Immigration Issues: Information On How To Work In The U.S.

Advancing, Promoting and Facilitating the Success of New American Businesses

Figeroux and Associates

Contents

ABOUT NEW AMERICAN CHAMBER OF COMMERCE

Since being founded, the New American Chamber of Commerce has dedicated itself to providing assistance to all small businesses within New York City. We strongly believe that every business should be given the opportunity to reach their full potential. Not only does the Chamber provide avenues for small businesses to obtain further assistance, but the Chamber also offers workshops and events for businesses so that they can expand their visibility within the community. Given the current workforce and the socio-economic demands, it is critical to support these entrepreneurs in the underserved areas of New York City.

Our main priority is to expand and deepen community relations and diversify the Chamber's funding sources for small businesses. Clearly, expressing these strategic goals and direction will help to deepen trust and support for the Chamber, and build on our rich legacy of years of service to the New York City community.

We are excited to share our strategic vision, aiming to gain your participation and involvement. As such, we are committed to earning your business, trust, satisfaction and partnership. By working together we can move our organization forward toward prosperity and a renewed purpose.

ABOUT FIGEROUX AND ASSOCIATES

The Law Offices of Figeroux & Associates, is a full-service law firm with over 15 years of legal experience that has helped more than 10,000 clients. The firm was created by Civil Rights attorney Brian Figeroux. Initial concentration focused on Criminal Defense, Family/Divorce Law Immigration, Civil Litigation and Police Misconduct Issues. Soon the practice expanded to Personal Injury, Wills & Estate, Tax Relief and Bankruptcy Law.

Figeroux & Associates embraces diversity, having roots from all over the globe and speaking many languages, including Spanish, Creole, French, Korean, Russian, Chinese, Punjabi and Urdu. Additionally, Figeroux & Associates founded three not-for profit organizations. The Immigrant's Journal Legal & Educational Fund, Inc., the New American Chamber of Commerce, and Concerned Americans for Racial Equality.

Remember, Figeroux & Associates provides you with guidance and they can represent you when dealing with legalities for employment within the U.S. The Law Firm of Figeroux & Associates was founded to serve our clients, but also to contribute to the greater good.

IMMIGRATION ISSUES: PLANNING TO WORK IN THE U.S.

Every individual who is seeking to enter the US with the intention to work in the US needs to understand that every situation is different and that there are several paths to achieving authorized employment status.
Here are several different options for foreign nationals seeking to acquire authorization to work in the U.S.

E-1/E-2 Visa

EB-5 Visa

E Status

L-1A Visa

H-1B Visa

H-2B Visa

Some of the questions that might have:

- What is the eligibility?
- How do I qualify?
- How long will it take?
- Which one do I choose?
- How can I obtain a green card?
- When can I apply for US Citizenship?

These are all valid questions, and we have constructed this booklet in order guide you to take the best path for your journey to the US. In this overview of information we will discuss the most common employment based categories, eligibility criteria, application process and other important information relevant to your transition.

In some cases the prospective employer will file the corresponding documentation on behalf of the prospective employee, but in other situations the foreign national-prospective employee, will have to file on his/her own.

You have already taken the most important step towards your application, and that is to start planning ahead of time. USCIS (United States Citizenship and Immigration Services) is very strict with foreign nationals, and individuals will need to be prepared for the lengthy process that it takes to ensure that all documentation is in place. This can lead to frustration but don't be deterred by the process, and remain calm since many others have also traveled through the same difficulties as you. Most importantly, remember that failure to enter the U.S. through the proper procedure will result in severe consequences for both the employee and the employer.

INTRODUCTION TO E1

E-1 Treaty Traders

The E-1 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation) to be admitted to the United States solely to engage in international trade on his or her own behalf. Certain employees of such a person or of a qualifying organization may also be eligible for this classification. (For dependent family members, see "Family of E-1 Treaty Traders and Employees" below.)

