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BUSINESS  
IMMIGRATION



# BUSINESS IMMIGRATION

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*This booklet should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult your lawyer concerning your particular situation and any specific legal questions you may have. Employers are specifically encouraged to consult an attorney to determine whether they are subject to other unique state requirements that extend beyond the scope of this booklet.*

# E

very year, hundreds of thousands of foreign nationals enter the U.S. to work or join family members. Individuals who enter the U.S. for employment include managers, executives, professionals, skilled workers, professors, researchers, seasonal workers, agricultural workers, and a host of others. Family members may enter the U.S. as the spouse or child of a U.S. Citizen or Permanent Resident. Siblings of U.S. Citizens may also obtain permission to live in the U.S. as a permanent resident.

Each foreign national who enters the U.S., whether based on employment or a family relationship, first must obtain authorization, usually in the form of a visa stamp in his or her passport. This booklet provides an overview of the various types of temporary employment visa categories currently available and also describes the various types of employment and family-based permanent resident options and processes.

U.S. employers are required to ensure that all employees, including foreign nationals and U.S. workers, are eligible to work in the U.S. under the Immigration Reform and Control Act of 1986 (IRCA). All employees hired after November 6, 1986 must complete a Form I-9 and produce documents verifying their identity and work authorization. The federal agencies charged with enforcing IRCA are stepping up efforts to ensure employer compliance. This booklet provides a summary of IRCA and E-Verify requirements.

In March 2003, the Immigration and Naturalization Service (INS) was reorganized and reformed under the Department of Homeland Security (DHS). The topics covered in this booklet fall within the jurisdiction of two DHS divisions: 1) the U.S. Immigration and Citizenship Services (USCIS); and 2) Immigration and Customs Enforcement (ICE). USCIS is responsible for visa benefits and related services and ICE is responsible for enforcing immigration laws in the U.S., including IRCA requirements.

# EMPLOYMENT VERIFICATION AND SANCTIONS

IRCA enlists U.S. employers in the federal government's efforts to enforce the nation's immigration laws. IRCA imposes several requirements upon employers, with violations punishable by civil fines and criminal sanctions. Specifically, IRCA makes it unlawful for you to:

- knowingly hire or continue the employment of any person hired after November 6, 1986 who lacks authorization to work in the United States;
- hire any person (after November 6, 1986) without verifying that individual's identity and employment eligibility;
- discriminate in hiring and firing decisions on the basis of citizenship status (except under very narrow restrictions);
- discriminate on the basis of national origin;
- knowingly counterfeit or alter a document for the purpose of satisfying any immigration-related requirement; or
- knowingly use or accept any false document for the purpose of satisfying any immigration-related requirement.

Reform legislation enacted in 1990 added new provisions to strengthen IRCA's prohibitions against discrimination. As a result, you cannot: 1) require an employee to present more or different documents than are minimally required for the employment verification process; 2) refuse to honor documents presented by an employee that reasonably appear to be genuine and that relate to the person; or 3) specify which documents an employee must present to prove identity or employment eligibility. These prohibited practices are commonly known as "document abuse."

Employment eligibility verification is accomplished by completion of Form I-9, a form designated specifically for

this purpose. The employee completes basic identifying information and attests to his or her immigration status in Section 1 before starting work. The employer must then examine the new hire's documents and certify in Section 2 within three business days of the employee's start date that the documents appear to: 1) be genuine; 2) relate to the individual in question; and 3) authorize the employee to work in the United States. Any document that contains an expiration date must be current at the time that the I-9 form is completed.

The law requires that the employee be allowed to select the documents he or she wishes to present to verify identity and employment authorization so long as they are on the List of Acceptable Documents. The current version of the I-9 Form (which includes the list of acceptable documents) is available on our website. The employer is responsible for ensuring that the I-9 forms are completed in a timely manner, are completed properly, and that the forms are retained in accordance with IRCA requirements.

An I-9 form is required for each employee hired after November 6, 1986. Employees hired before that date are "grandfathered" and an I-9 form is not needed for these persons so long as the individual's employment is "continuing" in nature. For example, this means that authorized leaves of absence, brief interruptions in employment, transfers to other facilities, resumption of seasonal employment and similar situations do not generally trigger the verification requirement. True independent contractors are not subject to the I-9 Form verification requirement. To reduce the risk of possible liability, however, you will often want to ensure that even your contract employees are lawfully working in this country.

