Immigration

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Section One: Visa Overview

Most foreign citizens need to obtain a visa in order to visit or work in the United States. The U.S. Department of State, in conjunction with the Department of Homeland Security, oversees the U.S. visa process. The purpose of your intended travel and other facts will determine what type of visa is required under U.S. immigration law. Below is a description of the visa types available for business and employment purposes. For information on the U.S. visa process, including updates to visa policy, please refer to the Department of State's travel website.

A visa does not guarantee entry into the United States but allows a foreign citizen coming from abroad to travel to a United States port of entry (generally an airport or land border) and request permission to enter the United States. The Department of Homeland Security, U.S. Customs and Border Protection (CBP) officials have authority to permit or deny admission to the United States, as well as determine how long a traveler may stay. For more information about admission to the United States, please refer to the CBP website.

Temporary Business Visitor Visas

The **B-1 visa** is generally for foreign nationals who wish to consult with business associates, negotiate a contract, settle an estate, or attend an educational, professional, or business convention or conference. For more information on the B-1 visa and the application process, please visit the Department of State's travel website.

Temporary Worker Visas (Nonimmigrant)

E-2: Treaty Investors

The **E-2 visa** is for foreign nationals who have invested or are actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States and are seeking to enter the United States solely to develop and direct the investment enterprise. This visa is available to citizens of all countries that maintain the relevant treaty with the United States or have been accorded such status by the enactment of legislation. Additional information on the E-2 visa can be found on the U.S. Citizenship and Immigration Services (USCIS) website.

L-1A and L-1B: Intracompany Transferees

The **L visa** category is a temporary work visa for employees transferred from abroad to a branch, parent, affiliate, or subsidiary in the United States. The **L-1A** visa is for intracompany transferees who will work in a managerial or executive position in the United States. The **L-1B** visa is for intracompany transferees who will work in a position that requires specialized knowledge in the United States. Additional details on the requirements for L-1A and L-1B visas as well as information on blanket petitions may be found on the USCIS website.

H-1B: Specialty Occupations

The **H-1B visa for specialty occupations** applies to applicants who may perform the services of a specialty occupation. Their position is considered a specialty occupation when it meets at least one of the following criteria:

1. A position that requires a minimum of a bachelor's degree or equivalent degree;
2. The degree requirement for the job is common to the industry or the job is so complex that it can be performed only by an individual with a degree;
3. The employer requires a degree or equivalent for the position; or
4. The nature of the duties for the position are so specialized or complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

The holder of an H-1B is permitted to work within the United States for a maximum of three years, with a possible extension of up to six years. Spouses and children (unmarried and under 21 years old) may be eligible to accompany the H-1B holder if they are found eligible for an H-4 visa.

Each fiscal year, the United States grants a maximum of 65,000 H-1B visas. However, applicants employed at an institution of higher education, a nonprofit research organization, or a government research organization are not subject to this limit. Additionally, the first 20,000 petitions filed on behalf of beneficiaries with a master's degree are exempt from this limit.

For additional details on the application process of the H-1B visa, please visit the USCIS H-1B webpage.

O-1: Individuals with Extraordinary Ability or Achievement

The **O-1** is a temporary work visa for individuals who possess an extraordinary ability. The **O-1A** is for individuals with extraordinary ability in the sciences, education, business, or athletics. The **O-1B** is for individuals with extraordinary ability in the arts, motion picture, or

television industries. Under an O visa, the applicant may reside in the United States for a maximum of three years, with an opportunity to extend one additional year.

To be eligible for an O-1 visa, the applicant must be coming to the United States on a temporary basis and must demonstrate their extraordinary ability through sustained national or international acclaim. More specifically, for the fields of science, education, business, and athletics, the applicant must show that they have a level of expertise indicating that they are part of a small percentage who has risen to the very top of the field of endeavor. In the arts, motion picture, and TV industries, the applicant must demonstrate distinction in their field. Distinction means a high level of achievement in the field of the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The **O-2 visa** is available for individuals who will accompany O-1 visa holders in order to assist them in their work. The O-2 worker must have critical skills and experience with the O-1 carrier that cannot be readily performed by a U.S. worker. Additionally, he or she must be petitioned for in conjunction with the O-1 alien to whom he or she provides support and is not entitled to work separate and apart from the O-1 alien. The **O-3 visa** is available for individuals who are the spouse or children of carriers of the O-1 or O-2 visas.

