is expressed as a numerical value on an ascending scale from one to nine, which defines the amount of vocational preparation (experience and/or education) that may be required for an occupation. For example, a physicist has an SVP of eight or above. An SVP of eight is defined as over four years and up to 10 years, of specific vocational preparation. An SVP of eight or above would therefore mean that over ten years of specific vocational preparation could be required for this occupation.

To gauge whether the job requirements meet or exceed the SVP for the position, the employer must know how to equate education and experience to an SVP value. PERM provides the following equivalency:

- A general associate's degree equates to zero years of preparation;
- A specific associate's degree equates to two years preparation;
- A bachelor's degree also equates to two years preparation;
- A master's degree equates to four years preparation (bachelor's + master's = 2+2); and
- A doctorate equates to seven years preparation (bachelor's + master's + doctorate = 2+2+3).

Therefore, if a master's degree and six years of experience are required on a labor application for a physicist, the total number of years of combined experience and education the employer is requiring for the job is 10. This would be in keeping with the SVP range for this occupation.

The O*NET consists of only five Job Zones, each with a range of SVP values, for all occupations. PERM does not clarify what the ranges mean in terms of actual requirements. The lack of clarity with regard to this requirement, along with the other complexities associated with the labor certification process, underscores why employers need to hire experienced legal counsel to successfully petition for foreign workers.

2. *Alternate Job Requirements*

DOL regulations permit an employer to specify alternate experience, job skills, and/or academic requirements in lieu of the basic minimum requirements that are substantially equivalent to the primary requirements. Substantially equivalent is determined by the SVP as previously explained.

3. *Business Necessity*

PERM recognizes that some U.S. businesses have positions with special requirements beyond those normally required. The rule permits an employer to require experience and/or education that exceed the SVP level for the job if the employer can show the requirements are a business

necessity. Requirements such as foreign language fluency or unusual job skills must also be justified by business necessity.

To show business necessity, an employer must demonstrate that the job requirements – including the special requirements – bear a reasonable relationship to the occupation in the context of the employer’s business and are essential to perform the job duties described by the employer in a reasonable manner. The documentation to support a business necessity argument should be prepared before the labor application is filed because all applications with business necessity requirements will likely be audited by DOL. The employer must also keep in mind that PERM applications audited by DOL will face additional delays in adjudication.

In the specific context of foreign language requirements, PERM regulations provide factors that will be considered in determining whether the requirement is a business necessity. These include:

- The frequency of communication with clients or other employees who do not speak English;
- The percentage of work time spent by the employee using the foreign language; and
- The percentage of the employer’s clients, employees, or contractors who do not speak English.

4. *Combination of Occupations*

PERM allows justification for jobs that combine the duties of several occupations (*e.g.*, a vice president of finance who is also a systems analyst). Positions that combine occupations are often a business necessity for smaller companies. Or, it might be customary in certain industries to combine occupations under one job heading. Regardless of the reason, jobs that combine several occupations must be justified with a business necessity argument and/or an argument that the requirements are normal and standard for the occupation in the industry. A labor application with a combination of duties requirement is likely to be audited by the certifying officer (CO) and will therefore likely delay the certification process.

5. *Dissimilar Job Duties or Infeasibility to Train*

PERM does not permit an employer to state requirements that the foreign national did not meet prior to joining the current employer. However, the PERM regulations provide limited exceptions to this rule under two circumstances: where the experience the foreign national gained with the current employer is not “substantially comparable” to the job offered, or if it can be shown that it is now infeasible to train a new hire that does not already have the experience that was gained on the job. While

the “infeasibility to train” exception is rarely sought, the “not substantially comparable” exception is applied often.

Substantially comparable is defined in PERM as a position in which the duties and responsibilities are not the same as the job offered more than 50 percent of the time. Therefore, as long as the employer can show that there are substantive differences between the two positions (*e.g.*, supervising twice the number of people as before, receiving a large salary increase over the prior position, personnel authority that the foreign national did not previously hold, or responsibility for a significantly larger budget), the foreign national may use his or her prior experience, with the same employer, to satisfy the experience requirement. This situation normally arises when a foreign national has worked for the same employer for many years and has been promoted to a more senior position.

Employers have found it much harder to demonstrate that it is no longer feasible to train a worker to qualify for the position, as the employer must clearly demonstrate with concrete evidence that within the context of its business, changes in circumstances have made it not just impractical, but infeasible to hire and recruit without the requisite experience.

Posing a dissimilar job duties argument or an infeasibility to train argument, in all likelihood, will result in the application being audited by the Department of Labor, delaying a final decision in the certification process.

6. *Prevailing Wage Determinations and Alternative Wage Sources*

The first steps for any employer intending to sponsor a foreign national for labor certification is to file a prevailing wage determination (PWD) request with the NPWC. PERM permits the employer to submit successive PWD requests for the same position. The employer is required to offer 100% of the prevailing wage. Bonuses, cost of living allowances, and commissions cannot be used as part of the wage offer unless they are guaranteed (not discretionary) by the employer and paid out as part of the wage on a weekly, biweekly, or monthly basis. In effect, this requirement excludes guaranteed bonuses given at year-end or commissions paid out quarterly from the calculation of the wage offer.

DOL primarily relies on the Occupational Employment Statistics (OES) Governmental Wage Survey to issue prevailing wage determinations. This data is available on DOL's website. Employers can also consult the Davis-Bacon Act (DBA) wage data bank, which covers jobs on federal and state construction projects, or the McNamara-O'Hara Service Contract Act (SCA), which applies to employees of contractors and subcontractors on service contracts with the federal government. The NPWC will not contest

an employer's wage offer if either the DBA or SCA wage source is used and properly applied.

The employer may also use other independent surveys to determine the proper wage offer, so long as they comply with DOL regulations. Among many criteria, those regulations mandate that when the survey provides both an arithmetic mean and a median wage, the mean must be used. If a mean is not provided, the median is acceptable. The regulations provide guidance on the acceptable geographic area for a survey to encompass. If wage data is unavailable for a specific area, surveys that encompass larger areas, including statewide surveys, may be acceptable.

Government wage surveys, such as the OES, that previously only provided two wage levels, are now required to provide for four wage levels commensurate with education, experience, and the level of supervision required for the position. If the survey only provides two levels, the employer can mathematically derive the other two levels. This is accomplished by subtracting the first level from the second, dividing the difference by three, then adding the quotient obtained to the first level and subtracting it from the second level. For example, if the first level wage is \$20,000 and the second level wage is \$80,000, the difference between them is \$60,000, which divided by three provides a quotient of \$20,000. By adding the \$20,000 to the first wage level, we derive a wage level of \$40,000. Then, by subtracting \$20,000 from the \$80,000, we derive another wage level of \$60,000. This system is a significant improvement over the previous two-level OES usage system which often skewed the second level to unrealistically high wages for mid-level employees.

In the event the NPWC issues a PWD that is higher than the offered wage, the employer may submit a request for a redetermination through the iCERT Portal. If the redetermination is denied, an employer can continue to challenge the PWD by requesting review by the Center Director within 30 days of receiving the response on the redetermination. If the Center Director likewise denies the employer's request, the employer may appeal to the Board of Alien Labor Certification Appeals (BALCA). An appeal to BALCA can be quite a lengthy process. Alternatively, or in addition to challenging the initial PWD, the employer may also file a new PWD request. A new request will be treated as a new application and will not be given processing priority.

Once the NPWC issues a PWD, the employer is required to keep the original determination in the event the final labor application is selected for audit. A PWD is valid for at least 90 days, but not more than one year, from the date of the determination. In general, if an employer does not submit the final

labor application while the PWD is valid, it will be required to obtain a new PWD before it can file the PERM labor application.

C. NOTICE AND RECRUITMENT UNDER PERM

1. *In-House Posted Job Notice and Use of Other Media*

An internal printed posting notice regarding the filing of the application is required under PERM. The notice must be posted for at least 10 consecutive business days in a conspicuous location at the place of employment, and the notice period must occur between 30 and 180 days before filing the labor application. If the job offered is covered by a collective bargaining agreement, notice must be provided to the union bargaining representative. The notice must contain the salary (a salary range is acceptable as long as the lowest part of the range meets prevailing wage), a job description, and the requirements for the position. In addition, the notice must state that any person may provide documentary evidence regarding the application to the certifying officer (CO). Although the primary purpose of the notice is to provide employees the opportunity to comment on the application to the CO, and not to recruit U.S. workers, if an employee applies for the position based on the notice, the employer should document the application and the lawful job-related reasons the employee was not qualified for the job. Documentation of the job posting and results should be retained by the employer. The employer may retain the original posted notice on file with a note providing (a) the dates on which the notice was posted, (b) responses, if any, to the posting, and (c) how they were addressed.

Employers are also required to use all printed and electronic in-house media (email, flyers, intranet, and the like) to post notice of the job in accordance with the company's normal procedures, for a duration used for similar positions within the company. If the employer does not have, or never uses, in-house media to recruit for similar positions, then a reasonable reading of this regulation would be that it is exempt from this requirement.

2. *Basic Recruitment Requirements*

PERM requires the employer to conduct recruitment for the job offered before filing the labor application. This recruitment is designed to test the labor market to determine whether there are any willing and qualified U.S. workers for the job. If there is even one qualified U.S. worker who wants the position, and is willing and able to take the job following an interview, the labor application cannot be filed. The only exception is if there are two or more openings for identical positions and the U.S. worker is hired to fill one while the other position remains open.

3. *Job Order with the State Workforce Agency*

Employers are required to recruit for the position by placing a job order with the State Workforce Agency (SWA) for a period of 30 days. The job order must run from 30 to 180 days prior to filing the labor application. Documentation of the job order placement should be retained by the employer.

4. *Print Advertising Requirements*

PERM requires employers to recruit for the position by advertising in a newspaper of general circulation in the area of employment. The advertisement must run in at least two Sunday editions of the newspaper and must appear between 30 and 180 days before the labor application is filed. If the newspaper does not run a Sunday edition, the advertisement should run on another day with the widest circulation. If the advertisement is run in a suburban newspaper, it may only be run on a Sunday.

The advertisement does not have to contain the salary, but must include:

- The name of the employer;
- The geographic area of employment;
- The job title;
- A description of the job duties that reasonably defines the job opportunity; and
- Information on where to send résumés or contact the employer.

The employer may include the company's physical address or direct résumés to a post office box or a central company office location. If a salary is included, it must meet the prevailing wage. If the employer places the advertisement under a section of the newspaper or heading inconsistent with the position, the DOL will view the recruitment as lacking in good faith, which could result in a requirement to re-advertise under DOL supervision. For positions requiring advanced degrees (master's degree or higher) and experience, the employer has the option to advertise the job opening in a professional journal in lieu of one of the Sunday newspaper advertisements.

5. *Three Additional Recruitment Steps for Professional Positions*

The employer must undertake three additional recruitment steps if the position offered is a professional one. A professional job is one requiring at least a bachelor's degree. PERM provides a list of occupations classified as professional. The recruitment must take place no more than 180 days before the labor application is filed, and only one of the three additional recruitment steps can occur within 30 days of the filing.

These additional recruitment steps do not require the employer to advertise for the specific position, *e.g.*, senior computer programmer. Instead, the employer need only advertise for openings in the occupations related to the position (*e.g.*, multiple openings for computer programming positions ranging from entry to advanced). The employer must select the three additional recruitment steps for professional occupations from the following list:

- Job fairs;
- Employer's web site;
- Job search web site other than that of the employer (a web page posting of the position, even if posted in tandem with a print ad, qualifies under this step);
- On-campus recruitment;
- Trade or professional organizations;
- Private employment firms;
- Employee referral programs (if they include specific incentives for the referral);
- Notice of the job opening at a college campus placement office (only if the job requires a degree but no experience);
- Local and/or ethnic newspapers if they are appropriate vehicles for the job opportunity; or
- Radio and television advertisements.

6. *Documentation of Recruitment Efforts*

Following the recruitment, employers are required to prepare and sign a recruitment report describing the results of the recruitment campaign. The report will not be submitted to DOL with the labor application, but must be retained in case of an audit. The recruitment report must indicate the total number of applicants and the lawful job-related reasons why they were not qualified. The employer is not required to name each job applicant, and may sort the applicants who were rejected into categories based upon like reasons for rejection.

If applicants fail to meet the minimum education, training, experience, or special skill requirements for the job as set forth in the labor application, they may be lawfully rejected for the position.

7. *Documentation Retention Requirements*

The employer must retain the following documentation on file for a period of five years from the date of the filing of the labor application:

- Job posting (keep an original posted job notice and the results of the posting);

- Advertising (keep a copy of the entire page of the newspaper or professional journal where the job was advertised);
- Proof of the three additional steps for professional positions;
- Original recruitment report signed by the employer; and
- All of the applicant résumés.