Who May File for Change of Status to E-1 Classification

If the treaty trader is currently in the United States in a lawful nonimmigrant status, he or she may file Form I-129 to request a change of status to E-1 classification. If the desired employee is currently in the United States in a lawful nonimmigrant status, the qualifying employer may file Form I-129 on the employee's behalf.

How to Obtain E-1 Classification if Outside the United States

A request for E-1 classification may not be made on Form I-129 if the person being filed for is physically outside the United States. Interested parties should refer to the U.S. Department of State website for further information about applying for an E-1 nonimmigrant visa abroad. Upon issuance of a visa, the person may then apply to a DHS (Department of Homeland Security) immigration officer at a U.S. port of entry for admission as an E-1 nonimmigrant.

General Qualifications of a Treaty Trader

To qualify for E-1 classification, the treaty trader must:

- Be a national of a country with which the United States maintains a treaty of commerce and navigation
- Carry on substantial tra*de*
- Carry on principal trade between the United States and the treaty country which qualified the treaty trader for E-1 classification.

Trade is the existing international exchange of items of trade for consideration between the United States and the treaty country. Items of trade include but are not limited to:

- Goods
- Services
- International banking
- Insurance
- Transportation

- Tourism
- Technology and its transfer
- Some news-gathering activities.

Substantial trade generally refers to the continuous flow of sizable international trade items, involving numerous transactions over time. There is no minimum requirement regarding the monetary value or volume of each transaction. While monetary value of transactions is an important factor in considering substantiality, greater weight is given to more numerous exchanges of greater value.

Principal trade between the United States and the treaty country exists when over 50% of the total volume of international trade is between the U.S. and the trader's treaty country.

General Qualifications of the Employee of a Treaty Trader

To qualify for E-1 classification, the employee of a treaty trader must:

- Be the same nationality of the principal foreign employer (who must have the nationality of the treaty country)
- Meet the definition of "employee" under the relevant law
- Either be engaging in duties of an executive or *supervisory character*, or if employed in a lesser capacity, have special qualifications.

If the principal foreign employer is not an individual, it must be an enterprise or organization at least 50% owned by persons in the United States who have the nationality of the treaty country. These owners must be maintaining nonimmigrant treaty trader status. If the owners are not in the United States, they must be, if they were to seek admission to this country, classifiable as nonimmigrant treaty traders.

Duties which are of an *executive or supervisory character* are those which primarily provide the employee ultimate control and responsibility for the organization's overall operation, or a major component of it.

Special qualifications are skills which make the employee's services essential to the efficient operation of the business. There are several qualities or circumstances which could, depending on the facts, meet this requirement. These include, but are not limited to:

- The degree of proven expertise in the employee's area of operations
- Whether others possess the employee's specific skills
- The salary that the special qualifications can command
- Whether the skills and qualifications are readily available in the United States

Knowledge of a foreign language and culture does not, by itself, meet this requirement. Note that in some cases a skill that is essential at one point in time may become commonplace, and therefore no longer qualifying, at a later date.

Period of Stay

Qualified treaty traders and employees will be allowed a maximum initial stay of two years. Requests for extension of stay may be granted in increments of up to two years each. There is no maximum limit to the number of extensions an E-1 nonimmigrant may be granted. All E-1 nonimmigrants, however, must maintain an intention to depart the United States when their status expires or is terminated.

An E-1 nonimmigrant who travels abroad may generally be granted an automatic two-year period of readmission when returning to the United States. It is generally not necessary to file a new Form I-129 with USCIS in this situation.

Terms and Conditions of E-1 Status

A treaty trader or employee may only work in the activity for which he or she was approved at the time the classification was granted. An E-1 employee, however, may also work for the treaty organization's parent company or one of its subsidiaries as long as the:

- Relationship between the organizations is established
- Subsidiary employment requires executive, supervisory, or essential skills
- Terms and conditions of employment have not otherwise changed.

USCIS must approve any *substantive change* in the terms or conditions of E-1 status. A "substantive change" is defined as a fundamental change in the employer's basic characteristics, such as, but not limited to, a merger, acquisition, or major event which affects the treaty trader or employee's previously approved relationship with the organization.