When an employee's work authorization has an expiration date, you are required to "reverify" his or her employment authorization no later than the date that the prior work authorization expires. If the employee cannot provide you with proof of his or her authorization to work beyond that date, you may not continue to employ that person. In order to reverify an employee's work authorization, you may complete a new I-9 Form or use Section 3 of the

current version of I-9 Form. List B proof-of-identity documents never need to be reverified, even if they have an expiration date.

While an individual remains employed by your company, you must maintain an I-9 form for that employee in your files (unless he or she was hired before November 7, 1986). Once an employee is terminated, you must retain that employee's I-9 form in your files for: 1) three years from the date the employee originally started to work; *and* 2) one year after employment terminates. While you may photocopy documents presented by employees you are not required to do so.

Officials of the USCIS, ICE, and others have authority to conduct inspections of an employer's I-9 forms. In almost all cases, you are entitled to three days notice, in writing, prior to the inspection — this is time you should use to review your forms and prepare for the inspection. If it is determined that you knowingly hired or continued to employ individuals who were not authorized to work in the U.S. or discriminate on the basis of citizenship status or national origin, you may be ordered to pay fines ranging from \$375 to \$3200 per unauthorized worker for a first offense, from \$3200 to \$6500 per unauthorized worker for a second offense, and from \$4300 to \$16000 per unauthorized worker for subsequent offenses. Criminal penalties, including \$3000 per employee and/or six months in prison, may be imposed against an employer convicted of engaging in a “pattern or practice” of knowingly hiring unauthorized workers in violation of the law.

The prohibitions against discrimination, including the document abuse provisions, are enforced by the Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). OSC also has the power to inspect I-9 forms to ensure that an employer has not over-documented employees or specified which document an employee must present. OSC functions much like the Equal Employment Opportunity Commission (EEOC) in investigating and prosecuting alleged violations of IRCA's discrimination prohibitions. The penalties for IRCA discrimination violations may include backpay and other remedial measures in addition to the fines listed above.



E-Verify is a web-based system that allows employers to check the work authorization for newly hired, and, in some cases, existing employees. While use of E-Verify is voluntary for most employers, many states have passed laws requiring certain employers to use E-Verify. Additionally, some employers may be required by federal law to use E-Verify. For the most current list of state and federal rules regarding use of E-Verify, please visit the immigration compliance section of the Fisher & Phillips website, located at <http://www.laborlawyers.com/I-9>.

Once an employer has enrolled in the E-Verify program, which includes signing a Memorandum of Understanding to share data with the DHS and the Social Security Administration (SSA), the employer must verify all covered employees through the system. E-Verify does not relieve an employer of the obligation to complete a Form I-9 for each newly hired employee; rather the system provides additional verification of the employee's authorization to work in the United States.

## IMMIGRATION OPPORTUNITIES AND CATEGORIES

U.S. immigration law presumes that every foreign national entering the country intends to stay here permanently. Thus, most foreign nationals coming to the U.S. must demonstrate that they intend only a temporary visit. The law distinguishes between permanent residence (immigrant) visas and temporary (non-immigrant) visas. Visas permit an individual to come to the U.S. border and seek entry in a particular status or classification. Each visa category has different eligibility requirements and benefits.

Visas are valid for varying lengths of time depending on the visa category and "reciprocity" rules with the foreign national's native country. Visa validity marks the period during which the foreign national may apply for admission to the United States. If admitted, the foreign national will be granted a period of authorized stay by means of an Arrival/Departure (Form I-94) card. The period of authorized stay does not always coincide with the visa validity period.

There are five broad categories of employment-based permanent residence and more than 20 different non-

## NON- IMMIGRANT WORK VISAS

immigrant visa designations. A complete list of the current non-immigrant categories can be found in Appendix 1 at the end of this booklet. Some of the more common employment-related visa categories are explained below, followed by a discussion of the basics of permanent residence.

Different types of non-immigrant (temporary) visas are issued for different purposes – travel, business, study, employment, etc. Specific documentation and evidence is necessary to meet the requirements of each different visa category.