Any and all of this documentation may be requested by the DOL in the event of an audit.

8. *Optional Special Recruitment and Documentation Procedures for College and University Teachers*

Employers filing labor applications for college and university teachers may utilize the basic recruitment process described above, or select a candidate for the job using a competitive recruitment and selection process through which the foreign national is found to be more qualified than any of the U.S. workers who applied for the job. Under the competitive recruitment and selection process, PERM requires the college or university to provide documentation of the recruitment efforts. These documentary requirements are set forth below:

- A statement signed by the hiring official to detail the recruitment efforts (this is virtually identical to regular PERM applications);
- A report from the committee or body making the selection of the foreign national for the position (the labor application must be filed within 18 months of the foreign national's selection for the job offered);
- A copy of an advertisement for the job opportunity in a national professional journal;
- Evidence of all other recruitment sources utilized; and
- A written statement specifying the foreign national's professional qualifications and academic accomplishments.

D. SCHEDULE A APPLICATIONS

1. *Schedule A Labor Applications*

Schedule A pre-certification applications are reserved for those occupations for which there are few qualified, willing, and able U.S. workers. These occupations are divided into Group I and Group II categories. Group I includes, at the time of publication, professional nurses and physical therapists. Group II includes aliens of exceptional ability in the sciences and arts, and performing artists of exceptional ability.

Schedule A applications are completed on Form ETA 9089, but filed directly with USCIS together with the Petition for Immigrant Worker. Such

applications must be accompanied by the following general supporting documentation:

- Prevailing wage determination;
- Evidence, if applicable, that the union bargaining representative was provided with notification of the job opening or, if there is no bargaining representative, evidence that a job notice was posted in a conspicuous location at the intended place of employment for at least 10 consecutive business days; and
- Documentary evidence of recruitment for the job opening in all in-house media normally used for the recruitment of similar positions.

In addition to the general supporting documentation, each group has other special documentary requirements delimited under the Schedule A PERM regulations.

E. LABOR CERTIFICATION ISSUES UNDER PERM

1. *Audits and Supervised Recruitment*

Any case filed under PERM is subject to audit by the CO. There is no specific timetable for the CO to commence an audit. To initiate an audit, the CO sends a letter to the employer requesting additional documentation. The employer is given 30 days from the date of the letter to respond or withdraw the labor application. If the employer fails to respond, the CO has discretion to:

- Deny the application;
- Require the employer to conduct supervised recruitment for any future labor applications filed within a two-year period; or
- Grant an extension of the 30-day response period.

In the event the CO determines that supervised recruitment is warranted, the procedures are essentially the same as pre-PERM traditional labor application processing. The CO will mandate the recruitment means and schedule. Applicants will be instructed to send their résumés to DOL, and DOL will forward them to the employer. The employer will assess candidate qualifications and, if necessary, interview applicants. At the conclusion of the recruitment, the employer must provide a detailed recruitment report to the CO documenting the lawful job-related reasons for the rejection of each applicant. The employer will have 30 days in which to complete the report or to request a 30-day extension. The employer's recruitment report must be accompanied by copies of the advertisement and proof of other recruitment as required, any résumés received by the employer for the job that were not sent to the employer by the CO (*i.e.*, résumés that came from other sources),

and a job posting notice. The CO will notify the employer in writing, either electronically or by mail, whether the application is certified or denied. There is no set timetable for the CO to complete the process.

2. *Denial of the Labor Application and Request for Review*

If a labor application is denied by the CO, the employer may submit a Request for Review (RFR) of the denial to the Board of Alien Labor Certification Appeals (BALCA). The RFR must be submitted within 30 days of the denial to the CO who denied it. The CO will then develop an appeal file and forward it to BALCA, sending a copy to the employer. The employer may also submit evidence to accompany the RFR on condition that the information was provided to the CO prior to the denial determination. BALCA will give the employer and the DOL 30 days in which to submit or decline to submit a legal brief or Statement of Position outlining their positions. BALCA will either agree with the denial or direct the CO to certify the application. BALCA may also order a hearing regarding the case. There is no set time frame for BALCA to adjudicate a case on appeal.

3. *Invalidation or Revocation of a Labor Certification*

The CO may revoke the certification of an approved labor application if there is a finding that the certification was unjustified. The CO must provide the employer with a Notice of Intent to Revoke detailing the reasons for revocation. The employer must provide a rebuttal to the Notice within 30 days of its date, and the CO must notify the employer within 30 days of receiving the rebuttal whether the case will be revoked. If a revocation is issued, the employer may appeal. If the employer fails to provide a timely rebuttal, the revocation is final.

Invalidation of an already certified labor application by DHS or by a CO might occur if a determination is made that willful misrepresentation or fraud occurred in the labor certification process. Invalidation can also occur if the CO becomes aware that willful misrepresentation or fraud occurred prior to the final adjudication of an application. In this instance, the CO must refer the case to DHS for review and further action, including possible prosecution.

4. *Layoffs and Employer Responsibilities*

Prior to filing a PERM labor application with DOL, employers must notify and consider for the job opening any employees who were laid off within the prior six months due to downsizing, corporate restructuring, reduction in force, or any other involuntary departure from the position without cause or prejudice. The employer is only required to consider those employees who were previously employed in the same occupation as the job offered in the labor application, or in a related occupation performing the same duties listed in the job opening. PERM requires the employer to retain

documentation that those former employees were contacted and, if qualified, willing, and able to take the position, were offered the position. If the laid-off employee was not hired, the employer must document the lawful job-related reasons for not rehiring the former employee.

F. THE IMPACT OF CHANGES IN EMPLOYMENT

In most cases, changes in the foreign national's position or prospective position with the employer may impact the viability of the labor certification as a basis of the employer's Petition for Immigrant Worker. As explained above, the purpose of the labor certification step is to test the labor market for the availability of U.S. workers who are willing, able, and qualified to take the position offered to the foreign national. If the nature of the job offered to the foreign national changes to the extent that the employer's recruitment campaign does not cover the new position or job location, the labor certification may not be used to support the employer's petition for the individual. A new labor application, based upon a recruitment campaign for the new position and/or job location, must be certified before the employer's sponsorship may continue.

CHAPTER 18

Employment-Based Immigration Without Labor Certification

A. RELEVANT EB CATEGORIES

The employment-based categories discussed in this chapter do not require a labor certification by DOL. In establishing these categories, Congress reflected a belief that the interests of the U.S. are served by admitting superlative foreign talent and therefore their employment should not be subject to certification by DOL. The categories are:

1. *EB-1: Extraordinary Ability*

The regulations define individuals with “extraordinary ability” as those who possess a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” Employers petitioning for foreign nationals with extraordinary ability in the sciences, arts, education, business, and athletics must demonstrate such ability by presenting evidence that their achievements have been recognized in the field of expertise and that they have sustained national or international acclaim in their fields. Because Congress intended the extraordinary ability subcategory to be restrictive, it is reserved for a select group of foreign nationals.

In order to qualify an individual as one of extraordinary ability, an employer must provide evidence that the foreign national has sustained national or international acclaim, and that his or her achievements have been recognized in the field of expertise. The employer must also be able to demonstrate that the foreign national’s contributions in the field will “substantially benefit” the U.S. in the future. Unlike the other EB-1 categories, a foreign national who qualifies as an individual of extraordinary ability may self-petition and is not required to have sponsorship by a specific employer.

In submitting evidence of extraordinary ability, the petitioner must demonstrate either receipt of a major international prize, or at least three of the following:

- Documentation of the foreign national’s receipt of lesser-known prizes or awards for excellence in the field;

- Documentation of the foreign national’s membership in associations in the field that require outstanding achievements of their members;
- Published material in professional publications written by others about the foreign national’s work in the field;
- Evidence of the foreign national’s participation, either individually or on a panel, as judge of the work of others in the same or an allied field;
- Evidence of the foreign national’s original scientific, scholarly, artistic, athletic, or business-related contributions to the field;
- Evidence of the foreign national’s authorship of scholarly books or articles in professional or major trade publications or other major media;
- Evidence that the individual’s work has been displayed at artistic exhibitions or showcases;
- Evidence of the individual’s performance in a leading or critical role for organizations with a distinguished reputation;
- Evidence that the foreign national has commanded a high salary or significant remuneration compared to others in the field; or
- Evidence of commercial successes in the performing arts.

Immigration regulations permit submission of other comparable evidence if the criteria do not apply to the field. USCIS will assess the value and quality of the evidence submitted and make a determination on the individual’s qualifications based on whether the evidence, taken together, shows the foreign national’s extraordinary ability, and not simply whether the evidence meets at least three of the criteria. Extraordinary ability petitions do not necessarily need to demonstrate the individual’s international acclaim; rather, a record of national achievements may satisfy the requirements.

USCIS has taken the position that simply “qualifying” in at least three (3) of the described categories is not necessarily sufficient toward approval of an extraordinary ability petition. A separate analysis of the overall qualifications and credentials of the applicant must be made before a final determination.

2. *EB-1: Outstanding Professors and Researchers*

Professors and researchers may qualify for the EB-1 category if it can be demonstrated that they are outstanding. In addition to outstanding ability, this category requires that the researchers and professors possess at least three years of experience in teaching or research in their academic field and have received international recognition for their work. The regulations define “academic field” as a body of specialized knowledge offered for study at an accredited U.S. institution of higher learning.

To be eligible for classification as an outstanding professor or researcher, the foreign national must be sponsored by an employer offering one of the following types of positions:

- 1) A permanent, tenured, or tenure-track teaching position with a U.S. institution of higher learning;
- 2) A research position with a U.S. institution of higher learning; or
- 3) A research position with a private employer that employs at least three full-time researchers and has documented achievements in an academic field.

The employment offered must be for an indefinite period of time. Thus, a grant-based teaching or research position with a specific end date would not meet the regulatory requirements.

To show that a foreign national is recognized internationally as outstanding, the foreign national must submit evidence of meeting at least two of the following six criteria:

- Documentation of the foreign national's receipt of major prizes or awards for outstanding achievement in the field;
- Documentation of the foreign national's membership in associations in the field that require outstanding achievements of their members;
- Published material in professional publications written by others about the foreign national's work in the field, which must include the title, date, and author, and if necessary, be translated;
- Evidence of the foreign national's participation, either on a panel or individually, as a judge of the work of others in the same or an allied field;
- Evidence of the foreign national's original scientific or scholarly research contributions to the field; or
- Evidence of the foreign national's authorship of scholarly books or articles in scholarly journals with international circulation in the field.

3. *EB-1: Certain Multinational Executives and Managers*

The final category of individuals eligible for EB-1 classifications are internationally transferred executives and managers.

The requirements for classification in this category are as follows:

- 1) Employment abroad with the same employer, or an affiliate or subsidiary;

- 2) For one year out of the previous three years, or the three years prior to the individual's transfer to the U.S.;
- 3) In an executive or managerial capacity; and
- 4) An offer of employment in the U.S. in an executive or managerial position.

These are very similar to the criteria necessary to qualify a foreign worker as an L-1 nonimmigrant intracompany executive or manager.

The terms “manager” and “executive” are defined in the immigration regulations. The definition of manager includes those whose duties involve either the management of a function of the organization or the supervision of professional employees. Executive is defined as one who directs the management of the organization or a component of the organization, establishes company goals and policies, exercises a high level of discretion in executing his or her duties, and receives only general supervision from higher level executives.

Petitions to classify an individual eligible under this category must be filed by a sponsoring employer.

4. *EB-2: Request for National Interest Waiver of the Labor Certification Requirement*

A foreign national qualifying under the EB-2 category as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business, may request a waiver of the job offer requirement. The request to the USCIS seeks a waiver of a specific job offer, and thus a labor certification, if the waiver is in the “national interest” of the U.S. Immigration regulations do not define the term “national interest,” leaving interpretation of evidence sufficiency to individual USCIS officers in reviewing cases.

A successful request for a national interest waiver should contain the following elements:

- Evidence that the individual is seeking employment in an area of substantial intrinsic merit, which is defined as employment that benefits the national interest of the U.S., and has been interpreted to include medical researchers, engineers, and business owners, among others;
- Evidence that the proposed benefit will be national in scope; and
- Evidence that the national interest would be adversely affected if a labor certification were required for the individual.

The final prong goes to the foreign national's contributions to the field of endeavor, and may be met through evidence demonstrating a track record of the individual's accomplishments. These include peer-reviewed publications in the field, conference or seminar presentations of the individual's work, publications about the individual, awards and prizes won by the individual in the field, as well as letters of reference by industry and academic experts in the field.

CHAPTER 19

Immigrant Investor Program – EB-5

In 1990, Congress created the EB-5 Immigrant Investor Program to spur foreign direct investment in the United States. Under the EB-5 program, a foreign national can obtain lawful permanent residence as an entrepreneur if he or she makes a significant capital investment in a commercial enterprise that results in job creation for U.S. workers. There are 10,000 immigrant visas available each fiscal year in the EB-5 employment-based fifth preference category.