For more information on the O visa category, please visit the USCIS webpage on O visas.

Permanent Worker Visas (Employment-Based Immigration)

The **EB visa** category is for employment-based immigration. The United States issues approximately 140,000 EB visas each year, split into five different types. The EB-1 visa is for applicants who either possess an extraordinary ability, are an outstanding professor or researcher, or are a multinational executive. The EB-2 visa is for applicants who possess an advanced degree or its equivalent or who possess an exceptional ability. The EB-3 visa is designated for applicants who are skilled workers or professionals. The EB-4 is for specified sets of immigrants, including religious workers, Afghan and Iraqi translators, broadcasters, and others. The EB-5 visa is reserved for candidates who intend on investing a minimum amount of capital that will create a minimum number of jobs in the United States.

For further information on any employment-based visa programs, including additional requirements, stipulations for spouses and children, or necessary forms, please visit the USCIS webpage for EB visas.

About SelectUSA

SelectUSA is a U.S. government-wide program housed in the International Trade Administration at the United States Department of Commerce. Our mission is to facilitate job-creating business investment into the United States and raise awareness of the critical role that economic development plays in the U.S. economy.

Disclaimer

This chapter was prepared by A.J. Francis with SelectUSA. Views expressed in this chapter are the author's own, not that of the International Trade Administration. This chapter does not constitute legal advice. Readers interested in investing in the United States should consult legal counsel.

U.S. Immigration Pathways: Which One is Right for Your Investment Project?

In an environment of fluid markets and changing policies altering cross-border travel, understanding the immigration options available to investors and their workforces is an essential – but sometimes overlooked – aspect of investing in the United States. Investors need to make sure that their employees have the correct U.S. visa(s) and an immigration advisor to ensure the visas are secured as timely and seamlessly as possible. This chapter details the immigration options available to business investors and their prospective U.S. employees, including information on visa requirements, timeframes, and considerations for families.

The table at the end of this chapter summarizes key aspects of each of the visa categories discussed and includes additional hyperlinks to relevant government websites.

Temporary Visitors

The **B-1** (business visitor) visa allows individuals to enter the United States temporarily to conduct certain types of business activities on behalf of a foreign entity or investor. Under a B-1 visa, the individual may establish an investment and plan for relocation, including incorporating a business, meeting with business and financial advisors and contracting for their services, opening accounts, securing premises, and searching for housing and schools.

The B-1 visa does not, however, permit employment on behalf of a U.S. business. Thus, if the foreign investor wants to direct, manage, or perform services in the United States for the new U.S. business, then he or she must first obtain a U.S. work permit. This is true even if the investor will be paid for his services by a foreign company.

Once obtained, the B-1 visa will be valid for as little as one month to as long as 10 years depending on the nationality of the visa holder. Some B-1 visas may be used for only one entry into the United States while others may be used for multiple entries, again based on nationality. Officers at the U.S. border decide how long a business visitor may stay for each visit. The officer may grant a stay for the time necessary to conduct the business, but not more than six months. If the business visitor requires additional time in the United States to complete his or her business activities, then it is possible to request an extension of stay

from the government, but extension requests will only be granted if the government is convinced that the visitor will not engage in unauthorized employment.

An alternative to the B-1 visa is the **Visa Waiver Program (VWP)**, under which citizens of designated countries can apply to enter the United States as business visitors for 90 days or less without the need to obtain a visa from a U.S. consulate. VWP travelers are required to obtain an online pre-approval from the Department of Homeland Security's Electronic System for Travel Authorization (ESTA) at least 72 hours before departing for the United States. Those who enter the United States under the VWP may only engage in activities that are permissible for those who enter with a B-1 visa. The law does not permit VWP travelers to extend their stay beyond 90 days.

Family members of the investor may also apply for B-1 visas or travel under the VWP, provided they, like the investor, will not be employed in the United States and intend to return to their home country after a temporary visit. The B-1 visa and VWP may not be used for the purpose of attending school in the United States.