Not all temporary visas authorize employment. It is therefore possible for a foreign national to be in the U.S. lawfully, but not be allowed to work. In addition, nearly all employment-related non-immigrant visas authorize employment only in a specific position and for a specific employer. Any other employment is prohibited. It is usually possible for the foreign national to change visa categories and/or employment upon USCIS approval of a visa petition filed by the foreign national or the employer.

### A. B-1 Business Visitor

This visa category is commonly used by a foreign employer to send a foreign national to the U.S. to perform a brief assignment. The B-1 visa does not authorize employment by a U.S. employer. For example, this category is frequently used by salespeople to call upon U.S. customers, by managers or executives attending conventions or business meetings in the U.S., by technical personnel servicing equipment or goods sold to U.S. entities, etc. The key requirement is that the foreign national cannot receive payment from a U.S. employer for services rendered during a B-1 visit. The B-1 visa authorizes the foreign national to stay for the duration of the temporary assignment but no more than six months; an extension of stay beyond six months is possible but difficult to obtain.

Business visitors who are citizens or nationals from certain countries may be able to travel to the United States using the Visa Waiver Program (VWP). VWP allows eligible citizens or nationals from certain countries to travel to the

United States for tourism or business and stay for 90 days or less without a visa. Individuals eligible to travel on the VWP may apply for a visa, if they prefer to travel using a visa. Not all countries participate in the VWP, and not all travelers from VWP countries are eligible to use the program.

Currently, there are 35 countries participating in the Visa Waiver Program, as shown below:

Andorra	Iceland	Norway
Australia	Ireland	Portugal
Austria	Italy	San Marino
Belgium	Japan	Singapore
Brunei	Latvia	Slovakia
Czech Republic	Liechtenstein	Slovenia
Denmark	Lithuania	South Korea
Estonia	Luxembourg	Spain
Finland	Malta	Sweden
France	Monaco	Switzerland
Germany	The Netherlands	United Kingdom
Hungary	New Zealand	

Canada and Bermuda are not participants in the Visa Waiver Program, however the Immigration and Nationality Act includes other provisions for visa-free travel for nationals of Canada and Bermuda under certain circumstances.

Individuals wishing to travel using the VWP are required to obtain authorization prior to traveling from the DHS's Electronic System for Travel Authorization (ESTA) system. ESTA is a free, automated system used to determine whether an individual is eligible to travel to the U.S. under the VWP. ESTA was implemented to provide added security to the VWP. ESTA allows the DHS to determine whether an individual may travel using the VWP and whether the individual poses a security risk. ESTA applications may be completed online at <https://esta.cbp.dhs.gov> any time before traveling. The ESTA system requires the traveler's biographical data including name, birth date, and passport.

Individuals wishing to travel to the United States on the VWP must also meet specific requirements regarding their passports. Individuals not meeting the requirements

must either obtain a visa to enter the United States or obtain a new passport meeting the requirements.

### **B. E-1 Treaty Trader And E-2 Treaty Investor**

The E visa category allows foreign nationals to enter the U.S. to manage a foreign entity's "substantial" trade or investment in the United States. This visa category is frequently used by multi-national companies to transfer managers, executives, and key personnel to U.S. operations. E visas require the existence of a friendship, navigation, and commerce or bilateral investment treaty between the U.S. and the foreign entity's country. The foreign national must be a citizen of the treaty country, and the foreign entity must be owned (or majority owned) by citizens of the treaty country. The E visa permits an initial period of authorized stay of two years, but E status can be renewed indefinitely so long as the requisite treaty relationship and qualifying trade/investment continue.

### **C. E-3 Australian Citizen Professional**

The E-3 category allows Australian nationals to work in the U.S. in specialty occupations. Specialty occupations are those which are professional in nature and require at least a baccalaureate degree in a specific, relevant field. The foreign national must possess the relevant baccalaureate degree or the equivalent in education and working experience. E-3 visas are approved for a period of two years and are renewable indefinitely. A statutory quota system limits the number of new E-3 visas granted during each fiscal year.

### **D. H-1B Specialty Worker**

The H-1B visa category allows a foreign national to fill a specialty "professional" position, i.e., one that requires at least a baccalaureate degree in a specific, relevant field. The foreign national must possess the relevant baccalaureate degree or the equivalent in education and working experience. The H-1B visa allows for an initial period of three years of authorized employment and a maximum period of six consecutive years of authorized employment (although the six year period may be extended under cer-

tain circumstances). The employer may be required to return the foreign national to his or her native country in the event that employment terminates during the validity period of the visa approval.