A treaty trader or organization may seek advice from USCIS, however, to determine whether a change is considered substantive.

A strike or other labor dispute involving a work stoppage at the intended place of employment may affect a Canadian or Mexican treaty trader or employee's ability to obtain E-1 status.

Family of E-1 Treaty Traders and Employees

Treaty traders and employees may be accompanied or followed by spouses and unmarried children who are under 21 years of age. Their nationalities need not be the same as the treaty trader or employee. These family members may seek E-1 nonimmigrant classification as dependents and, if approved, generally will be granted the same period of stay as the employee. If the family members are already in the United States and seeking change of status to or extension of stay in an E-1 dependent classification, they may apply by filing a single Form I-539 with fee. Spouses of E-1 workers may apply for work authorization by filing Form I-765

with fee. If approved, there is no specific restriction as to where the E-1 spouse may work.

As discussed above, the E-1 treaty trader or employee may travel abroad and will generally be granted an automatic two-year period of admission when returning to the United States. Unless the family members are accompanying the E-1 treaty trader or employee at the time the latter seeks admission to the United States, the new readmission period will not apply to the family members. To remain lawfully in the United States, family members must carefully note the period of stay they have been granted in E-1 status, and apply for an extension of stay before their own validity expires.

INTRODUCTION TO E2

E-2 Treaty Investors

The E-2 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation) to be admitted to the United States when investing a substantial amount of capital in a U.S. business. Certain employees of such a person or of a qualifying organization may also be eligible for this classification

Who May File for Change of Status to E-2 Classification

If the treaty investor is currently in the United States in a lawful nonimmigrant status, he or she may file Form I-129 to request a change of status to E-2 classification. If the desired employee is currently in the United States in a lawful nonimmigrant status, the qualifying employer may file Form I-129 on the employee's behalf.

How to Obtain E-2 Classification if Outside the United States

A request for E-2 classification may not be made on Form I-129 if the person being filed for is physically outside the United States. Interested parties should refer to the U.S. Department of State website for further information about applying for an E-2 nonimmigrant visa abroad. Upon issuance of a visa, the person may then apply to a DHS immigration officer at a U.S. port of entry for admission as an E-2 nonimmigrant.

General Qualifications of a Treaty Investor

To qualify for E-2 classification, the treaty investor must:

- Be a national of a country with which the United States maintains a treaty of commerce and navigation
- Have invested, or be actively in the process of investing, a substantial amount of capital in a bona fide enterprise in the United States

- Be seeking to enter the United States solely to develop and direct the investment enterprise. This is established by showing at least 50% ownership of the enterprise or possession of operational control through a managerial position or other corporate device.

  An investment is the treaty investor's placing of capital, including funds and/or other assets, at risk in the commercial sense with the objective of generating a profit. The capital must be subject to partial or total loss if the investment fails. The treaty investor must show that the funds have not been obtained, directly or indirectly, from criminal activity.

A substantial amount of capital is:

- Substantial in relationship to the total cost of either purchasing an established enterprise or establishing a new one
- Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise
- Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise. The lower the cost of the enterprise, the higher, proportionately, the investment must be to be considered substantial.

  A *bona fide enterprise* refers to a real, active and operating commercial or entrepreneurial undertaking which produces services or goods for profit. It must meet applicable legal requirements for doing business within its jurisdiction.

Marginal Enterprises

The investment enterprise may not be marginal. A marginal enterprise is one that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. Depending on the facts, a new enterprise might not be considered marginal even if it lacks the current capacity to generate such income. In such cases, however, the enterprise should have the capacity to generate such income within five years from the date that the treaty investor's E-2 classification begins.

General Qualifications of the Employee of a Treaty Investor

To qualify for E-2 classification, the employee of a treaty investor must:

- Be the same nationality of the principal alien employer (who must have the nationality of the treaty country)
- Meet the definition of "employee" under relevant law
- Either be engaging in duties of an executive or supervisory character, or if employed in a lesser capacity, have special qualifications.