Treaty Traders and Investors

The **E-1** (Treaty Trader) and **E-2** (Treaty Investor) visa categories allow individuals to enter the United States to work for a U.S. business that is majority owned by citizens of a country with which the United States has a commercial treaty. The E visa applicant must be a citizen of the treaty country who will direct and manage the U.S. business or provide essential skills. Generally, "E-1 treaties" require the U.S. business to engage in substantial trade with the other treaty signatory. "E-2 treaties" require a substantial investment in the U.S. business. The United States has treaty relationships with many major economies. There is no such treaty with India or China.

Qualifying U.S. businesses must apply for and be deemed eligible by a U.S. consulate in order to support E visa applications. This process can be complex. Once the business is deemed eligible, qualified citizens of the treaty country may apply for E visas at a U.S. consulate. These may be the principal investor(s) in the U.S. business or other citizens of the treaty country whose skills and experience are required by the U.S. business.

There is no maximum number of years an individual may be employed in the United States as an E treaty trader or investor, so long as they continue to provide management or essential skills services to the U.S. treaty business and the business remains at least 50 percent owned by citizens of the treaty country. Spouses and unmarried children under age 21 may accompany the principal E visa holder and attend school. Spouses of principal E visa holders may seek employment in the United States for any employer without the need for separate sponsorship.

Note: there is no requirement that the E visa applicant be employed outside the United States by a foreign parent or affiliated company prior to his or her U.S. assignment. This is an important distinction from the L-1 visa category discussed below.

Intracompany Transferees

The **L-1** visa category is for foreign nationals who will be assigned to work in the United States for an organization that is related to their home country employer. Employees who have worked outside the United States for at least one continuous year in an executive, managerial, or specialized knowledge capacity for a parent, branch, subsidiary, or other affiliate of the U.S. employer may be eligible for L-1 classification. The employer must seek to transfer the employee to the United States to assume an executive, managerial, or specialized knowledge position, although it does not need to be the same position the employee held abroad. Newly established U.S. businesses may sponsor foreign employees for L-1 visas, but work authorization is initially granted for one year, and the employer must subsequently renew sponsorship with evidence of business viability.

Ordinarily, the employer must obtain U.S. Citizenship and Immigration Services (USCIS) approval for each prospective L-1 transferee before the transferee can apply for an L-1 visa at a U.S. consulate. However, there is a streamlined process, known as the L-1 "blanket program," that does not require USCIS processing and permits the U.S. consulate to handle the entire adjudication process. The blanket program is available for multinational organizations who frequently transfer employees to the United States. To qualify for the blanket program, the U.S. employer must have been doing business in the United States for at least one year and meet at least one of the following criteria: 1) at least ten L-1 approvals from USCIS in the prior year; 2) U.S. sales of at least $25 million; or 3) at least 1,000 U.S. employees. USCIS processing for individual L-1 filings and/or initial approval for the corporate blanket program can take several months unless the employer pays for 15-day Premium Processing. Once the initial corporate blanket petition is approved by USCIS, most individual L-1 visa requests may be made entirely at the consulate, as stated above.

L-1 work authorization is available for up to seven years if the U.S. role is executive or managerial (L-1A) or up to five years if the U.S. role requires specialized knowledge (L-1B). L-1A executives or managers who also served as executives or managers for their foreign affiliated employers before transferring to the United States may be eligible to apply for U.S. permanent residency (the "green card") without the need for the U.S. labor market test that is typically a prerequisite for green card applications.

Spouses and unmarried children under age 21 may accompany the principal L-1 visa holder and attend school in the United States. Spouses of principal L-1 foreign nationals may seek employment in the United States for any employer without the need for separate sponsorship.

Note: unlike the E-1 and E-2 visa categories discussed above, the L-1 visa is available to those of any nationality so long as they have been employed abroad by an affiliated company for at least one year in a qualifying capacity.

Specialty Occupation Professionals

The **H-1B** visa category is available to persons who will be employed in "specialty occupations." Specialty occupations are defined by USCIS as occupations for which a bachelor's degree or equivalent in a specific academic field of study, or from a set of logically related fields of study, is required to perform the job. The H-1B candidate must in turn possess at least a bachelor's degree, or equivalent education and/or experience, in one of the specified and related fields.