The employer must compile documentation and obtain approval of a Labor Condition Application (LCA) from the U.S. Department of Labor before submitting an H-1B petition to the USCIS. The LCA attestation requirements include, among other things, agreeing to pay the prevailing wage or the actual wage, whichever is higher, and agreeing to provide the foreign national the same benefits as those offered to U.S. workers.

H-1B visa holders may take advantage of a “portability” provision that allows them to begin working for a new employer once the new employer’s H-1 petition is filed (rather than waiting several months for the petition to be approved). Of course, the new employer must comply with the attestation requirements and file a bona fide petition.

A statutory quota system limits the number of new H-1B visas granted during each fiscal year. Institutions of higher education, non-profit research organizations, and organizations affiliated with institutions of higher education generally are exempt from the annual quota. Extensions of H-1B status are also generally exempt.

Spouses of H-1B foreign nationals qualify for H-4 status, but are not authorized to work while in that status.

## **E. H-2 Temporary Worker**

There are two kinds of H-2 visas: H-2A visas for temporary agricultural workers and H-2B visas for other temporary workers. In both cases, the employer must demonstrate that the foreign national will only be needed for a temporary or seasonal period, i.e., the job itself must be temporary in nature. In addition, the employer must undertake an extensive documentation process to obtain a labor certification from the DOL. This process includes positive recruitment efforts intended to prove that U.S. workers are not available for the job in question. Generally, H-2 status is only valid for the period of the employer’s temporary

need. The underlying DOL certification will be valid for no more than one year and must be renewed if the temporary employment is to continue. H-2B visas are subject to a fiscal year quota limiting the number of visas issued each year.

### **F. H-3 Trainee**

The H-3 category is for foreign nationals coming to the U.S. to receive training unavailable in their native country. The employer providing the training must document the existence and content of a formal training program, which may include some on-the-job training. The foreign national, however, cannot displace a U.S. worker and cannot work for the U.S. employer once the training program concludes.

### **G. J-1 Exchange Visitor**

This visa category is a broad category used by students, visiting researchers, lecturers, business trainees, summer camp counselors, au pairs, and others. Business trainees may qualify for up to 18 months of on-the-job training or employment, except for trainees in the agricultural, hotel and tourism fields which are generally limited to 12 months. The foreign national must be sponsored by an officially designated exchange visitor program sponsor, but employers can often coordinate sponsorship with an academic institution or “umbrella” program. Umbrella program sponsors work with employers to place exchange visitors for a fee.

The J-1 visa can subject the foreign national to a two-year home country residence requirement if the foreign national’s visit is funded by the native country or a U.S. government agency, if the foreign national’s skills are in short supply in the native country, or if the J-1 foreign national is coming to the U.S. to receive graduate medical training. A foreign national subject to the two-year residence rule must spend two full years in the native country or obtain a waiver before being eligible for H-1, L-1, or permanent residence status. It is sometimes possible to obtain a waiver of the two-year home country residence requirement, but waivers are difficult to obtain.

## **H. L-1 Intra-company Transferee**

The L-1 visa category permits transfer of managers, executives, and persons with specialized skill/knowledge from a foreign entity to a related affiliated U.S. employer. The foreign national must have been employed by the foreign entity in the requisite capacity for at least one full year during the three years preceding the transfer and must be coming to a qualifying position with the U.S. employer. The L-1 visa authorizes up to seven years of employment for executives and managers, and up to five years of employment for specialized knowledge personnel. L-1 status is advantageous because L-1 managers and executives are eligible for a streamlined permanent residence process.

Employers who make frequent use of the L-1 category may qualify for “blanket” L-1 authorization. In effect, this amounts to pre-qualification for L-1 status and reduces the procedural burden associated with key transfers. Spouses of L-1 foreign nationals qualify for L-2 status and may apply for employment authorization.