  If the principal foreign employer is not an individual, it must be an enterprise or organization at least 50% owned by persons in the United States who have the nationality of the treaty country. These owners must be maintaining nonimmigrant treaty investor status. If the owners are not in the United States, they must be, if

they were to seek admission to this country, classifiable as nonimmigrant treaty investors.

Period of Stay

Qualified treaty investors and employees will be allowed a maximum initial stay of two years. Requests for extension of stay may be granted in increments of up to two years each. There is no maximum limit to the number of extensions an E-2 nonimmigrant may be granted. All E-2 nonimmigrants, however, must maintain an intention to depart the United States when their status expires or is terminated.

An E-2 nonimmigrant who travels abroad may generally be granted an automatic two-year period of readmission when returning to the United States. It is generally not necessary to file a new Form I-129 with USCIS in this situation.

Terms and Conditions of E-2 Status

A treaty investor or employee may only work in the activity for which he or she was approved at the time the classification was granted. An E-2 employee, however, may also work for the treaty organization's parent company or one of its subsidiaries as long as the:

- Relationship between the organizations is established
- Subsidiary employment requires executive, supervisory, or essential skills
- Terms and conditions of employment have not otherwise changed.

USCIS must approve any substantive change in the terms or conditions of E-2 status.

It is not required to file a new Form I-129 to notify USCIS about non-substantive changes.

A strike or other labor dispute involving a work stoppage at the intended place of employment may affect a Canadian or Mexican treaty investor or employee's ability to obtain E-2 status. See 8 CFR 214.2(e)(22) for details.

Family of E-2 Treaty Investors and Employees

Treaty investors and employees may be accompanied or followed by spouses and unmarried children who are under 21 years of age. Their nationalities need not be the same as the treaty investor or employee. These family members may seek E-2 nonimmigrant classification as dependents and, if approved, generally will be granted the same period of stay as the employee. If the family members are already in the United States and are seeking change of status to or extension of stay in an E-2 dependent classification, they may apply by filing a single Form I-539 with fee. Spouses of E-2 workers may apply for work authorization by filing Form I-765 with fee. If approved, there is no specific restriction as to where the E-2 spouse may work.

As discussed above, the E-2 treaty investor or employee may travel abroad and will generally be granted an automatic two-year period of readmission when returning to the United States. Unless the family members are accompanying the E-2 treaty investor or employee at the time the latter seeks readmission to the United States, the new readmission period will not apply to the family members. To remain lawfully in the United States, family members must carefully note the period of stay they have been granted in E-2 status, and apply for an extension of stay before their own validity expires.

INTRODUCTION TO EB5

EB-5 Immigrant Investor

USCIS administers the Immigrant Investor Program, also known as “EB-5,” created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under a pilot immigration program first enacted in 1992 and regularly reauthorized since, certain EB-5 visas also are set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth.

The EB-5 Adjudications Policy Memorandum is the guiding document for USCIS administration of the EB-5 program.

All EB-5 investors must invest in a **new commercial enterprise**, which is a commercial enterprise:

- Established after Nov. 29, 1990, or
- Established on or before Nov. 29, 1990, that is:
  1. Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, or
  2. Expanded through the investment so that a 40-percent increase in the net worth or number of employees occurs

Commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to:

- A sole proprietorship
- Partnership (whether limited or general)
- Holding company
- Joint venture
- Corporation
- Business trust or other entity, which may be publicly or privately owned

This definition includes a commercial enterprise consisting of a holding company and its wholly owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business.

Note: This definition does not include noncommercial activity such as owning and operating a personal residence.

Job Creation Requirements

- Create or preserve at least 10 full-time jobs for qualifying U.S. workers within two years (or under certain circumstances, within a reasonable time after the two-year period) of the immigrant investor's admission to the United States as a Conditional Permanent Resident.
- Create or preserve either direct or indirect jobs:
    - Direct jobs are actual identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital.
    - Indirect jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor. A foreign investor may only use the indirect job calculation if affiliated with a regional center.