A. CAPITAL INVESTMENT REQUIREMENTS

The minimum investment required under the EB-5 program is \$1,000,000. However, if the foreign national invests in a geographic location designated as a Targeted Employment Area (TEA), the minimum qualifying investment is reduced to \$500,000. TEAs relate to high unemployment or rural areas. TEAs are specifically defined as either:

- an area that, at the time of investment, is experiencing unemployment of at least 150 percent of the national average rate; or
- A rural area is any area outside a metropolitan statistical area (as designated by the Office of Management and Budget) or outside the boundary of any city or town having a population of 20,000 or more according to the decennial census.

Capital includes cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the capital is “at risk.” Further, the investor must demonstrate that the capital was acquired through lawful means.

B. NEW COMMERCIAL ENTERPRISE OR “TROUBLED BUSINESS”

To qualify for an EB-5 investor visa, the investment must generally be made in a “new” commercial enterprise, or a “troubled business.” “New” means a business established after November 29, 1990. A “commercial

enterprise” is broadly defined as any for-profit relationship formed for the ongoing conduct of lawful business, including sole proprietorships, partnerships (whether limited or general), holding companies, joint ventures, corporations, and business trusts or other entities, which may be publicly or privately owned. A commercial enterprise that was established prior to November 29, 1990 may qualify as a new business only if it was purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, repurchased after November 29, 1990.

A “troubled business” qualifies if, through the EB-5 investment, the business expands, resulting in a forty percent increase in the entity’s net worth, or number of employees, whether or not the business was established after November 29, 1990. A “troubled business” is an enterprise that has been in existence for at least two years and has incurred a net loss during the 12 or 24 month period prior to filing for the EB-5 green card. The loss for this period must be at least 20 percent of the troubled business’ net worth prior to the loss.

C. DIRECT INVESTMENT, INDIRECT INVESTMENT THROUGH REGIONAL CENTERS, AND THE JOB CREATION REQUIREMENT

The EB-5 investment can be made directly into the commercial business by the foreign national, or indirectly through a USCIS designated and approved Regional Center. USCIS designates an organization as a Regional Center through a request for designation submitted on Form I-924. The Regional Center must do the following:

- Focus on a specific geographical area,
- Fully explain how at least 10 new full-time jobs will be created by each individual alien investor within the Regional Center,
- Provide an economic analysis that shows and describes how jobs will be created for each industrial category of economic activity, and,
- Provide a business plan for an actual or exemplar capital investment project, which contains sufficient detail to provide valid and reasoned inputs into the economic forecasting tools and demonstrate that the proposed project is feasible under current market and economic conditions.

Direct investors in an EB-5 project must show that the investment creates 10 actual new jobs. Regional Centers are permitted to establish ten jobs directly or indirectly, as supported by a statistically valid economist’s report. Indirect jobs are those jobs shown to have been created collaterally or as a result

of capital investment in a commercial enterprise affiliated with a Regional Center.

D. APPLICATION PROCESS

First, the EB-5 investor must file Form I-526 and supporting documentation demonstrating the investment and employment creation with the USCIS Service Center. Upon approval of Form I-526, the intending immigrant may file to adjust status through an I-485 Application if he or she is physically in the United States or they can apply for an immigrant visa at a U.S. Consulate if they are outside of the United States. Once approved, the immigrant investor, his or her spouse and minor children are granted Conditional Permanent Residence for a two year period.

To become unconditional permanent residents, the EB-5 investor and family must file the I-829 petition with USCIS 90 days prior to the expiration of the conditional green card status. The Form I-829 and supporting documents must demonstrate that the investor has met all requirements of the EB-5 visa program. If the investment is not viable up until the time of adjudication, the petition will be denied. If approved, the investor, spouse, and unmarried children under the age of 21 will be granted Lawful Permanent Resident status in the United States.



Part Four

EMPLOYMENT ELIGIBILITY VERIFICATION

CHAPTER 20

Overview of Employer Obligations Under IRCA

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA) to combat the increasing rate of illegal immigration in the U.S. Congress believed that the most effective way to deter illegal immigrants from entering the U.S. was to impose obligations and sanctions on the employers hiring them. It reasoned that if employers did not hire illegal workers, who were primarily entering the U.S. in search of employment, the large influx of illegal immigration would decrease.

IRCA prohibits employers from knowingly hiring or continuing to employ an individual not authorized to work in the U.S. The law requires that the employer verify and attest to an employee's identity and authorization to work in the U.S. The attestation is made under penalty of perjury on the Employment Eligibility Verification Form, Form I-9. There was a fear held by some members in Congress that the verification requirements would result in privacy violations and discrimination against persons who appear or sound foreign. To address this concern, Congress included an antidiscrimination provision in IRCA.

Every employer must verify both the identity and work eligibility of each employee it hires after November 7, 1986, the effective date of the law. The Form I-9 must also be completed for each individual referred or recruited for a fee. The Form I-9 must be completed regardless of an employee's citizenship. Relevant regulations define the term "employee" as an "individual who provides services or labor for an employer for wages or other remuneration," and define the term "refer for a fee" as the "referral of a potential applicant to an employer to obtain employment in the U.S." When hiring, recruiting, or referring a new employee, employers must comply with the Form I-9 requirement at the time of the employee's actual commencement of employment for wages or remuneration. Although IRCA requires that all U.S. employers possess and maintain a Form I-9 for each employee, it provides exemptions in the following limited instances:

- The employee was hired before November 7, 1986 and has been continuously employed by the same employer;

- The individual is providing sporadic, irregular, or intermittent domestic services in a private household;
- The individual is providing services for the employer as an independent contractor; or
- The individual is providing services to the employer through entities supplying contract services, such as temporary employment agencies. In those cases, the contractor is the employer for Form I-9 purposes.

In situations where an employer acquires an existing business or has merged with another company, the employer may choose to treat the acquired employees as continuing in their employment and retain the predecessor employer's Form I-9 records rather than complete new Forms I-9 for existing employees. As successor in interest, the new employer assumes liability for all Form I-9 violations. In the alternative, the new employer may choose to treat the acquired employees as new hires and complete new Forms I-9 for each acquired employee in order to limit its liability. Election to complete new Forms I-9 must be applied consistently to all acquired employees.

An employer violates IRCA if it employs a foreign national knowing that he or she is not authorized to be employed in the U.S. or continues to employ a foreign national that the employer knows has become unauthorized during employment. The "knowing" requirement for this violation encompasses constructive knowledge that, based on the circumstances, the employer has reason to know that a foreign national is not authorized to work. An employer is also held accountable for a knowing hire even if it contracts, rather than directly employs, for the labor of an individual who it knows is not authorized for employment in the U.S.

CHAPTER 21

Employment Eligibility Verification Requirements: Form I-9

The Form I-9 contains three sections that require accurate completion to ensure compliance with IRCA. Proper completion of this form requires attestations by the employee and employer, as well as the employer's review of specific documentation. Form I-9 is periodically revised and reissued. Thus, it is important for employers to utilize the current version of Form I-9 when verifying and re-verifying employees. The current and correct version of the Form I-9 can always be found on the USCIS website at <http://www.uscis.gov/i-9>.

A. SECTION 1 OF THE FORM I-9 – EMPLOYEE INFORMATION AND VERIFICATION

Section 1 must be completed by the employee no later than the close of business on his or her first day of employment. The employer is responsible for ensuring that the employee completes Section 1 in full, signs, and dates the form. If the employer participates in the E-Verify program, the employee is required to provide a Social Security number in Section 1, otherwise this field is optional. The fields for the employee's telephone number and email address may be completed on a voluntary basis. Although the employee's attestations regarding his or her employment status are made under penalty of perjury, it is the employer that is held liable when the employee fails to properly complete Section 1 of the Form I-9.

B. SECTION 2 OF THE FORM I-9 – EMPLOYER REVIEW AND VERIFICATION

When completing Section 2 of the Form I-9, the employer must review unexpired original documents, not photocopies, which establish the employee's identity and employment eligibility. The Form I-9 provides three lists of acceptable documents from which the employee may select to establish his or her identity and authorization to work in the U.S. The employer may accept any List A document that establishes an individual's identity and work eligibility. Alternatively, if a List A document is not presented, the employer may accept a List B document that establishes identity and a List C document that establishes work eligibility. If an

▶ **START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.
ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation <i>(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)</i>				
Last Name (Family Name)		First Name (Given Name)	Middle Initial	Other Names Used (if any)
Address (Street Number and Name)		Apt. Number	City or Town	State
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	E-mail Address		Telephone Number

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (See instructions)
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: _____

OR

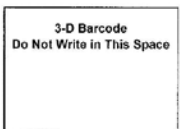
2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)



Signature of Employee:	Date (mm/dd/yyyy):
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Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.)*

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator:		Date (mm/dd/yyyy):	
Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State
			Zip Code

Section 1 of the Form I-9

employer participates in E-Verify, the employer may only accept List B documents which bear a photograph. The list of acceptable documents is included in the Appendices.

Human Resources personnel responsible for executing the Form I-9 related duties should become familiar with the acceptable form of documentation. The Handbook for Employers: Guidance for Completing Form I-9 (M-274), which is published by USCIS, is the primary reference source for employers when completing Form I-9. Employers are also recommended to reference the I-9 Central webpage from the USCIS website, www.uscis.gov/I-9central for user friendly, practical guidance and for the latest interpretations relevant

to the use of the I-9 Form. The employer may not dictate which documents an employee should present; such action would be deemed “document abuse.” The employer should present the list of acceptable documentation to the employee and allow the employee to choose which documents to present.

Section 2 of the Form I-9 must be fully completed by the employer within three business days of the employee’s first day of employment. The three day period within which Section 2 must be executed and signed is calculated from the day after the first day of commencement of employment. Thus, if the individual starts employment on a Monday, the three days are Tuesday, Wednesday and Thursday. In this scenario, the employee must complete Section 1 on Monday, and the Employer must complete Section 2 by Thursday. Non-business days (weekends and legal holidays) are not included in the count.

If the employee does not present the required documentation within three business days, the employer is required to terminate the employment. The employer may later rehire the individual if he or she presents proper documentation. Section 2 of the Form I-9 requires that the employer or its agent attest, under penalty of perjury, that he or she has physically examined the employee’s original documents and that the documents appear to be genuine and relate to the employee.

1. *Reviewing Documents Presented by Employee*

IRCA does not mandate that an employer independently verify the authenticity of the documentation presented by an employee. Rather, IRCA requires that the employer review and accept documentation presented by the employee as long as the documents reasonably appear to be genuine on their face and relate to the person presenting them.

Given this standard of review, it is possible that an employer will inadvertently accept a document that is not in fact genuine, or is genuine, but does not belong to the person who presented it. In such situations, as long as the documents reasonably appear to be genuine and relate to the person presenting them, the employer is not in violation of IRCA’s provisions.

On occasion, an employer may discover that the documents originally presented by the employee were either not genuine, or did not relate to the employee. An employee may have worked with a false identity, but then obtained employment authorization, perhaps through one of the Deferred Action programs, such as the aforementioned DACA or DAPA programs.

Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)

Employee Last Name, First Name and Middle Initial from Section 1:

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title:		Document Title:		Document Title:
Issuing Authority:		Issuing Authority:		Issuing Authority:
Document Number:		Document Number:		Document Number:
Expiration Date (if any)(mm/dd/yyyy):		Expiration Date (if any)(mm/dd/yyyy):		Expiration Date (if any)(mm/dd/yyyy):
Document Title:				
Issuing Authority:				
Document Number:				
Expiration Date (if any)(mm/dd/yyyy):				
Document Title:				
Issuing Authority:				
Document Number:				
Expiration Date (if any)(mm/dd/yyyy):				

3-D Barcode
Do Not Write in This Space

Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions.)

Signature of Employer or Authorized Representative	Date (mm/dd/yyyy)	Title of Employer or Authorized Representative		
Last Name (Family Name)		First Name (Given Name)		Employer's Business or Organization Name
Employer's Business or Organization Address (Street Number and Name)			City or Town	State Zip Code

Section 2 of the Form I-9

The general practice is to give these employees an opportunity to resolve any discrepancies by requiring the employee to complete a new Form I-9 and present new acceptable identity and work authorization documents. It is well established under U.S. immigration law that an employer may continue the employment of such an individual after updating records and correcting past filings, as now the employee is legally authorized to work. However, employers with "honesty policies" may also be confronted with a decision on whether to discharge an employee who provided false information during the hiring process. Such decisions must be made based on a policy that would be applied consistently and in a non-discriminatory way. It must also account for local and state law which might, in some instances, prohibit an employer from taking any adverse action against an employee who was undocumented at the time of hire, but later seeks to update his or her personal information with new work authorization documents.