## **I. O-1 Extraordinary Alien**

The O-1 visa category is intended for foreign nationals of extraordinary ability in the arts, sciences, education, business, or athletics. This category is sometimes used by foreign nationals who cannot qualify for H-1B professional status. The prospective employer must demonstrate a specific, limited need for a foreign national of extraordinary ability, and the foreign national must be able to document national or international renown in the relevant field of endeavor. The employer must also obtain a consultation from a peer group or labor organization in the field which confirms the foreign national’s reputation and the employer’s need for the foreign national’s services. The return transportation requirement applicable to H-1 professionals also applies to O-1 foreign nationals. O-1 status is generally valid for three years and may be extended.

## **J. P Performing Artist**

The P-1 visa category is designed to permit entry of foreign national performers in the arts or athletics who are internationally known artists, entertainers, or athletes coming to the U.S. for a specific event or tour. P-2 visas are available for foreign national performers participating in a reciprocal cultural exchange program. P-3 visas are used by coaches and trainers accompanying P artists or athletes. The foreign national must demonstrate an international reputation. Like the O-1 visa, the P visa categories require a consultation from a peer group or labor organization to confirm the foreign national's reputation, and the return transportation requirement applies if the employment ends prematurely.

## **K. Q Cultural Exchange Visitor**

The Q visa permits entry of foreign nationals coming to an approved international cultural exchange program. This category is popularly referred to as the Disney visa, since it is used to permit employment of foreign nationals in culturally unique exhibits or attractions. Q foreign nationals are permitted up to 15 months of employment in the cultural exchange program.

## **L. TN NAFTA Treaty Professional**

NAFTA incorporated the provisions of the U.S.-Canada Free Trade Agreement, and made similar provisions applicable to Mexicans seeking employment in the United States. Canadian and Mexican citizens who are employed in defined occupations can obtain TN visas that will authorize U.S. employment in three year increments. Canadian TN applicants may apply at the border simply by presenting proof of citizenship, proof of an academic degree in the qualifying profession, and an offer of employment from the U.S. employer. Mexicans seeking TN status must present the same documents at a U.S. Consulate to obtain a TN visa stamp and then may apply for entry at the border. TN status is generally approved in three year increments and is renewable indefinitely. Dependents are typically granted Treaty Dependent (TD) status for the same time period as the TN foreign national but are not authorized to work in the U.S.



## M. F-1 Student

Foreign students pursuing an education in the U.S. generally utilize the F-1 (academic) or M-1 (vocational) student visa category. Upon completion of a recognized degree program, a foreign student may qualify for a period of on-the-job optional practical training, commonly referred to as OPT. For example, academic students completing a baccalaureate degree program are often eligible for up to 12 months of practical training. The student must apply to CIS for permission to engage in such training, and the training must be in a field related to the student's degree program.

Because practical training is fairly easy to obtain, in many cases it will be the ideal means of employing a foreign national professional. Once the foreign national begins practical training, the employer can consider sponsoring the foreign national for H-1B status. OPT may be extended from 12 months to 29 months for F-1 visa students with a degree in science, technology, engineering, or mathematics who are employed by businesses enrolled in the E-Verify program.

Students in degree programs may sometimes work pursuant to "curricular practical training" or a work-study program. Curricular practical training is approved by the school's foreign student advisor and does not require prior government approval. If a student uses up 12 or more months of curricular practical training, s/he become ineligible for post-graduate practical training.

Foreign nationals who intend to reside in the U.S. indefinitely may wish to obtain permanent residence. Foreign nationals may apply for permanent residence on the basis of a family relationship to a U.S. citizen or permanent resident, or, they may seek permanent resident status on the basis of current or prospective employment. Other foreign nationals may qualify for permanent residence by virtue of a grant of asylum or admission as a refugee. To promote greater cultural diversity, the law occasionally provides for random lotteries which can result in permanent residence status as well.

## IMMIGRANT VISAS

In family and employment-based cases, the sponsor files a visa petition with USCIS seeking to classify the foreign national in the desired category. Unlike non-immigrant visas, which generally have no quotas limiting visa availability, immigrant visas are subject to two kinds of quota systems. First, there is a quota created by the annual allocation of visas to different permanent residence categories. Second, there is a per-country quota system designed to ensure that foreign nationals from no single country consume too many of the visas allocated in any category.