The H-1B visa is one of the most sought-after U.S. employment visas, but it presents two key challenges for employers. Unlike other temporary U.S. work visas, the H-1B visa category is subject to an annual quota of 65,000, plus an additional 20,000 quota numbers for those holding a U.S. advanced degree. Each year, the demand for H-1B visas far exceeds the quota. This restricts the H-1B option for most of the year. Quota exemptions are available for certain nonprofits and existing H-1B visa holders, who may change employers during their H-1B tenure in the United States, subject to successful sponsorship by a subsequent employer sponsor.

The H-1B visa program is also regulated by the U.S. Department of Labor (DOL), which requires employers to obtain approval of a "Labor Condition Application" (LCA) before filing an H-1B petition with USCIS. Among other things, the LCA requires employers to attest they will pay the H-1B worker competitive wages and provide notice to local U.S. employees of the H-1B sponsorship. DOL may investigate employers' compliance with LCA attestations and violators may be subject to significant monetary penalties and debarment from the H-1B and other immigration programs.

The employer must have USCIS approval before the H-1B candidate can apply for an H-1B visa at a U.S. consulate. USCIS processing is several months unless the employer pays for 15-day Premium Processing.

H-1B employment authorization is available for up to six years and may be granted in up to three-year increments, or up to 18 months where the sponsored H-1B employee has a controlling interest in the U.S. employer sponsor. Extensions beyond six years may be permitted where the worker is sponsored for U.S. permanent residency.

Spouses and unmarried children under age 21 may accompany the principal H-1B visa holder to the United States and attend school. Spouses are not eligible for work authorization as dependents unless the principal H-1B employee is being sponsored for an employment-based green card and is well along in that process.

Canadian and Mexican Professionals

The **TN** visa category was created pursuant to the North American Free Trade Agreement (NAFTA) and is now included in the U.S.-Mexico-Canada Agreement (USMCA). It permits certain Canadian and Mexican citizens to accept temporary employment in the United States. To qualify for TN classification, a U.S. employer must be offering a temporary position in an occupation that is listed in the USMCA. The listed occupations generally require the individual to possess a bachelor's degree (or a Canadian or Mexican degree that is equivalent to a U.S. bachelor's degree) in a field related to the occupation.

Canadians may apply for TN classification at a U.S. border crossing with a sponsorship letter from the U.S. employer and supporting documentation; they are not required to obtain a TN visa stamp at a U.S. consulate as Canadian citizens are generally exempt from the U.S. visa requirement. Citizens of Mexico must apply for a TN visa at a U.S. consulate before proceeding to the United States.

TN employment authorization is granted in up to three-year increments with no limitation on the maximum period of stay. However, an individual in TN status must maintain the intent to remain in the U.S. temporarily.

Spouses and unmarried children under age 21 may accompany the principal TN employee and attend school but are not eligible to work in the United States unless they obtain separate sponsorship.

Persons of Extraordinary Ability

The **O-1 visa** is available to individuals who can demonstrate "extraordinary ability" in the sciences, education, business, athletics, or the arts. USCIS regulations provide that these individuals are among the small percentage who have risen to the very top of their field of endeavor and have achieved national or international recognition for their achievements in their field. In addition to these overarching requirements, O-1 petitions must include evidence, including letters of reference, that meets at least three categories of evidence listed in the regulations.

While the standard for the O-1 visa is high, one does not need to have a Nobel Prize or Olympic medal or be widely known to the public. Rather, evidence must show that the candidate is highly respected and distinguished within his or her specialized sphere of expertise.

Employers must seek USCIS approval before a foreign national can apply for an O-1 visa. USCIS processing takes several months unless the employer pays for 15-day Premium Processing.

O-1 visas are initially granted for three years and then in one-year increments, with no limitation on the maximum period of stay. Spouses and unmarried children under age 21 may accompany the principal O-1 visa holder and attend school but are not eligible to work in the United States unless they obtain separate sponsorship.

Employment-Based U.S. Residency (the "Green Card")

A U.S. employer may sponsor an employee for U.S. residency and in some cases an employee may self-sponsor his or her green card application. In most cases, a residency application sponsored by a U.S. employer requires the DOL to certify that U.S. workers are not available for the sponsored role after the employer completes a U.S. labor market test. The labor market test requirement – known as PERM – requires employers to place ads in newspapers, publicize the job announcement on recruitment sites, and demonstrate that any U.S. applicants were considered for the role in good faith, but none met the employer's minimum requirements.