2. *Immigration Documents That Satisfy Form I-9 Requirements (And Those That Don't)*

The Form I-9 can appear deceptively simple. An employer is recommended to reference the Handbook for Employers (M-274) for practical guidance when determining which types of documents are acceptable during the I-9 verification process. Listed below are a number of scenarios and I-9 documents that require special consideration by employers.

- **Visa Stamps:** Employers should be aware that the work authorized status of a foreign worker in the U.S. is never governed by a consular visa stamp issued in the employee's passport. Instead, the Form I-94 (Arrival/Departure Record), Employment Authorization Document (EAD), or other government-issued documents are appropriate evidence of lawful employment status.
- **Foreign Passports:** If an employee chooses to present his or her unexpired foreign passport as a List A identification document, he or she should also produce the Form I-94, which may have been issued after inspection at a U.S. port of entry, or on a Form I-797 by USCIS. The Form I-94 must have a future expiration date and indicate an immigration status authorizing employment with the employer in order to be acceptable as proof of valid work authorization. Nonimmigrant visa statuses that authorize employment include E-1, E-2, E-3, H-1B, H-1B1, H-2, H-3, I, J-1, L-1A, L-1B, O-1, P-1, P-2, R-1, and TN.
- **Foreign Students Authorized to Work:** Nonimmigrant students are issued I-94 records without specific expiration dates and instead show a validity of "D/S" (duration of status). These nonimmigrant students must produce additional documentation to evidence when they are authorized to work in the U.S. For example, F-1 students given permission to work pursuant to Curricular Practical Training (CPT) must produce a Form I-20, Certificate of Eligibility for Nonimmigrant Students, which is annotated with the dates of work permission. F-1 students who have been granted Optional Practical Training (OPT) must present a valid Employment Authorization Document (EAD). Further, under the special "cap-gap" provisions (discussed previously in Chapter 12), some F-1 students who filed new H-1B petitions with October 1st effective dates will receive automatic extensions of his or her OPT work permission through September 30th. These F-1 students will not receive a new EAD. Instead, the F-1 student will provide an updated Form I-20, which is specially annotated with their continued work authorization through September 30.
- **J-1 Exchange Visitors:** J-1 Exchange Visitors are also issued I-94 records with "D/S" (duration of status) validity periods. J-1

Exchange Visitors with permission to work will provide employers with a Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, or an EAD to evidence their lawful employment authorization.

- H-1B Employees Changing Employers: There are special portability rules that apply to H-1B employees who change employers. Immigration law permits an employer to hire an H-1B worker once it *files* a new H-1B petition with USCIS for the individual changing employers. To complete the Form I-9 *before* the new H-1B petition is approved, the employer may accept the H-1B approval of the previous employer, or Form I-94 showing H-1B status, and a receipt notice for the new petition. When the employer's H-1B petition is approved, the employer must update the Form I-9 with the new H-1B information.
- Social Security Card: The most common List C document presented to show employment eligibility is a Social Security card. Lawful permanent residents, refugees, and asylees are issued unrestricted Social Security cards that are indistinguishable from those issued to U.S. citizens. However, a foreign national's Social Security card may be endorsed with restrictions. A Social Security card that includes any of the following restrictive wording is not an acceptable List C document:
 - NOT VALID FOR EMPLOYMENT
 - VALID FOR WORK ONLY WITH INS AUTHORIZATION
 - VALID FOR WORK ONLY WITH DHS AUTHORIZATION
- Receipt Notices for Lost, Damaged, or Stolen Documents: A receipt notice indicating that the issuing authority has received an application to replace a List A, B, or C document that has been lost, damaged, or stolen is acceptable in place of the original document. The employee must present the actual replacement document within 90 days of hire.

C. SECTION 3 OF THE FORM I-9 – UPDATING AND REVERIFICATION

The employer may use Section 3 of the Form I-9 to rehire an employee, to record a legal name change of the employee, and to reverify an employee's expiring work authorization.

1. *Rehire of an Employee*

When a former employee is rehired by the employer, the original Form I-9 may be used if the new employment begins within three years of

Section 3: Reverification and Rehires <i>(To be completed and signed by employer or authorized representative.)</i>		
A. New Name <i>(if applicable)</i> Last Name <i>(Family Name)</i> First Name <i>(Given Name)</i> Middle Initial		B. Date of Rehire <i>(if applicable)</i> <i>(mm/dd/yyyy)</i>
C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.		
Document Title:	Document Number:	Expiration Date <i>(if any)</i> <i>(mm/dd/yyyy)</i> :
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative:	Date <i>(mm/dd/yyyy)</i> :	Print Name of Employer or Authorized Representative:

Section 3 of the Form I-9

the initial execution of the Form I-9. If the employer uses the original Form I-9, the employer must determine if the employment eligibility remains valid. If not, the employer must review an original List A or List C document showing employment eligibility, and complete Section 3. Reverification must take place within three days of rehire.

2. Name Change of Employee

If an employee has had a legal change of name, such as following marriage, USCIS recommends that an employer record the employee's legal change of name in Section 3 and to maintain evidence that reasonably documents the legal name change. This is not legally required.

3. Reverification of U.S. Permanent Residents

During the hiring process, all employees must present unexpired and original documents. However, employers are not permitted to later reverify the expired Alien Registration Receipt Card/Permanent Resident Card (Form I-551) of a lawful permanent resident, including conditional permanent residents. However, if an employee presents an unexpired foreign passport containing a temporary I-551 stamp as evidence of his or her lawful permanent residence status, reverification of his or her employment eligibility must be done before the expiration date of the I-551 stamp.

4. Reverification of Employees in a Nonimmigrant Status

Nonimmigrant statuses such as E-1, E-2, H-1B, L-1A, L-1B, O-1, P, or TN confer temporary work authorization for varying periods. Where an employee is authorized to work because of his or her nonimmigrant status, an employer must reverify an individual's employment eligibility before the expiration of the work authorization period. The employee need not present a new identity document. Rather, the employee must provide an original document from List A or List C evidencing employment eligibility.

In some cases, an employer may utilize evidence that it filed a petition with USCIS to extend an employee's work authorization status. The petition

must be filed prior to the expiration of the nonimmigrant status to avoid suspension of the employee's work authorization in the U.S. Immigration regulations automatically extend the lawful immigration status and work authorization of individuals in E-1, E-2, H-1B, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, R-1 and TN status while a timely nonimmigrant extension petition is being processed, up to 240 days after expiration of the original status.

If the extension petition is approved before the expiration of the original status, the employer must complete Section 3 after reviewing the original extension approval notice with the employee's new Form I-94, noting the extended validity period. If the extension petition is not approved before the original status expiration, the employer should attach a copy of the USCIS receipt notice showing that the extension petition was timely filed to establish employment eligibility under the USCIS automatic extension rule for 240 days. The employer must complete full reverification once the extension petition has been approved.

5. *Reverification of an Employment Authorization Document*

An EAD grants work authorization for a temporary period. An employer must reverify employment eligibility before expiration of the current EAD. The employee must be able to present an actual, unexpired EAD card or new form of work authorization at the time of reverification. A receipt notice for an EAD renewal application is not acceptable interim work authorization and does not permit an automatic extension of an employee's permission to accept or continue employment in the U.S.

CHAPTER 22

I-9 Recordkeeping

A. PHOTOCOPYING FORM I-9 DOCUMENTATION

IRCA permits, but does not mandate, that employers maintain photocopies of identity and employment eligibility documentation. If the employer elects to make copies, it must do so for all employees, and must retain the copies with the Form I-9. Furthermore, merely photocopying the documents does not relieve the employer from completing Section 2 in full on the Form I-9. However, employers who are enrolled in E-Verify must retain photocopies of employees' EAD cards (Form I-766) and Permanent Resident Cards (Form I-551) with respective Forms I-9.

B. RETENTION REQUIREMENTS RELATED TO THE FORM I-9

Employers are required to maintain Form I-9 records for each employee for the longer of the following: (1) three years from the date of an employee's hire; or (2) one year after the employee's termination. The Form I-9 must be retained for all current employees, as well as terminated employees whose records fall within the retention period.

There are several affirmative steps the employer can take to facilitate proper Form I-9 retention and compliance, and to limit liability. The employer should maintain Form I-9 records separately from other employee files to facilitate review and audit of the forms, and to safeguard the privacy of its employees. Maintaining separate Form I-9 records also assists in reverification of employment eligibility and the timely purging of Form I-9 records.

Employers must store the Form I-9 on paper, on microfilm/microfiche, or electronically. When storing these forms, USCIS recommends that employers provide adequate safeguards to protect employee information. No matter how an employer chooses to store Form I-9 records, the employer must have the ability to present these records within three days of the date the inspection inquiry was made.

C. ORGANIZING AN EMPLOYER'S FORM I-9 RECORDS – TICKLER SYSTEMS

To facilitate the proper reverification of Form I-9 documentation, it is extremely important for employers to implement a tickler system that reminds them well in advance of the expiration of an employee's employment authorization. Advance warning protects both the employee and the employer. The tickler system provides the employee and the employer with ample time to seek renewal of an expiring work authorization and minimize disruptions in employment.

CHAPTER 23

Antidiscrimination Provisions of IRCA

IRCA's antidiscrimination provisions are intended to protect U.S. workers and foreign nationals authorized for employment in the U.S. from work-related discrimination by the employer. To enforce these provisions of IRCA, Congress created the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) as a part of the Civil Rights Division of the DOJ. OSC also enforces prohibitions against unfair documentary practices by employers in the verification of employment eligibility of employees.

OSC has jurisdiction over claims alleging individual acts, and patterns or practices, of discrimination against an individual based on his or her national origin or citizenship status. In addition, the law prohibits the employer from engaging in certain forms of retaliation and intimidation. A representative sampling of unfair immigration-related employment practices follows:

- The employer refuses to hire a protected individual due to his or her national origin or citizenship status;
- The employer requests specific documentation in completing the Form I-9 for the purpose of discriminating or with the intent to discriminate against an individual due to his or her national origin or citizenship status;
- The employer refuses to recruit a protected individual due to his or her national origin or citizenship status; or
- The employer retaliates against and/or intimidates a protected individual due to a discrimination claim he or she has made against the employer.

Under IRCA, unfair documentary practices, otherwise known as “document abuse,” is considered an unlawful immigration-related employment practice, which may render the employer subject to penalties. Document abuse may occur during the completion of the Form I-9 when an employer demands that an employee produce a specific document, or more or different documents than are required, to establish employment eligibility. It may also occur if an employer rejects valid documents that reasonably appear genuine on their face.

The Form I-9 cannot be used to prescreen potential applicants. The regulations implementing IRCA clearly indicate that the Form I-9 should be completed at the time of hire. However, once there has been an offer of employment and an acceptance of the terms, the I-9 process may be completed even prior to the commencement of employment.

During an employment interview or on an employment application, the employer may inquire as to whether the applicant is eligible to work and whether he or she will require immediate or future sponsorship for an employment visa. The OSC has advised that employment applicants should not be questioned about their citizenship status. Since 1998, the OSC has sanctioned the following inquiries as acceptable during the interview process:

- “Are you legally authorized to work in the U.S.?”
- “Will you now or in the future require sponsorship for employment visa status (*e.g.*, H-1B visa status)?”

However, since these two questions did not identify every instance where an employer may need to be concerned about a potential hire’s ability for continued work authorization, the OSC has more recently agreed that employers may ask an additional set of questions:

- “Will you now or in the future require sponsorship for an employment visa? If you have a visa, how much time remains on your current visa?”
- “Will you now or in the future require sponsorship for an immigration-related employment benefit?” For purposes of this question “sponsorship for an immigration-related employment benefit” means “an H-1B visa petition, an O-1 visa petition, an E-3 visa petition, TN status and ‘job flexibility benefits’ (also known as I-140 portability or Adjustment of Status portability) for long-delayed adjustment of status applications that have been pending for 180 days or longer.” (Please seek the advice of counsel if you are uncertain whether you may need immigration sponsorship or desire clarification.)

It has long been accepted that questions such as these are permissible because they do not implicate national origin or citizenship discrimination against protected classes of individuals, which by statute has been limited to U.S. citizens, certain resident aliens, refugees and asylees. However, one federal court found that an employer who refused to hire an individual who had received employment authorization through the Deferred Action for Childhood Arrivals (DACA) program had violated federal law that prohibits

race and citizenship discrimination in employment contracts. It is left to be seen whether the definition of a protected class may be expanded to include individuals who have a temporary authorization document.