The two quotas combine to make it extremely difficult to immigrate in some categories, and foreign nationals can face a delay of several years before visas are available in certain categories. Once the visa becomes available, the foreign national can apply for permanent resident status through consular visa processing at a U.S. embassy or consulate abroad, or, if the foreign national is already in the U.S., through adjustment of status at a local USCIS office.

Because the permanent residence procedures can take a considerable amount of time to complete, most employers seeking a foreign national's services will first seek a temporary work status for the foreign national. Once the foreign national is in the U.S. working pursuant to the non-immigrant visa status, the employer will then sponsor the foreign national for permanent residence.

If a foreign national is sponsored for employment-based permanent residence, the following conditions must be met: 1) the sponsoring employer must intend to employ the foreign national; 2) the position to be filled by the foreign national must be permanent, full-time employment; 3) the employer must have the financial resources to pay the foreign national's salary; and 4) the foreign national must meet the minimum requirements for the position. In addition, several categories of employment-based permanent residence require certification by DOL that no qualified U.S. workers are available to fill the position.

There are five major employment-based visa categories for immigrants, described below.

## **A. Priority Workers**

There are three groups of foreign nationals who can qualify for Priority Worker status. Labor certification is not required for this category of permanent residence.

### **1. Aliens of Extraordinary Ability in Arts, Sciences, Education, Business, or Athletics**

Generally, this sub-category is reserved for individuals of extraordinary talent and achievements such as Nobel laureates or recipients of internationally recognized prizes and awards. In short, the foreign national must have risen to the very top of his or her profession. Although this is an employment-based permanent residence category, foreign nationals meeting this high standard need not have a firm offer of employment in the U.S. but can qualify solely on the basis of a promise to seek employment commensurate with their standing in the profession or field.

### **2. Outstanding Professors and Researchers**

This sub-category is intended to permit academic and research institutions to hire the most qualified people regardless of citizenship status. The foreign national must have at least three years experience in teaching and/or research and must be able to demonstrate an outstanding reputation in the field. In addition, the employer must demonstrate that the position requires the services of an outstanding teacher or researcher and that the foreign national will be filling a tenure or tenure-track position (or an indefinite position in a non-academic research center).

### **3. Intra-Company Transferee Managers and Executives**

This sub-category recognizes that foreign companies with U.S. operations often prefer “home-grown” managers and executives in key positions in the U.S. operation. Thus, the standard for this category is the same as for the L-1 non-immigrant visa, i.e., the foreign national must have

been a manager or executive for the foreign employer for at least one year during the three years prior to admission to the U.S. and must be filling a managerial or executive position with the related U.S. entity.

### **B. Professionals With Advanced Degrees And Aliens Of “Exceptional Ability” In The Arts, Sciences, Or Business**

Foreign nationals applying in this category must have post-baccalaureate degrees or exceptional ability in a field relevant to the proposed employment. The foreign national must possess skills or knowledge which are necessary to the U.S. employer or will substantially benefit the U.S. prospectively. Labor certification is required but may be waived if the employment of the foreign national is in the “national interest.”

### **C. Other Professionals And Skilled/ Unskilled Workers**

This is a “catch-all” category for other foreign workers desiring permanent residence. Professionals who lack an advanced degree but have a bachelor’s degree in the relevant field of endeavor, skilled workers in jobs requiring at least two years of training or experience, and unskilled laborers qualify in this category. Labor certification always is required in this category.

### **D. Investors And Entrepreneurs**

This category, which has an annual limit of 10,000 visas, was created to encourage business investment in the U.S. and provide employment opportunities for U.S. workers. In general, a foreign national seeking to qualify in this category must invest at least \$1 million in a commercial enterprise which will create at least ten new jobs for U.S. workers. The investment amount may be as little as \$500,000 in areas of high unemployment or in targeted job creation areas. Permanent residence is granted conditionally for the first two years; the conditional status is removed if the foreign national demonstrates that at least ten U.S. workers are employed as a result of the qualifying investment. By placing the investment with an approved Regional

Center, however, the investor is not required to show direct job creation.

## **E. Special Immigrants**

This category is another “catch all” category which is principally used by foreign nationals who can demonstrate at least two years experience as a worker for a religious denomination that has a bona fide, non-profit organization in the United States. This category is also available for certain employees of international organizations and certain U.S. government employees employed abroad.