Note: Investors may only be credited with preserving jobs in a troubled business.

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 the priority date on the immigrant investor's Form I-526. The loss for this period must be at least 20 percent of the troubled business' net worth prior to the loss.

A **qualified employee** is a U.S. citizen, permanent resident or other immigrant authorized to work in the United States. The individual may be a conditional resident, as a refugee, or a person residing in the United States under suspension of deportation. This definition does not include the immigrant investor; his or her spouse, sons, or daughters; or any foreign national in any nonimmigrant status.

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. In the case of the Immigrant Investor Pilot Program, "full-time employment" also means employment of a qualifying employee in a position that has been created indirectly from investments associated with the Pilot Program.

A **job-sharing arrangement** whereby two or more qualifying employees share a full-time position will count as full-time employment provided the hourly requirement per week is met. The two qualified employees sharing the job must be permanent and share the associated benefits normally related to any permanent, full-time position, including payment of both workman's compensation and unemployment premiums for the position by the employer.

Capital Investment Requirements

Capital means 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 assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. Note: Investment capital cannot be borrowed.

The minimum qualifying investment in the United States is $1 million.

- Targeted Employment Area (High Unemployment or Rural Area). The minimum qualifying investment either within a high-unemployment area or rural area in the United States is $500,000.

L-1A Intracompany Transferee Executive or Manager

The L-1A nonimmigrant classification enables a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to one of its offices in the United States. This classification also enables a foreign company which does not yet have an affiliated U.S. office to send an executive or manager to the United States with the purpose of establishing one. The employer must file a Form I-129, Petition with fee, on behalf of the employee.
The following information describes some of the features and requirements of the L-1 nonimmigrant visa program.

General Qualifications of the Employer and Employee

To qualify for L-1 classification in this category, the employer must:

- Have a qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate, collectively referred to as qualifying organizations); and
- Currently be, or will be, doing business as an employer in the United States and in at least one other country directly or through a qualifying organization for the duration of the beneficiary's stay in the United States as an L-1. While the business must be viable, there is no requirement that it be engaged in international trade.
  Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

To qualify, the named employee must also:

- Generally have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding his or her admission to the United States; and
- Be seeking to enter the United States to provide service in an executive or managerial capacity for a branch of the same employer or one of its qualifying organizations.
  Executive capacity generally refers to the employee's ability to make decisions of wide latitude without much oversight.

  Managerial capacity generally refers to the ability of the employee to supervise and control the work of professional employees and to manage the organization, or a department, subdivision, function, or component of the organization. It may also refer to the employee's ability to manage an essential function of the organization at a high level, without direct supervision of others. See section 101(a)(44) of the Immigration and Nationality Act, as amended, and 8 CFR 214.2(l)(1)(ii) for complete definitions.

New Offices
For foreign employers seeking to send an employee to the United States as an executive or manager to establish a new office, the employer must also show that:

- The employer has secured sufficient physical premises to house the new office;
- The employee has been employed as an executive or manager for one continuous year in the three years preceding the filing of the petition; and
- The intended U.S. office will support an executive or managerial position within one year of the approval of the petition.
  See 8 CFR 214.2(l)(3)(v) for details.

Period of Stay

Qualified employees entering the United States to establish a new office will be allowed a maximum initial stay of one year. All other qualified employees will be allowed a maximum initial stay of three years. For all L-1A employees, requests for extension of stay may be granted in increments of up to an additional two years, until the employee has reached the maximum limit of seven years.

Family of L-1 Workers

The transferring employee may be accompanied or followed by his or her spouse and unmarried children who are under 21 years of age. Such family members may seek admission in L-2 nonimmigrant classification and, if approved, generally will be granted the same period of stay as the employee.

Change/Extend Nonimmigrant Status

If these family members are already in the United States and seeking change of status to or extension of stay in L-2 classification, they may apply collectively, with fee, on an Form I-539, Application to Change/Extend Nonimmigrant Status.