CHAPTER 24

Enforcement and Penalties

Principal authority for enforcement of IRCA's employment eligibility verification requirements lies with U.S. Immigration and Customs Enforcement (ICE). ICE is authorized to conduct all investigations and audits to determine if an employer has knowingly hired or continued to employ an unauthorized worker, or has violated the Form I-9 verification provisions. Employers found liable for knowingly violating the provisions of IRCA will receive a cease and desist order. If the employer is found to have knowingly hired or continued to employ unauthorized workers, ICE may subject the employer to debarment, which will result in the employer being prevented from participating in future federal contracts and/or from receiving other government benefits. Employers may also receive a court order requiring the payment of back pay to the individual discriminated against and/or a court order requiring the employer to hire the individual discriminated against.

Furthermore, employers found to have knowingly hired or continued to employ unauthorized foreign workers in the U.S. will be subject to the following:

- Civil fines ranging from \$375 to \$3,200 for each unauthorized worker if this is the employer's first offense;
- Civil fines ranging from \$3,200 to \$6,500 for each unauthorized worker if this is the employer's second offense; and
- Civil fines ranging from \$4,300 to \$16,000 for each unauthorized worker for every offense thereafter.

Employers found to have engaged in a "pattern or practice" of knowingly hiring or continuing to employ unauthorized workers are subject to enhanced civil and possible criminal penalties. Penalties include fines of up to \$3,000 per unauthorized worker and/or imprisonment for not more than six months for the entire pattern or practice.

In addition to imposing liability for violations involving the knowing employment of unauthorized foreign workers, IRCA also imposes penalties for "paperwork violations." This term refers to violations committed by employers for not properly completing, maintaining, and/or presenting for

inspection Form I-9 records for some or all of their employees. Penalties for paperwork violations involve civil fines ranging from \$110 to \$1,100 for each violation on a Form I-9. In determining the amount of civil penalties that might be levied against the employer, the following factors are typically considered by ICE: the size of the employer; good faith efforts of the employer to comply; whether the employer failed to correct mistakes and/or engaged in a pattern of Form I-9 violations; and the seriousness of the violations.

OSC has the authority to enforce IRCA's antidiscrimination provisions. Employers found liable for discrimination under IRCA, or found to have committed document abuse, may be subject to fines and other penalties. Fines may be assessed as follows:

- Civil fines ranging from \$375 to \$3,200 for each individual discriminated against if this is the employer's first offense;
- Civil fines ranging from \$3,200 to \$6,500 for each individual discriminated against if this is the employer's second offense; and
- For every offense thereafter, civil fines ranging from \$4,300 to \$16,000 for each individual discriminated against.

A finding that an employer has committed document abuse may result in a fine of between \$110 and \$1,100 for each individual discriminated against.

CHAPTER 25

E-Verify

E-Verify is an Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security (DHS) and Social Security Administration (SSA) records to verify an individual's employment eligibility in the U.S.

A. WHEN IS E-VERIFY REQUIRED?

The E-Verify system is currently a free and voluntary program for most employers. However, E-Verify is mandated for companies that were awarded a qualifying federal contract. As of September 8, 2009, federal contractors and subcontractors are required to use E-Verify for all new hires and existing employees working on federal contracts if their contract includes the Federal Acquisition Regulation (FAR) E-Verify clause. Employers who received federal contracts that meet the following criteria listed below must participate in the E-Verify program.

Prime Contracts

- The contract has a period of performance that is for 120 days or more;
- The contract's value exceeds \$150,000; and
- At least some portion of the work under the contract is performed in the United States.

Subcontracts

- The contract is for commercial or noncommercial services, or for construction;
- The contract's value exceeds \$3,000; and
- At least some portion of the work under the contract is performed in the United States.

Indefinite Delivery/Quantity Contracts

- The contract is an existing contract;
- The period of performance extends at least 6 months after the effective date of September 8, 2009; and
- The contract requires a substantial amount of work during the remaining performance period.

In addition, many states now mandate that certain employers use E-Verify. As of the time of publication, 20 states require the use of E-Verify for at least some of their public and/or private employers: Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, and West Virginia.

B. OBLIGATIONS OF AN E-VERIFY EMPLOYER

An E-Verify employer must verify employment eligibility of new employees only. It cannot be used to verify current employees (except for certain federal contractors). The system cannot be used to pre-screen employment applicants. In order to participate in E-Verify, an employer must sign and agree to a Memorandum of Understanding (MOU). An E-Verify employer must also post notices of the employer's participation in E-Verify and an anti-discrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

An employer can choose to participate at one worksite, some worksites, or all worksites. An employer can also choose to enroll one, some, or all of its U.S. corporate entities. With 30 days' notice, an employer may terminate its use of the E-Verify program.

C. HOW DOES E-VERIFY WORK WITH THE FORM I-9?

E-Verify does not replace the I-9 process. E-Verify employers must continue to complete Form I-9 within 3 days of hire. However, the use of E-Verify will alter the requirements for the Form I-9 process. While employers are generally prohibited from specifying which documents an employee should provide when completing the Form I-9, E-Verify employers must ensure that a Form I-9 is completed in accordance with E-Verify rules. The most notable differences include:

- An employee must provide a Social Security number in Section 1 of the Form I-9.

- The employee must present a List B document that includes a photograph.
- The photo tool must be used in conjunction with the Form I-9 process. The photo tool allows and requires an employer to copy certain documents, such as the resident alien card (Form I-551) and an employment authorization document.

When an employer inputs Form I-9 data into the E-Verify system, the employer will receive a response, often immediately, with regard to the employee’s work eligibility. The response will include one of four possible answers:

No. 1 – Employment Authorized	Employee is authorized to work. Employer records the verification number on the employee’s Form I-9 or attaches a printout of the result screen.
No. 2 – Department of Homeland Security (DHS) verification in process	The DHS will respond within 24 hours with either an employment authorization or a “tentative non-confirmation response” (TNC).
No. 3 – Social Security Administration (SSA) tentative non-confirmation	This indicates that there is a mismatch within the information as provided to the Social Security Administration.
No. 4 – Final Non-Confirmation	If tentative non-confirmation responses from either the DHS or SSA are not resolved, a final non-confirmation is issued, and the employee is not authorized to work.

An E-Verify employer must follow a protocol for tentative non-confirmations (TNCs). An employer must inform an employee if a TNC is received and give the employee an opportunity to contest the TNC. The employee has the right to contest or not contest a tentative non-confirmation. If the employee chooses to contest the TNC, the employee must visit or call the appropriate agency within eight federal government workdays from the date of the referral in an attempt to resolve the discrepancy. While the employee is engaging in this resolution process, the employee is allowed to continue to work. It is the employer’s responsibility to continue to monitor the E-Verify system for an updated response from the appropriate agency. The employer could receive one of the following responses:

- Employment authorized;
- Review and update employee data, then resubmit;
- Final non-confirmation; or
- DHS no show.

If the response is a “final non-confirmation” or a “DHS no show,” DHS’ position is that the employee must be terminated.

If the employee believes that he or she has been subject to discrimination based upon national origin, citizenship, or immigration status through an employer’s use of E-Verify or when completing the Form I-9, he or she can submit a complaint to the Department of Justice’s Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC).

D. WHAT ARE THE ADVANTAGES TO PARTICIPATING IN E-VERIFY?

Employers who participate in E-Verify are afforded certain benefits.

- If an employer is subject to an immigration related investigation, E-Verify enrollment is considered a positive factor for the employer. An employer participating in E-Verify may not be held civilly or criminally liable for actions taken in good faith reliance on information received through E-Verify.
- An employer who confirms the identity and employment eligibility of an employee in accordance with the terms of E-Verify will benefit from a rebuttable presumption that it has not knowingly hired an unauthorized worker in violation of INA Sec. 274(a)(1)(A). However, employers who continue to employ a worker after receiving a final non-confirmation notice may be subject to civil money penalty, and subjects itself to a rebuttable presumption that it has violated INA Sec. 274(a)(1)(A).
- F-1 students with science, technology, engineering, or mathematics (STEM) degrees are afforded an additional 17 months of optional practical training (OPT) if their employers are enrolled in the E-Verify program. Normally, F-1 students are granted 12 months of OPT work authorization. Thus, a STEM student working for an E-Verify employer will be granted a total of 29 months of OPT work authorization. This longer period of OPT work authorization consequently allows F-1 students two chances to apply for an H-1B visa.



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1. GLOSSARY OF TERMS

Adjustment of Status (AOS): The process of obtaining permanent resident status in the U.S. without having to leave the U.S.

Actual Wage: The wage paid by an employer to employees in the same occupation with similar qualifications.

Admission: Lawful entry into the U.S. after inspection and authorization by a CBP officer.

Alien: An individual who is not a citizen or national of the U.S.

Applicant: An individual who applies for a benefit.

Arrival/Departure Record: CBP form, electronic or paper depending on port of entry, issued to foreign nationals upon admission to the U.S. after inspection indicating the individual's class of admission and authorized period of stay.

Beneficiary: An individual who is the subject of an immigration petition.

Bureau of Consular Affairs (BCA): An agency within the State Department responsible for the oversight and management of U.S. Consulates.

Certifying Officer (CO): An employee of the Labor Department with final authority for reviewing and approving labor certification applications.

Change of Status (COS): An application by a petitioner or individual to change nonimmigrant status (*e.g.*, from student to employee).

Consular Processing: The process of applying for a visa at a U.S. consular post outside the U.S. Application may be for either a nonimmigrant (temporary) visa or an immigrant (permanent resident) visa.

Curricular Practical Training (CPT): A type of employment authorization granted to F-1 students. CPT includes required cooperative education, alternate work/study, internship, and other types of internships offered by a school. CPT may be authorized by the DSO.

Deferred Action: Prosecutorial discretion providing temporary relief from removal or deportation even if the individual is technically inadmissible or removable from the U.S.

Derivative Status: An immigration status or benefit that is derived by virtue of the relationship to a principal beneficiary, usually a spouse or child.

Designated School Official (DSO): For schools authorized to admit F-1 and/or M-1 students, a regularly employed member of the school administration whose office is located at the school and whose compensation does not derive from commissions for recruitment of foreign students. The DSO must be a U.S. citizen or lawful permanent resident of the U.S. The DSO is the principal point of contact on campus for foreign students, and is responsible for updating SEVIS.

Duration of Status (D/S): The period of stay typically granted to students and trainees in lieu of a set expiration date. Determination of the date the individual's stay actually expires depends on status authorization documents issued by the school or program administrators: Form I-20 for F-1 and M-1 Students, and Form DS-2019 for J-1 Exchange Visitors.

E-Verify: An Internet-based system, available to enrolled employers, that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility.

Employer Sanctions: Civil and criminal penalties imposed on employers who, subsequent to the effective date of the Immigration Reform and Control Act (IRCA), on November 6, 1986, hire, continue to employ, or refer or recruit for a fee, foreign nationals who are not authorized to work in the U.S.

Employer Verification: An employer's obligation to verify the identity and eligibility of all employees hired or referred for a fee after November 6, 1986, on Form I-9 as required by IRCA.

Employment and Training Administration (ETA): An agency within the Labor Department responsible for the administration of benefits programs for the employment of foreign workers.

Employment Authorization Document (EAD): USCIS issued document permitting the holder to be employed in the U.S.

Exchange Visitor: A foreign national coming to the U.S. on a temporary basis to participate in an Exchange Visitor program designated by the Bureau of Educational and Cultural Affairs at the State Department for the

purpose of teaching, instructing, lecturing, studying, observing, conducting research or receiving training.

Extension of Status (EOS): An application by a petitioner or individual to extend existing nonimmigrant status.

Foreign Affairs Manual (FAM): Manual that contains the regulations, policies, and procedures for DOS's operations.

Green Card: Term commonly used to describe evidence of immigrant or lawful permanent resident status.

Immigrant: An individual possessing a Permanent Resident Card, Form I-551, thus, having the right to reside and work permanently in the U.S. Also known as a “green card” holder or lawful permanent resident.

Immigrant Visa: A document issued by a consular officer at a U.S. post abroad to an eligible individual permitting him or her to be admitted to the U.S. as an immigrant.

Inadmissible: A foreign national seeking admission to the U.S. who does not meet the criteria for admission. The individual will be barred from entering the U.S., may be placed in removal proceedings, or may be permitted to withdraw his or her application for admission.

Inspection: The process that all travelers must undergo at the border; administered by CBP to determine an individual's admissibility to the U.S.

Intracompany Transferee: An individual employed for at least one continuous year out of the last three by a company abroad, and who seeks to enter the U.S. temporarily to continue to work for the same employer, or a subsidiary or affiliate, in a managerial, executive or specialized knowledge capacity. Intracompany transferees working in the U.S. legally will be working pursuant to their status as an L visa holder.

Labor Certification: Certification by the DOL that an insufficient number of U.S. workers are able, willing, qualified and available to fill a position offered to a foreign national in the geographic area for which the labor certification is sought. In addition, the DOL must make a determination that the employment of the foreign national will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Labor Condition Application (LCA): Application made to the DOL, in which the employer makes four attestations regarding the proposed

employment of an H-1B nonimmigrant. The LCA must be certified before the employer files the H-1B petition.