Exceptions to the labor market test requirement include foreign nationals who qualify as persons of extraordinary ability, outstanding professors or researchers, multinational executives and managers, those whose work serves the U.S. national interest, and residency applications made through the EB-5 investor program.

Once DOL certifies the employer's labor market test, or where the labor market test is waived, the employer (or the employee where self-sponsorship is permitted) must file a petition with USCIS seeking classification in one of five employment-based green card categories, often referred to as "EB" categories, i.e., "EB-1" through "EB-5." Eligibility for the EB-1, EB-2, and EB-3 categories is generally based on the education, experience, and specialized skills required for the sponsored role and possessed by the sponsored employee, among other factors. The EB-4 category comprises a broad range of foreign nationals, including certain religious workers, translators, and retirees of international organizations, each with their own eligibility requirements.

Finally, the EB-5 category is a special type of employment-based green card category designed for investors. To qualify for the EB-5 program, the investor must make an investment of personal funds in a new commercial enterprise or troubled business. The required investment is US$1.05 million. However, if the business is in rural area or a location designated by the U.S. government as a high unemployment area, or the investment is made in a qualifying federal, state, or local infrastructure project, the required investment decreases to US$800,000.

Once classified in the appropriate green card category, the employee and dependents can complete the green card process by filing an application for residency status in the United States or by filing for an immigrant visa at a U.S. consulate. Because employment-based green cards are limited by an annual quota, some applicants, depending on their classification category and country of birth, may need to wait many years before they can complete the process and become residents. As a result, the entire green card process can take as little as two years (sometimes less) to a decade or longer.

Spouses and unmarried children under age 21 may apply for residency with the principal applicant in order to live, attend school, and work in the United States.

Except for the EB-5 category, once an individual is granted employment-based U.S. permanent residency status, he or she and eligible dependents may work for any U.S. employer and live in the United States indefinitely. In the case of EB-5 sponsorship, the investor and dependents are initially granted U.S. residency for two years. If the investment creates or preserves 10 jobs for U.S. workers within two years, then the investor and dependents may apply for indefinite residency.

In order to preserve residency status, a permanent resident must maintain his or her primary residence in the United States and abide by all tax and other laws applicable to U.S. residents.

Which Option Is Right for Your Organization?

There is an array of immigration options for foreign investors and their employees. Choosing the right immigration pathway is an important decision that should be made with competent immigration counsel, preferably at the early planning stages of your U.S. venture.

Please see the attached table, which summarizes the visa categories discussed above and provides additional hyperlinks to government websites.

Visa Type	Permitted Activities	Prohibited Activities	Eligibility Criteria	Length of Stay	Dependents	Process and Timeframe	Special Considerations
B-1 Business Visitor **Visa Waiver Program**	Establish an investment and plan for relocation, including: • Incorporate a business • Open accounts • Secure premises • Search for housing and schools	• Direct, manage, or provide services to a U.S. business • Receive compensation from a U.S. employer • Attend school	Must have a residence outside the United States and intend to remain in the United States temporarily and only for permitted activities.	Up to six months with a B-1 visa stamp, or up to 90 days under the Visa Waiver Program with approved ESTA.	Yes, provided they will not engage in prohibited activities and they meet eligibility criteria.	Immediate if already have B-1 visa; a few days to secure on-line ESTA approval; Appointment waiting times at U.S. consulate to apply for B-1 visas vary greatly.	While a stay of up to 6 months is permitted under the rules for those with a visa, U.S. border officers will typically only permit entry for a shorter period, depending on the reasons for the visit. Entrants under the Visa Waiver Program/ESTA will almost always be granted a 90-day stay.
E Treaty Trader/ Investor	Invest in, direct, and/or manage a U.S. business that is majority owned by citizens of a country with which the United States has a commercial treaty.	U.S. employment with an organization other than the one sponsoring the E visa business.	The U.S. business must be majority owned by citizens of a treaty country and the E visa applicant must also be a citizen of that country. The applicant must also be entering the United States to direct and manage the investment or provide essential skills.	Visa validity varies by country. A two-year stay is typically granted each entry, but there is no maximum period of stay.	Yes. Spouses and unmarried children under age 21 may accompany principal visa-holder and attend school. Spouses may seek employment.	Qualifying U.S. businesses must request eligibility from U.S. consulate in order to support E visa applications. Once eligible, qualified citizens of treaty country may apply for E visas at U.S. consulate. Appointment waiting times at U.S. consulate to apply for E visas vary greatly.	E-1 visas require U.S. business to engage in substantial trade with the other treaty signatory. E-2 visas require a substantial investment in U.S. business.
L-1 Intracompany Transferee	L-1A: Employment as executive, manager for a U.S. entity with foreign affiliates L-1B: Employment based on specialized knowledge for a U.S. entity with foreign affiliates	U.S. employment other than with sponsoring L-1 organization	Must be employed outside U.S. for at least one year in an executive, managerial, or specialized knowledge capacity for a parent, subsidiary, affiliate, or branch of U.S. entity.	Up to 7 years if U.S. role is executive or managerial (L-1A) Up to 5 years if U.S. role is specialized knowledge (L-1B)	Yes. Spouses and unmarried children under age 21 may accompany the principal visa-holder and attend school. Spouses may seek employment.	USCIS approval required before applying for visa unless employer has an approved "blanket" petition covering the U.S. and foreign employers. USCIS processing is several months unless employer pays for Premium Processing. Appointment waiting times at U.S. consulates to apply for L-1 visas vary greatly.	Newly established U.S. businesses may sponsor foreign employees for L-1 visas, but work authorization is initially granted for one year, then sponsorship must be renewed evidence of continued business viability.