## **F. Family-Based Immigration**

Permanent residence is also possible based upon a familial relationship to a U.S. citizen or permanent resident. Foreign nationals who are immediate relatives of U.S. citizens, i.e., a spouse or child (defined as under age 21), are granted a preference and are not subject to any quota system. For all other types of family-based permanent residence, there is no labor certification requirement, but the categorical and per-country quotas apply. This can result in considerable delays before an immigrant visa is available in certain categories.

There are four major family-based permanent residence categories with quotas by category and country:

### **1. Unmarried Sons and Daughters of Citizens**

This category permits adult (21 years of age or older), single children of U.S. citizens to become permanent residents. Children under 21 years of age usually qualify as immediate relatives of U.S. citizens.

### **2. Spouses, Children and Unmarried Sons and Daughters of Permanent Residents**

There is often a waiting period of several years before a visa becomes available because of extremely high demand. Spouses and children receive 77 percent of the visas allocated, and unmarried sons and daughters (21 years of age or older) receive the remaining 23 percent of the allocation.

### **3. Married Sons and Daughters of Citizens**

This category is for married children of a parent who first became a U.S. permanent resident and later naturalized and became a U.S. citizen.

### **4. Brothers and Sisters of Adult Citizens**

This visa category is reserved for foreign nationals who are brothers or sisters of adult U.S. citizens.

**F**or further information about these contents, visit our website at [www.laborlawyers.com](http://www.laborlawyers.com) or you can contact an attorney in our Global Immigration Practice Group at 404-240-4224 or email [immigration@laborlawyers.com](mailto:immigration@laborlawyers.com).

*For more information contact any office of Fisher and Phillips, LLP or visit our website at [www.laborlawyers.com](http://www.laborlawyers.com)*

# APPENDIX 1 NON- IMMIGRANT VISA CATEGORIES

A-1, A-2	Foreign Government Officials
A-3	Employees of Foreign Government Officials
B-1	Visitors for Business
B-2	Tourists
C	Foreign nationals in Transit Through the United States
D-1	Crewmen
E-1, E-2	Treaty Traders and Treaty Investors
F-1	Foreign Students
G	Representatives of International Organizations
H-1	Nurses (H-1A) and Professionals (H-1B)
H-2	Temporary Agricultural Workers (H-2A) and Temporary Non-Agricultural Workers (H-2B)
H-3	Trainees
I	Foreign Media Representatives
J-1	Exchange Visitors
K-1	Fiancé(e) of a U.S. Citizen
L-1	Intra-company Transferees
M	Vocational Students
TN	NAFTA Professionals
O-1	Aliens with Extraordinary Ability in Sciences, Arts, Education, Business, or Athletics
O-2	Accompanying and Assisting O-1 Non-immigrants
P-1	Internationally Recognized Artists and Athletes

- P-2 Culturally Unique Artists and Entertainers
- P-3 Coaches and Trainers of P-1 Foreign nationals
- Q Cultural Exchange Program Visitors
- R Religious Occupations



## **APPENDIX 2 IMMIGRANT VISA CATEGORIES**

### **Employment-Based Immigration**

1. Priority Workers
  - A. Aliens of Extraordinary Ability in the Arts, Sciences, Education, Business, or Athletics
  - B. Outstanding Professors and Researchers
  - C. Intra-company Transferee Managers and Executives
2. Professionals with Advanced Degrees and Aliens of “Exceptional Ability” in the Arts, Sciences, or Business
3. Other Professionals and Skilled/Unskilled Workers
4. Investors and Entrepreneurs
5. Special Immigrants

### **Family-Based Immigration**

1. Unmarried Sons and Daughters of U.S. Citizens
2. Spouses and Children and Unmarried Sons and Daughters of Permanent Residents
3. Married Sons and Daughters of U.S. Citizens
4. Brothers and Sisters of Adult U.S. Citizens

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Age Discrimination In Employment Act

Americans With Disabilities Act  
(Employment Aspects)

Americans With Disabilities Act  
(Public Accommodations)

Business Immigration

COBRA

Employment Discrimination

Family Medical Leave Act

Fair Labor Standards Act  
(Exemptions & Recordkeeping)

Fair Labor Standards Act  
(Wage & Hour Provisions)

HIPAA

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National Labor Relations Act  
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OSHA

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USERRA

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