Lawful Permanent Resident (LPR): An individual with the intention to live permanently in the U.S., also known as an immigrant or a “green card” holder.

National Visa Center (NVC): An office of the State Department’s Bureau of Consular Affairs. The NVC is a clearinghouse between all USCIS offices in the U.S. and all U.S. Consulates for the processing of visas.

Naturalization: The conferring of U.S. citizenship upon an individual after birth.

Nonimmigrant: An individual seeking to enter the U.S. temporarily.

Nonimmigrant Visa: A document issued by a consular officer at a U.S. post abroad to an eligible individual permitting him or her to be admitted to the U.S. for a temporary period of time.

Occupational Employment Statistics (OES): A comprehensive prevailing wage survey maintained by the DOL.

Optional Practical Training (OPT): A form of employment authorization granted to F-1 students for employment that is not a required part of a student’s academic program. Available either prior to or upon completion of the student’s academic program, or a combination thereof.

Passport: Any travel document issued by a competent authority showing the bearer’s origin, identity and nationality, if any, valid for the admission of the bearer into a foreign country.

Petitioner: An individual or entity filing a petition for a benefit on behalf of a foreign national.

Port of Entry (POE): Any location in the U.S. or its territories that is designated as a point of entry to U.S. territory for foreign nationals and U.S. citizens.

Preference Categories: System of allocating immigrant visas based on annual quota assigning preferences to certain foreign nationals based on the relationship to U.S. citizens, lawful permanent residents or their employment-based immigrant visa category.

Pre-Flight Inspection (PFI): Complete inspection by a CBP officer at an airport in a foreign country, prior to a foreign national's travel to the U.S. No further inspection is necessary upon arrival in the U.S.

Prevailing Wage: The average rate of wages paid to workers similarly employed in the geographic area of the beneficiary's intended employment. A prevailing wage determination (PWD) issued by the National Prevailing Wage Center (NPWC) is required before filing a labor certification application. Employer attestations regarding prevailing wages are required in the LCA program, and in the permanent labor certification application.

Priority Date: The date that a foreign national submitted prima facie evidence of their eligibility to immigrate to the U.S. For a family based immigrant visa, this is the date the I-130 Petition for Immigrant Relative is filed with USCIS. For employment-based cases, this relates either to the I-140 Petition for Immigrant Worker or to the date a Labor Certification was filed with the DOL.

Program Electronic Review Management System (PERM): The program used to process permanent labor certification applications. The program is intended to streamline and automate the process of labor certification through the use of an attestation-based questionnaire filed electronically on-line or via mail. The certified labor application is supported by a required documentation retention program. A standard PERM labor application is designed to be certified (approved) within 45 to 60 days of receipt.

Request for Evidence (RFE): Request by a USCIS office for additional evidence on a pending application or petition.

Specialty Occupation: An occupation requiring theoretical and practical application of a body of highly specialized knowledge. To qualify for an H-1B visa, a foreign national must have the equivalent of a bachelor's degree or higher in a specific area related to the occupation.

Specific Vocational Preparation (SVP): Amount of time prescribed by the DOL for an individual to acquire, through education, training, or experience, the minimum skills necessary to perform an occupation. Used by the DOL to determine normal minimum requirements for occupations.

State Workforce Agency (SWA): The generic name for the agency or bureau in each State that deals with labor and employment issues, including the employment of foreign nationals in the U.S.

Student and Exchange Visitor Information System (SEVIS): A web-based system for the maintenance of information on international students (F-1, M-1) and exchange visitors (J-1) in the U.S. Administered by the Student and Exchange Visitor Program (SEVP), a division of ICE.

Temporary Worker: A foreign national with permission to work in the U.S. for a temporary period of time. Work authorization is limited in duration, and typically limited in scope. Most nonimmigrant classifications permitting employment require sponsorship by an employer for specific terms and conditions of employment.

USCIS Service Center: Regional USCIS office established to handle the filing, data entry, and adjudication of certain petitions and applications for immigration services and benefits. There are five service centers in the U.S.: 1) California Service Center (CSC); 2) Nebraska Service Center (NSC); 3) Texas Service Center (TSC); 4) Vermont Service Center (VSC); and 5) National Benefits Center (NBC).

Visa: A document issued by a U.S. consulate that allows the bearer to apply for entry to the U.S. in a certain nonimmigrant classification (*e.g.*, student (F), visitor (B), or temporary worker (H)), or as an immigrant. Issuance of a visa does not guarantee admission to the U.S.

2. USEFUL IMMIGRATION WEBSITES

APPLYING FOR A DRIVER'S LICENSE:

- Private site providing links and information to all states: www.dmv.org

DEPARTMENT OF COMMERCE:

- Bureau of Industry and Security, Export Control: www.bis.doc.gov/index.php/enforcement/oe
- Deemed Export Questions and Answers: <http://www.bis.doc.gov/index.php/policy-guidance/deemed-exports/deemed-reexport-guidance1>

DEPARTMENT OF HOMELAND SECURITY (DHS):

- DHS: www.dhs.gov
- DHS, Immigration Enforcement: <http://www.dhs.gov/topic/immigration-enforcement>

DEPARTMENT OF LABOR (DOL):

- DOL: www.dol.gov
- Foreign Labor Certification: www.foreignlaborcert.doleta.gov
- Online Wage Library: www.flcdatacenter.com/
- Standard Occupational Classification (SOC) User Guide: www.bls.gov/soc/soc_2010_user_guide.pdf
- O*Net Online: www.onetonline.org
- Dictionary of Occupational Titles: www.occupationalinfo.org
- Occupational Outlook Handbook: www.bls.gov/ooh
- Bureau of Labor Statistics: www.bls.gov
- PERM online filing system: www.plc.doleta.gov/eta_start

DEPARTMENT OF STATE (DOS):

- DOS: www.state.gov
- Bureau of Consular Affairs: travel.state.gov
- Links to U.S. Embassies and Consulates: www.usembassy.gov
- DOS Travel Warnings: travel.state.gov/content/passports/english/alertswarnings.html
- Visa Policy Telegrams: travel.state.gov/content/visas/english/law-and-policy/visa-policy-update.html
- Foreign Consular Offices in the U.S.: www.state.gov/s/cpr/rls/fco/
- All embassies around the world: www.embassyworld.com
- Visa fees and reciprocity tables: www.travel.state.gov/content/visas/english/fees/fees-reciprocity-tables.html
- Visa Bulletin: travel.state.gov/content/visas/english/law-and-

- policy/bulletin.html
- Foreign Affairs Manual: www.state.gov/m/a/dir/regs/fam/
- J-1 Designator Sponsor Organization Listing: <http://j1visa.state.gov/participants/how-to-apply/sponsor-search/>
- U.S. Citizen Foreign Entry Requirements to Other Countries: travel.state.gov/content/passports/english/country.html
- U.S. Passports: travel.state.gov/content/passports/english.html

EMPLOYMENT ELIGIBILITY VERIFICATION AND ANTIDISCRIMINATION:

- About Form I-9, Employment Eligibility Verification: www.uscis.gov/i-9
- Frequently Asked Questions About Employment Eligibility: www.uscis.gov/news/public-releases-topic/employment-verification/uscis-issues-final-rule-employment-eligibility-verification-questions-and-answers
- Handbook for Employers: Instructions for Completing Form I-9: www.uscis.gov/sites/default/files/files/form/m-274.pdf
- E-Verify: www.uscis.gov/e-verify
- Self Check for Employment Eligibility: www.uscis.gov/mye-verify/self-check
- Office of Special Counsel for Immigration-Related Unfair Employment Practices: www.justice.gov/crt/about/osc/
- Employer Information Bulletin: www.uscis.gov/working-united-states/information-employers-employees/employer-information

INTERNAL REVENUE SERVICE (IRS):

- IRS: www.irs.gov
- International Taxpayer: www.irs.gov/Individuals/International-Taxpayers
- U.S. Tax Guide for Aliens: www.irs.gov/publications/p519/index.html

PROCESSING WAIT TIMES:

- United States Citizenship and Immigration Service (USCIS): <https://egov.uscis.gov/cris/processTimesDisplayInit.do>
- Department of Labor, Labor Condition Applications (LCAs) and permanent Labor Certification applications: <https://icert.doleta.gov/>
- Department of State, Bureau of Consular Affairs, Estimated Nonimmigrant Visa Application Wait Times: <http://travel.state.gov/content/visas/english/general/wait-times.html>

PROSKAUER ROSE LLP:

- www.proskauer.com (for helpful information on a variety of subjects)
- www.proskauer.com/practices/immigration-nationality (for immigration specific information)

SOCIAL SECURITY:

- Social Security Administration: www.ssa.gov
- Social Security and Immigration (including application procedures): www.ssa.gov/people/immigrants

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE (USCIS):

- USCIS: www.uscis.gov
- Press Releases: www.uscis.gov/news-releases
- USCIS Civil Surgeon Locator: egov.uscis.gov/crisgwi/go?action=offices.type&OfficeLocator.office_type=CIV
- How to Report a Change of Address: www.uscis.gov/addresschange
- Immigration Forms and Fees: www.uscis.gov/forms
- USCIS Office Locations: www.uscis.gov/about-us/find-uscis-office
- Infopass Scheduler: <https://infopass.uscis.gov/>
- A Guide for New Immigrants: www.uscis.gov/tools/green-card-resources/welcome-united-states
- Applying for U.S. Citizenship: www.uscis.gov/citizenship/learners/apply-citizenship

U.S. CUSTOMS AND BORDER PROTECTION (CBP):

- CBP: www.cbp.gov
- Travel spotlight: www.cbp.gov/travel
- ESTA: www.cbp.gov/travel/international-visitors/esta
- Advisories and Border Wait Times: www.cbp.gov/travel/advisories-wait-times
- Deferred Inspection Sites: www.cbp.gov/xp/cgov/toolbox/contacts/deferred_inspection
- Preclearance Sites: www.cbp.gov/xp/cgov/toolbox/contacts/preclean_locations.xml
- Ports of Entry: www.cbp.gov/contact/ports
- Identification and Entry of Foreign Nationals: www.cbp.gov/travel/international-visitors/applying-admission-united-states
- U.S. VISIT: http://www.dhs.gov/dhspublic/interapp/content_multi_image/content_multi_image_0006.xml

- Trusted Traveler Programs: www.cbp.gov/travel/trusted-traveler-programs
- Global Online Enrollment System (GOES): <https://goes-app.cbp.dhs.gov/main/goes>
- Global Entry: www.cbp.gov/global-entry/about
- NEXUS: www.cbp.gov/travel/trusted-traveler-programs/nexus
- SENTRI: www.cbp.gov/travel/trusted-traveler-programs/sentri
- FAST: www.cbp.gov/travel/trusted-traveler-programs/fast

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE):

- ICE: www.ice.gov
- SEVIS: www.ice.gov/sevis

MISCELLANEOUS:

- U.S. House of Representatives: www.house.gov
- U.S. Senate: www.senate.gov
- Library of Congress: www.loc.gov
- U.S. Office of Personnel Management 2001 Report, Citizenship Laws around the world: www.multiplecitizenship.com/documents/IS-01.pdf
- American Immigration Lawyers Association: www.aila.org/fm?actiontype=home&CFID=334662&CFTOKEN=50592107

3. I-94 INSTRUCTIONS FROM CBP



U.S. Customs and
Border Protection

I-94 Automation

FACT SHEET

Overview

In order to increase efficiency, reduce operating costs and streamline the admissions process, U.S. Customs and Border Protection has automated Form I-94 at air and sea ports of entry. The paper form will no longer be provided to a traveler upon arrival, except in limited circumstances. The traveler will be provided with a CBP admission stamp on their travel document. If a traveler needs a copy of their I-94 (record of admission) for verification of alien registration, immigration status or employment authorization, it can be obtained from www.cbp.gov/I94.

Frequently Asked Questions

What is a Form I-94?

Form I-94 is the DHS Arrival/Departure Record issued to aliens who are admitted to the U.S., who are adjusting status while in the U.S. or extending their stay, among other things. A CBP officer generally attaches the I-94 to the non-immigrant visitor's passport upon U.S. entry. The visitor must exit the U.S. on or before the departure date stamped on the I-94.

How will the new I-94 automation impact international travelers' entry to the U.S.?

I-94 automation will not impact a traveler's ability to enter the U.S. CBP will continue to create an I-94 record for all travelers who require one, but the paper form will be created in an electronic format and not provided to the traveler. If a traveler requires a paper version of Form I-94, it will be available at www.cbp.gov/I94.

Will CBP provide a traveler with any documentation or evidence showing status and time allowed in the U.S.?

Yes. CBP will provide each traveler with an admission stamp that is annotated with date of admis-

sion, class of admission and admitted until date. The electronic arrival/departure record can be obtained at www.cbp.gov/I94.