Visa Type	Permitted Activities	Prohibited Activities	Eligibility Criteria	Length of Stay	Dependents	Process and Timeframe	Special Considerations
H-1B Professionals	Employment by U.S. sponsor in a "specialty occupation".	U.S. employment other than with sponsoring H-1B employer.	The U.S. job must require, and the foreign worker must possess, at least a bachelor's degree or equivalent in a related course of study.	Up to six years. Extensions beyond six years may be permitted where worker is sponsored for U.S. residency.	Yes. Spouses and unmarried children under age 21 may accompany the principal visa holder and attend school. Spouses can apply for work authorization in certain circumstances.	USCIS approval required prior to visa application. USCIS processing is several months unless employer pays for Premium Processing. Appointment waiting times at U.S. consulate to apply for H-1B visas vary greatly.	An annual quota restricts H-1B option for most of the year. Quota exceptions for certain nonprofits and existing H-1B workers may apply. Regulated by the U.S. Department of Labor, which requires payment of competitive wages and notice of sponsorship to local U.S. employees.
TN Professionals	Employment by a U.S. sponsor in an occupation specified in USMCA.	U.S. employment other than with sponsoring TN employer.	Citizens of Canada and Mexico. U.S. job must match occupation on USMCA list. Must have education and/ or experience required for occupation by USMCA, which is typically a bachelor's degree or foreign equivalent degree.	Up to three-year increments. No maximum period of stay. Must have intent to stay in the United States temporarily.	Yes. Spouses and unmarried children under age 21 may accompany the principal visa holder and attend school but may not work as dependents.	Canadians apply at U.S. border with sponsorship letter from U.S. employer and supporting documentation. Citizens of Mexico must apply for a TN visa at U.S. consulate. Appointment waiting times at U.S. consulate to apply for TN visas vary greatly.	Dependents do not need to be citizens of Canada or Mexico, but dependents must apply for a visa unless they are citizens of Canada.
O-1 Persons of Extraordinary Ability	Employment by a U.S. sponsor in job related to expertise.	U.S. employment other than with the sponsoring O-1 employer.	Individuals who are nationally or internationally renowned and acclaimed for achievements in their field.	Initially for three years, and then in one-year increments. No maximum stay.	Yes. Spouses and unmarried children under age 21 may accompany the principal visa holder and attend school but may not work as dependents.	USCIS approval required prior to visa application. USCIS processing is several months unless employer pays for Premium Processing. Appointment waiting times at U.S. consulate to apply for O-1 visas vary greatly.	Substantial evidence required, including letters of reference, as well as other specific evidence required by regulation.
U.S. residency (the "green card"), other than the EB-5 Investor Program	Live and work in the U.S. indefinitely. May work for any U.S. employer once	Failure to maintain primary residence in the United States. Violation of tax and other laws	A U.S. employer sponsor and labor market test are generally required, unless the labor market test is waived.	Indefinite.	Yes. Spouses and unmarried children under age 21 may apply for residency and	U.S. Department of Labor approves labor market test, unless waived. File immigrant petition in proper green card category based on	Labor market test is waived for persons of extraordinary ability, outstanding professors and researchers,