Will travelers need to do anything differently when exiting the U.S.? How can they be sure their departure will be recorded properly with this new the I-94 automation process?

Travelers will not need to do anything differently upon exiting the U.S. Travelers issued a paper Form I-94 should surrender it to the commercial carrier or CBP upon departure. The departure will be recorded electronically with manifest information provided by the carrier or by CBP. If travelers did not receive a paper Form I-94 and the record was created electronically, CBP will record their departure using manifest information obtained from the carrier.

Need Your I-94 Admission Number?

Go to www.cbp.gov/I94

How does a traveler revalidate a visa without their I-94?

The I-94 admission record is created electronically and maintained in CBP systems. CBP will verify the I-94 electronically to re-validate an expired visa if the traveler meets the conditions of automatic revalidation. If entry occurred prior to automation, a paper form must be presented in order to comply with validation requirements. For more information about automatic revalidation go to http://www.cbp.gov/linkhandler/cgov/travel/id_visa/revalidation.ctt/revalidation.pdf.

For more information on I-94 automation or any CBP related questions, visit www.CBP.gov.

3/2013

Will CBP still issue a paper Form I-94 once the automation begins?

No. Rather than distributing a paper Form I-94, CBP will scan a traveler's passport, generating an electronic arrival record with data elements found on the current paper Form I-94. CBP will make the electronic I-94 available at www.cbp.gov/I94. Travelers may visit this website to print their electronic I-94 number before applying for immigration or public benefits, such as a driver's license or a Social Security number.

Since automation only affects air and sea arrivals, a paper Form I-94 is still issued at the land border ports of entry. Also, CBP intends to continue to provide a paper Form I-94 to certain classes of aliens, such as refugees, certain asylees and parolees, and whenever CBP determines the issuance of a paper form is appropriate.

What if a traveler does not have a foreign passport for CBP to stamp?

Individuals without a foreign passport will be sent to CBP's secondary inspection upon arrival into the U.S., where they will receive their electronic I-94 number. These individuals will be issued a paper I-94 with the pre-printed number crossed out, and the actual electronic I-94 number handwritten upon it.

Employers and agencies can expect refugees, asylees, parolees and others who do not have any other travel document to have these I-94s.

What should a traveler do if he or she was admitted incorrectly to the U.S.?

If an applicant was admitted incorrectly to the U.S., the applicant should visit a local CBP Deferred Inspection Site or port of entry to have his or her admission corrected. A list of Deferred Inspection Sites and ports of entry can be found at www.cbp.gov, under the "Ports" link at the bottom of the page.

If an applicant received an incorrect I-94 from U.S.

Citizenship and Immigration Services, the applicant should refer to Form I-102 available at www.uscis.gov/forms.

Will the process help expedite passenger processing time?

The I-94 automation will expedite passenger processing. CBP automated the I-94W process in 2010, which independent studies show has resulted in an approximate 20-second time savings per passenger. CBP estimates that I-94 automation will result in similar time savings.

What is the I-94 website (www.cbp.gov/I94)?

Travelers may visit www.cbp.gov/I94 to retrieve their electronic I-94 number. Upon entering the U.S., travelers will receive a paper with instructions on how to access the website.

U.S. Customs and Border Protection Securing America's Borders	
Get I-94 Number	I-94FAQ
Admission (I-94) Number Retrieval	
Admission (I-94) Record Number: 6900088062	
Admit Until Date (MM/DD/YYYY): 10/10/2012	
Details provided on Admission(I-94) form:	
Family Name:	LI
First (Given) Name:	LYDIA
Birth Date (MM/DD/YYYY):	01/01/1990
Passport Number:	P823125213
Passport Country of Issuance:	Mexico
Date of Entry (MM/DD/YYYY):	04/14/2012
Class of Admission:	B1
Individuals can visit www.cbp.gov/I94 to retrieve a copy of their electronic Form I-94.	

4. QUICK REFERENCE CHART OF NONIMMIGRANT CLASSIFICATIONS COMMONLY ENCOUNTERED BY BUSINESS

VISA CATEGORY	SKILL SET REQUIRED & ELIGIBILITY CRITERIA	INCOME FROM U.S. SOURCE	MAXIMUM LENGTH OF STAY	PROCEDURE & COUNTRY OF CITIZENSHIP
B-1 Visitor for Business	Must demonstrate temporary activity in U.S. will benefit foreign employer and not be considered productive employment in the U.S. for which a U.S. worker may be hired. Must show ties to home country and intent to return abroad. This category is typically used to attend a conference, meeting, trade show or business event.	No income or other remuneration from any U.S. employer. Foreign national must be on foreign payroll and may only receive expenses incidental to his/her stay in the U.S.	Length of conference, meeting, trade show, business event, etc. up to a maximum of 6 months at entry with possible extensions. Under Visa Waiver Program, 90 days only with no possible extension.	Apply for visa stamp directly at U.S. Consulate. Nationals of some countries are visa exempt (Canada, Bermuda, Micronesia & the Marshall Islands) or eligible under Visa Waiver Program. A list of VWP countries can be found at: http://travel.state.gov .
E-1/E-2 Treaty Trader Treaty Investor	Based on trade/investment treaties between U.S. and various countries. E-1 requires trade must be at least 50% between U.S. and treaty country. E-2 requires investment must be at least 50% by nationals of treaty country. Must demonstrate foreign national will be facilitating trade and/or investment opportunities between the U.S. and treaty country company in a managerial/executive or essential employee position. Must demonstrate ties to home country and intent to return abroad.	Employment permitted only with qualifying U.S. entity. Can change jobs if new qualifying employer sponsors foreign national.	2 years at entry. No fixed limit on number of extensions. Nonimmigrant intent required.	National must be from a country that has a treaty of commerce and navigation with the U.S. Nationals may apply for a visa directly at the U.S. Consulate. If in the U.S., extension or change of employer may be filed with USCIS.
E-3 Australia – Specialty Occupation	Position must require at least Bachelor's Degree in relevant field and employee must have relevant degree. Must demonstrate ties to home country and intent to return abroad.	Employment permitted only with sponsoring U.S. employer. Can change jobs if new employer sponsors foreign national.	2 years at entry. No fixed limit on number of extensions. USCIS may limit entry where nonimmigrant intent is questioned.	Available only to nationals of Australia. File LCA with Department of Labor. Australians may apply for a visa directly at the U.S. Consulate. If in the U.S., extension or change of employer may be filed with USCIS.

VISA CATEGORY	SKILL SET REQUIRED & ELIGIBILITY CRITERIA	INCOME FROM U.S. SOURCE	MAXIMUM LENGTH OF STAY	PROCEDURE & COUNTRY OF CITIZENSHIP
F-1 Practical Training	Student is eligible to work in a position related to his/her degree upon the completion of degree program from a U.S. school to gain practical experience in field of study. Also available to students during vacation and when school is not in session prior to graduation, after he/she has completed the first year of coursework. Must demonstrate ties to home country and intent to return abroad.	Employment permitted with any U.S. employer as long as related to field of study.	Typically student is granted one year work authorization. Training must be completed within 14 months of graduation. STEM (science, technology, engineering or mathematics) students can obtain an additional 17 months of OPT if the employer is enrolled in E-Verify.	School officer makes recommendation for OPT under SEVIS and student must file application for Employment Authorization Card (EAD).
J-1 Exchange Visitor	Various Exchange Visitor Categories - Au pair and EduCare Short-term Scholar, Camp Counselor, Specialist, Government Visitor, Student (college/university), International Visitor (Dept. of State use), Summer Work Travel, Physician, Teacher, Professor and Research Scholar, Trainee, Student (secondary), Trainee and Intern. Trainee/internship programs are very common. Internship program requires student be currently enrolled in full-time degree program outside the U.S. or have graduated from such a program within the last 12 months. Trainee program requires foreign national to have a degree or professional certificate and at least one year of related work experience; or at least five years of work experience outside the U.S. in a specialized field. Must demonstrate ties to home country and intent to return abroad.	Application is employer specific. Employer must provide training in intern/trainee's field of study. Changing employers requires a new J-1 application. Candidates must be fluent in English and have/be provided health care insurance.	Interns are limited to 12 months, and trainees are generally limited to 18 months, with limited exception.	Application is made through a designated J-1 sponsor organization. Must secure visa at U.S. Consulate overseas if abroad. Open to all nationalities; however, if the training is in a field that is in demand in the foreign national's home country (and thus on the Dept. of State's Exchange Visitor Skills List), the J-1 applicant may be subject to a 2-year foreign residency requirement. Dept. of State also has some country-specific Exchange Visitor Pilot Programs currently in place: <ul style="list-style-type: none"> • Summer work/travel: Australians • Summer work/travel: New Zealanders • Intern work/travel: Irish • Work/Eng./Study/Travel: South Koreans

VISA CATEGORY	SKILL SET REQUIRED & ELIGIBILITY CRITERIA	INCOME FROM U.S. SOURCE	MAXIMUM LENGTH OF STAY	PROCEDURE & COUNTRY OF CITIZENSHIP
<p>H-1B</p> <p>Temporary Worker in Specialty Occupation</p>	<p>Position must require at least Bachelor's Degree in relevant field and employee must have relevant degree (or equivalent experience).</p>	<p>Employment permitted only with sponsoring U.S. employer. Can change jobs if new employer sponsors foreign national. Petitions are subject to a 65,000 H-1B numerical limitation (the "cap"). Petitions are exempt from the cap under the advanced degree exemption provided to the first 20,000 petitions filed for a beneficiary possessing a U.S. master's degree or higher. Petitions for the next fiscal year can be filed as early as April 1, for an October 1 start date. Recently, the cap has been reached in April because of increased demand for H-1Bs.</p>	<p>3 years at entry with extensions for a total stay of 6 years. Extensions beyond 6 years available in limited circumstances involving concurrent green card processing.</p>	<p>File LCA with Department of Labor and then USCIS petition. If abroad, must then apply for visa stamp at U.S. Consulate. Nationals of some countries are visa exempt.</p>
<p>H-1B1</p> <p>Chile and Singapore - Specialty Occupation</p>	<p>Position must require at least Bachelor's Degree in relevant field and employee must have relevant degree.</p>	<p>Employment permitted only with sponsoring U.S. employer. Can change jobs if new employer sponsors foreign national. 6,800 visas are set aside from the H-1B cap of 65,000 during each fiscal year. Unused numbers in this pool are made available for H-1B use for the next fiscal year.</p>	<p>1 year at entry. No fixed limit on number of extensions. USCIS may limit entry where nonimmigrant intent is questioned.</p>	<p>Available only to nationals of Chile and Singapore. File LCA with Department of Labor. Chilean and Singaporean nationals may apply for a visa directly at the U.S. Consulate. If in the U.S., extension or change of employer may be filed with USCIS.</p>

VISA CATEGORY	SKILL SET REQUIRED & ELIGIBILITY CRITERIA	INCOME FROM U.S. SOURCE	MAXIMUM LENGTH OF STAY	PROCEDURE & COUNTRY OF CITIZENSHIP
H-2B	<p>Program designed to fill temporary, seasonal, peak load or intermittent employment needs. Requires employer obtain a Temporary Employment Certification Application, which entails conducting recruitment to test the U.S. labor market. Petitions are subject to a 66,000 numerical limitation (cap), with 33,000 allocated for the first half of the fiscal year and another 33,000 for the second half.</p>	<p>Employment permitted only with sponsoring U.S. employer. Can change jobs if new employer sponsors foreign national.</p>	<p>Length of temporary employment based on Temporary Employment Certification Application. Possible extensions, in increments up to a year, for a maximum of 3 years. New Temporary Employment Certification Application required for all extensions.</p>	<p>File Temporary Employment Certification Application with Department of Labor and then USCIS petition. If abroad, must then apply for visa stamp at U.S. Consulate. DHS, with DOS, annually designates countries eligible to participate in the H-2B program and be found at https://www.federalregister.gov.</p>
H-3 Trainee	<p>Program designed to provide instruction and training to foreign national which is not available in his/her home country. Should not be designed primarily for productive employment, but productivity may be incidental to training. Training should benefit foreign national's employment pursuits outside the U.S. Must demonstrate ties to home country and intent to return abroad.</p>	<p>Employment permitted only with sponsoring U.S. employer. Can change jobs if new employer sponsors foreign national under new training program.</p>	<p>Trainees are limited to 2 years, but if 2 years fully utilized, foreign national must reside abroad for 6 months before seeking H or L status.</p>	<p>File USCIS petition, if abroad, must then apply for visa stamp at U.S. Consulate overseas. Nationals of some countries are visa exempt.</p>
L-1 Intracompany Transferee	<p>Must have been employed abroad continuously for 1 year during last 3 years with parent, branch, affiliate, or subsidiary of U.S. employer. Position abroad and in U.S. must involve managerial or executive (L-1A) or specialized knowledge (L-1B) capacity. If Blanket L visa, L-1B applicant must possess a bachelor's degree.</p>	<p>Employment permitted only with sponsoring U.S. employer.</p>	<p>3 years at entry with extensions in 2 year increments for a total of 7 years for managers and executives, or for a total of 5 years for specialized knowledge personnel.</p>	<p>If Blanket L visa, may apply for visa directly at U.S. Consulate. If not Blanket L, must file USCIS petition. If abroad, must then apply for visa stamp at U.S. Consulate. Nationals of some countries are visa exempt.</p>
TN NAFTA Occupations	<p>Occupation must be designated under NAFTA and employee must satisfy qualifications as required under NAFTA. Must demonstrate ties to home country and intent to return abroad.</p>	<p>Employment permitted only with sponsoring U.S. employer. Can change jobs if new employer sponsors foreign national.</p>	<p>3 years at entry. No fixed limit on number of extensions. USCIS may limit entry where nonimmigrant intent is questioned.</p>	<p>Canadians may apply directly at major U.S./Canada border crossings, or at Pre-Flight Inspection at certain airports in Canada. (See CBP.gov for Ports of Entry). Mexicans must apply for a TN visa at the consulate. If in the U.S., extension or change of employer may be filed with USCIS.</p>

VISA CATEGORY	SKILL SET REQUIRED & ELIGIBILITY CRITERIA	INCOME FROM U.S. SOURCE	MAXIMUM LENGTH OF STAY	PROCEDURE & COUNTRY OF CITIZENSHIP
O-1 Individual of Extraordinary Ability	Must document a high level of achievement and recognition, showing that employee is at the top of his/her field. Requires evidence establishing at least 3 statutory criteria for demonstrating extraordinary ability.	Employment permitted only with sponsoring U.S. employer. May also be sponsored by agent or business manager.	3 years at entry, with no fixed limit on 1 year extensions.	File USOIS petition. If abroad, must then apply for visa stamp at U.S. Consulate overseas. Nationals of some countries are visa exempt.

5. TREATY COUNTRIES FOR E VISA CLASSIFICATION AS OF DATE OF PUBLICATION

Country	Classification	Country	Classification
Albania	E-2	Korea (South)	E-1 / E-2
Argentina	E-1 / E-2	Kosovo	E-1 / E-2
Armenia	E-2	Kyrgyzstan	E-2
Australia	E-1 / E-2	Latvia	E-1 / E-2
Austria	E-1 / E-2	Liberia	E-1 / E-2
Azerbaijan	E-2	Lithuania	E-2
Bahrain	E-2	Luxembourg	E-1 / E-2
Bangladesh	E-2	Macedonia	E-1 / E-2
Belgium	E-1 / E-2	Mexico	E-1 / E-2
Bolivia	E-1 / E-2	Moldova	E-2
Bosnia and Herzegovina	E-1 / E-2	Mongolia	E-2
Brunei	E-1	Montenegro	E-1 / E-2
Bulgaria	E-2	Morocco	E-2
Cameroon	E-2	Netherlands	E-1 / E-2
Canada	E-1 / E-2	Norway	E-1 / E-2
Chile	E-1 / E-2	Oman	E-1 / E-2
China (Taiwan)	E-1 / E-2	Pakistan	E-1 / E-2
Colombia	E-1 / E-2	Panama	E-2
Congo (Brazzaville) / (Kinshasa)	E-2	Paraguay	E-1 / E-2
Costa Rica	E-1 / E-2	Philippines	E-1 / E-2
Croatia	E-1 / E-2	Poland	E-1 / E-2
Czech Republic	E-2	Romania	E-2
Denmark	E-1 / E-2	Serbia	E-1 / E-2
Ecuador	E-2	Senegal	E-2
Egypt	E-2	Singapore	E-1 / E-2
Estonia	E-1 / E-2	Slovak Republic	E-2
Ethiopia	E-1 / E-2	Slovenia	E-1 / E-2
Finland	E-1 / E-2	Spain	E-1 / E-2
France	E-1 / E-2	Sri Lanka	E-2
Georgia	E-2	Suriname	E-1 / E-2
Germany	E-1 / E-2	Sweden	E-1 / E-2
Greece	E-1	Switzerland	E-1 / E-2
Grenada	E-2	Thailand	E-1 / E-2
Honduras	E-1 / E-2	Togo	E-1 / E-2
Iran	E-1 / E-2	Trinidad & Tobago	E-2
Ireland	E-1 / E-2	Tunisia	E-2
Israel	E-1	Turkey	E-1 / E-2
Italy	E-1 / E-2	Ukraine	E-2
Jamaica	E-2	United Kingdom	E-1 / E-2
Japan	E-1 / E-2	Yugoslavia	E-1 / E-2
Jordan	E-1 / E-2		
Kazakhstan	E-2		

Available at: <http://travel.state.gov>

6. TN PROFESSIONS AND REQUIREMENTS UNDER NAFTA

North American Free Trade Act (NAFTA)

Professional Job Series List

Under Appendix 1603.D.1 to Annex 1603 of NAFTA

PROFESSION	MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS
Accountant	Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A., or C.M.A.
Architect	Baccalaureate or Licenciatura Degree; or state/provincial license
Computer Systems Analyst	Baccalaureate or Licenciatura Degree; or Postsecondary Diploma or postsecondary certificate and three years experience
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
Economist	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree; or state/provincial license
Forester	Baccalaureate or Licenciatura Degree; or state/provincial license
Graphic Designer	Baccalaureate or Licenciatura Degree; or Postsecondary Diploma and three years experience
Hotel Manager	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Postsecondary Diploma or postsecondary certificate in hotel/restaurant management and three years experience in hotel/restaurant management
Industrial Designer	Baccalaureate or Licenciatura Degree; or Postsecondary Diploma or postsecondary certificate, and three years experience
Interior Designer	Baccalaureate or Licenciatura Degree; or Postsecondary Diploma or postsecondary certificate, and three years experience
Land Surveyor	Baccalaureate or Licenciatura Degree or state/provincial/federal license
Landscape Architect	Baccalaureate or Licenciatura Degree
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
Librarian	M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was prerequisite)

PROFESSION	MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS
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
Mathematician (including statistician and Actuary)	Baccalaureate or Licenciatura Degree. An Actuary must satisfy the necessary requirements to be recognized as an actuary by a professional actuarial association or society.
Range Manager/Range Conservationist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a postsecondary educational institution)	Baccalaureate or Licenciatura Degree
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
Social Worker	Baccalaureate or Licenciatura Degree
Sylviculturist (including forestry)	Baccalaureate or Licenciatura Degree
Technical Publications Writer	Baccalaureate or Licenciatura Degree, or Postsecondary Diploma or postsecondary certificate, and three years experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counselor	Baccalaureate or Licenciatura Degree
MEDICAL/ALLIED PROFESSIONALS	
Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or state/provincial license
Dietitian	Baccalaureate or Licenciatura Degree; or state/provincial license
Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States)	Baccalaureate or Licenciatura Degree; or Postsecondary Diploma or Post Secondary certificate, and three years experience
Nutritionist	Baccalaureate or Licenciatura Degree
Occupational Therapist	Baccalaureate or Licenciatura Degree; or state provincial license
Pharmacist	Baccalaureate or Licenciatura Degree; or state provincial license
Physician (teaching or research only)	M.D., Doctor en Medicina; or state/provincial license
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Psychologist	State/provincial license; or Licenciatura degree
Recreational Therapist	Baccalaureate or Licenciatura Degree
Registered Nurse	State/provincial license or Licenciatura degree
Veterinarian	D.V.M., D.M.V., or Doctor en Veterinaria; or state/provincial license

PROFESSION	MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS
SCIENTIST	
Agricultural (Agronomist)	Baccalaureate or Licenciatura Degree
Animal Breeder	Baccalaureate or Licenciatura Degree
Animal Scientist	Baccalaureate or Licenciatura Degree
Apiculturist	Baccalaureate or Licenciatura Degree
Astronomer	Baccalaureate or Licenciatura Degree
Biochemist	Baccalaureate or Licenciatura Degree
Biologist (including Plant Pathologist)	Baccalaureate or Licenciatura Degree
Chemist	Baccalaureate or Licenciatura Degree
Dairy Scientist	Baccalaureate or Licenciatura Degree
Entomologist	Baccalaureate or Licenciatura Degree
Epidemiologist	Baccalaureate or Licenciatura Degree
Geneticist	Baccalaureate or Licenciatura Degree
Geochemist	Baccalaureate or Licenciatura Degree
Geologist	Baccalaureate or Licenciatura Degree
Geophysicist (including Oceanographer in Mexico and the United States)	Baccalaureate or Licenciatura Degree
Horticulturist	Baccalaureate or Licenciatura Degree
Meteorologist	Baccalaureate or Licenciatura Degree
Pharmacologist	Baccalaureate or Licenciatura Degree
Physicist (including Oceanographer in Canada)	Baccalaureate or Licenciatura Degree
Plant Breeder	Baccalaureate or Licenciatura Degree
Poultry Scientist	Baccalaureate or Licenciatura Degree
Soil Scientist	Baccalaureate or Licenciatura Degree
Zoologist	Baccalaureate or Licenciatura Degree
TEACHER	
College	Baccalaureate or Licenciatura Degree
Seminary	Baccalaureate or Licenciatura Degree
University	Baccalaureate or Licenciatura Degree

7. FORM I-9 AND REVISED LIST OF ACCEPTABLE DOCUMENTS



Employment Eligibility Verification
 Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS
Form I-9
 OMB No. 1415-0047
 Expires 03/31/2016

▶ **START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.
ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation <i>(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)</i>					
Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Names Used (if any)
Address (Street Number and Name)			Apt. Number	City or Town	State ▼
Date of Birth (mm/dd/yyyy)		U.S. Social Security Number	E-mail Address		Telephone Number

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States *(See instructions)*
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "N/A" in this field. *(See instructions)*

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

- 1. Alien Registration Number/USCIS Number: _____
- OR**
- 2. Form I-94 Admission Number: _____

3-D Barcode
Do Not Write in This Space

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____
 Country of Issuance: _____ ▼

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. *(See instructions)*

Signature of Employee: _____	Date (mm/dd/yyyy): _____
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Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.)*

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator: _____		Date (mm/dd/yyyy): _____	
Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State ▼
			Zip Code



Employer Completes Next Page



Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)

Employee Last Name, First Name and Middle Initial from Section 1: _____

List A Identify and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title: _____		Document Title: _____		Document Title: _____
Issuing Authority: _____		Issuing Authority: _____		Issuing Authority: _____
Document Number: _____		Document Number: _____		Document Number: _____
Expiration Date (if any)(mm/dd/yyyy): _____		Expiration Date (if any)(mm/dd/yyyy): _____		Expiration Date (if any)(mm/dd/yyyy): _____
Document Title: _____		<div style="border: 1px solid black; padding: 10px; width: fit-content; margin: auto;"> 3-D Barcode Do Not Write in This Space </div>		
Issuing Authority: _____				
Document Number: _____				
Expiration Date (if any)(mm/dd/yyyy): _____				
Document Title: _____				
Issuing Authority: _____				
Document Number: _____				
Expiration Date (if any)(mm/dd/yyyy): _____				

Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions.)

Signature of Employer or Authorized Representative		Date (mm/dd/yyyy)	Title of Employer or Authorized Representative	
Last Name (Family Name)		First Name (Given Name)	Employer's Business or Organization Name	
Employer's Business or Organization Address (Street Number and Name)			City or Town	State ▼
				Zip Code

Section 3. Reverification and Rehires *(To be completed and signed by employer or authorized representative.)*

A. New Name (if applicable) Last Name (Family Name) _____ First Name (Given Name) _____ Middle Initial _____ **B.** Date of Rehire (if applicable) (mm/dd/yyyy): _____

C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.

Document Title: _____	Document Number: _____	Expiration Date (if any)(mm/dd/yyyy): _____
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative: _____	Date (mm/dd/yyyy): _____	Print Name of Employer or Authorized Representative: _____
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LISTS OF ACCEPTABLE DOCUMENTS
All documents must be UNEXPIRED

Employees may present one selection from List A
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		5. U.S. Military card or draft record		5. Native American tribal document
		6. Military dependent's ID card		6. U.S. Citizen ID Card (Form I-197)
		7. U.S. Coast Guard Merchant Mariner Card		7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		8. Native American tribal document		8. Employment authorization document issued by the Department of Homeland Security
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI				

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274).

Refer to Section 2 of the instructions, titled "Employer or Authorized Representative Review and Verification," for more information about acceptable receipts.



U.S. CHAMBER OF COMMERCE
Labor, Immigration & Employee Benefits

Proskauer >>

U.S. Chamber of Commerce
Labor, Immigration & Employee Benefits
1615 H Street, NW
Washington, DC 20062