Visa Type	Permitted Activities	Prohibited Activities	Eligibility Criteria	Length of Stay	Dependents	Process and Timeframe	Special Considerations
	residency is granted.	applicable to U.S. residents.	Employee and sponsored job must also meet requirements for sponsorship category, based on education, experience, and skills.		also live and work in the United States indefinitely.	education, experience, and skills. Employee and dependents can then file to complete U.S. residency process. One- to two-year processing. Depending on country of birth and sponsorship category, annual quota may delay case by several years.	certain multinational managers and executives, and those working in the national interest. The EB-5 investor program also does not require a labor market test. See below.
U.S. residency (the "green card"): the EB-5 Investor Program	Live and work in the U.S. indefinitely.	Failure to maintain primary residence in the United States. Violation of tax and other laws applicable to U.S. residents.	Investment of personal funds in a new commercial enterprise or troubled business. Required investment is US$1.05 million, or US$800,000 where the business is in designated rural or high unemployment area, or the investment is made in a qualifying federal, state, or local infrastructure project.	Residency granted conditionally for 2 years, then indefinitely once certain criteria are met.	Yes. Spouses and unmarried children under age 21 may apply for residency and also live and work in the United States conditionally and then indefinitely.	File petition with USCIS to establish eligibility and apply for residency status, which is granted conditionally for two years. If the investment creates or preserves 10 jobs for U.S. workers within two years, the investor may apply for indefinite residency, subject to an annual quota.	Some EB-5 investments can be made through government-approved Regional Centers that sponsor EB-5 capital investment projects.

Glossary

Adjustment of Status (AOS): An option for the final stage of the permanent residence process. The AOS application, Form I-485, can be filed with USCIS if the priority date is current and certain other requirements are met.

B-1 Business Visitor: Visa category for business visitors to the United States. The B-1 visa does not confer the ability to work and B-1 visa holders cannot receive compensation from a U.S. source or work on a project where services are being billed to a client. Business visitors from certain countries can enter the United States without a B-1 visa stamp under the Visa Waiver Program (VWP); these individuals are admitted for a maximum of 90 days and are not eligible for extensions of their status except in extremely limited circumstances. B-1 visitors who have visa stamps in their passports can be admitted for up to six months and are eligible for extensions of their status.

B-2 Tourist Visitor: Visa category for tourists visiting the United States. Tourists from some countries are able to enter the U.S. without a B-2 visa stamp under the Visa Waiver Program (VWP); these individuals are admitted for a maximum of 90 days and are not eligible for extensions of their status except in extremely limited circumstances. B-2 visitors who have visa stamps in their passports can be admitted for up to six months and are eligible for extensions of their status.

Department of Labor (DOL): U.S. federal agency that includes the Office of Foreign Labor Certification, which oversees prevailing wage determinations, Labor Condition Applications (LCAs), and labor certifications/PERM.

Green Card: The informal name for the Permanent Resident Card, which is evidence that an individual has been granted status to live and work in the United States indefinitely.

H-1B: Visa category for temporary workers engaged in an occupation which requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a related field for entry into the occupation. Maximum period of stay is six years, with certain exceptions.

H-4: Visa category for spouses and unmarried children under 21 years of age who are accompanying H-1B visa holders. H-4s are not eligible for work authorization except in limited circumstances.

I-129 Form: Form I-129, Petition for a Nonimmigrant Worker, is a government form filed by an employer with USCIS to request E, H, L, O, or TN visa classification on behalf of a foreign national.

I-140 Form: Form I-140, Immigrant Petition for Alien Worker, is a government form filed by an employer with USCIS in U.S. permanent residency cases. The filing of this form is the

second stage of the permanent residence process for employment-based cases requiring PERM and the first stage where PERM is not required.

I-485 Form: Form I-485, Application to Register Permanent Residence or Adjust Status, is the government form filed with USCIS by a foreign national who is in the United States and seeks to finalize the permanent residence process.

L-1: Visa category for an Intracompany Transferee. The employee must have worked outside the United States for at least one year for a parent, subsidiary, affiliate, or branch office of the U.S. employer in a specialized knowledge (L-1B), or executive or managerial (L-1A) capacity. Individual L-1 petitions are submitted to USCIS in the United States for adjudication and approval before the visa stamp can be issued. This is in contrast to the Blanket L procedure where the application is submitted directly to the U.S. Consulate abroad. Maximum period of stay is five years (L-1B) or seven years (L-1A).

L-2: Visa category for spouses and unmarried children under 21 years of age who are accompanying L-1 visa holders. L-2 spouses may seek employment in the United States.

Labor Certification: A certification by the U.S. Department of Labor (DOL) that there is no able, willing, qualified, and available American worker (generally, this means a U.S. citizen or lawful permanent resident) available for a particular position, in a particular geographic area, at a prevailing wage. The labor certification relates to a particular position, not an employee. In order to obtain an approved labor certification, the employer must show that it tested the local job market and made a good faith effort to recruit for the position, and that employment of a foreign national employee does not adversely affect the wages or working conditions of similarly employed U.S. workers.

Labor Condition Application (LCA): The LCA is a prerequisite to filing an E-3, H-1B or H-1B1 petition. In the LCA, the employer attests to certain wage, working conditions, and notice obligations. The LCA must be approved by the U.S. Department of Labor (DOL).

Lawful Permanent Resident (LPR): A person who has been granted authorization to live and work in the United States on an indefinite basis. Also known as an immigrant, green card holder, or permanent resident.

O-1: Visa category for a Person of Extraordinary Ability. U.S. employers may sponsor foreign nationals for O-1 employment for an initial period of three years, and then in one-year increments.

Passport: Travel and identity document issued to foreign nationals by their country of citizenship. Must be unexpired and typically valid for at least 6 months in order to enter the United States. The U.S. Consulate will place nonimmigrant visa stamps in the foreign national's passport.

Program Electronic Review Management (PERM): The attestation and audit system under which employers obtain permanent labor certification for certain employment-based immigrant cases. Under PERM, employers conduct recruitment and advertising before filing a labor certification application. Applications are submitted electronically or by mail and are subject to audit by Certifying Officers of the Department of Labor.

Permanent Residence: A legal status that permits an individual to live and work in the United States indefinitely. When this legal status is granted, the government issues a Permanent Resident Card, often referred to informally as a "green card."

Port of Entry (POE): The port of entry is the air, land, or sea port through which the foreign national travels to the United States.

Priority Date: The date a U.S. employer files a PERM application with DOL on behalf of a foreign national. Where a PERM application is not required, then it is the date Form I-140 is filed with USCIS. This date secures a place in the queue for the foreign national under the green card quota system.

United States Citizenship and Immigration Services (USCIS): USCIS is the agency that processes applications and petitions for immigration benefits.

Visa Stamp: This is the stamp embossed in a foreign national's passport by a U.S. consulate abroad, and which indicates the foreign national's specific visa category. In order to enter the U.S., most foreign nationals must have a currently valid visa stamp in their passport (except Canadian citizens and persons entering in B-1/B-2 status under the visa waiver program). A foreign national who presents a visa stamp to the inspector at the port-of-entry may be admitted in that visa category and be issued an entry/departure record, Form I-94, showing the immigration status and length of time allowed to stay in the U.S.

Visa Waiver Program (VWP): The VWP permits citizens of designated countries to apply for admission to the United States for 90 days or less as nonimmigrant visitors for business or tourism without first obtaining a B-1 or B-2 visa stamp from a U.S. Consulate. Visits are generally short-term and, with very limited exceptions, cannot involve employment in the U.S. or the undertaking of an academic study program.

About Fragomen

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Fragomen's professionals are respected thought leaders in the immigration field, as recognized year after year by Chambers, Best Lawyers and Who's Who. They contribute to conferences and seminars around the world, and author books and other publications that are relied on as standard references by other immigration professionals. Many of Fragomen's professionals have prior experience working in government agencies and in-house corporate immigration departments, allowing Fragomen to advance strategies for world-class immigration program management.

Fragomen is structured to support all aspects of global immigration, including strategic planning, efficiency, quality management, compliance, government relations, reporting, and case management and processing. These capabilities allow the firm to represent a broad range of companies, organizations, and individuals, working in partnership with clients to facilitate the transfer of employees worldwide. For detailed information about Fragomen, please visit www.fragomen.com.

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