Spouses

Spouses of L-1 workers may apply for work authorization by filing a Form I-765, Application for Employment Authorization with fee. If approved, there is no specific restriction as to where the L-2 spouse may work.

Blanket Petitions

Certain organizations may establish the required intracompany relationship in advance of filing individual L-1 petitions by filing a blanket petition. Eligibility for blanket L certification may be established if:

- The petitioner and each of the qualifying organizations are engaged in commercial trade or services;
- The petitioner has an office in the United States which has been doing business for one year or more;
- The petitioner has three or more domestic and foreign branches, subsidiaries, and affiliates; and
- The petitioner along with the other qualifying organizations meet one of the following criteria:
  - Have obtained at least 10 L-1 approvals during the previous 12-month period;

- Have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or
- Have a U.S. work force of at least 1,000 employees.

The approval of a blanket L petition does not guarantee that an employee will be granted L-1A classification. It does, however, provide the employer with the flexibility to transfer eligible employees to the United States quickly and with short notice without having to file an individual petition with USCIS.

Where an L-1 visa is required

In most cases, once the blanket petition has been approved, the employer need only complete Form, I-129S,Nonimmigrant Petition Based on Blanket L Petition and send it to the employee along with a copy of the blanket petition Approval Notice and other required evidence, so that the employee may present it to a consular officer in connection with an application for an L-1 visa.

Canadians with an approved blanket petition seeking L-1 classification

Canadian citizens, who are exempt from the L-1 visa requirement, may present the completed Form I-129S and supporting documentation to a U.S. Customs and Border Protection (CBP) Officer at certain ports-of-entry on the United States-Canada land border or at a United States pre-clearance/pre-flight inspection station in Canada, in connection with an application for admission to the United States in L-1 status.

Please refer to CBP's website for additional information and/or requirements for applying for admission into the United States.

Optional filing of Form I-129S with USCIS

If the prospective L-1 employee is visa-exempt, the employer may file the Form I-129S and supporting documentation with the USCIS Service Center that approved the blanket petition, instead of submitting the form and supporting documentation directly with CBP.

INTRODUCTION TO L1-B

L-1B Intracompany Transferee Specialized Knowledge

The L-1B nonimmigrant classification enables a U.S. employer to transfer a professional employee with specialized knowledge relating to the organization's interests from one of its affiliated foreign offices to one of its offices in the United States. This classification also enables a foreign company which does not yet have an affiliated U.S. office to send a specialized knowledge employee to the United States to help establish one. The employer must file Form I-129, Petition for a Nonimmigrant Worker with fee, on behalf of the employee.

General Qualifications of the Employer and Employee

To qualify for L-1 classification in this category, the employer must:

- Have a qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate, collectively referred to as qualifying organizations); and
- Currently be, or will be, doing business as an employer in the United States and in at least one other country directly or through a qualifying organization for the duration of the beneficiary's stay in the United States as an L-1. While the business must be viable, there is no requirement that it be engaged in international trade.

To qualify, the named employee must also:

- Generally have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding his or her admission to the United States; **and**
- Be seeking to enter the United States to provide services in a specialized knowledge capacity to a branch of the same employer or one of its qualifying organizations.

Specialized knowledge means either special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

L-1 Visa Reform Act of 2004

The L-1 Visa Reform Act of 2004 applies to all petitions filed on or after June 6, 2005, and is directed particularly to those filed on behalf of L-1B employees who will be stationed primarily at the worksite of an of an employer other than the petitioning employer or its affiliate, subsidiary, or parent. In order for the employee to qualify for L-1B classification in this situation, the petitioning employer must show that:

- The employee will not be principally controlled or supervised by such an unaffiliated employer; and
- The work being provided by the employee is not considered to be labor for hire by such an unaffiliated employer.

New Offices

For foreign employers seeking to send an employee with specialized knowledge to the United States to be employed in a qualifying new office, the employer must show that:

- The employer has secured sufficient physical premises to house the new office ; and
- The employer has the financial ability to compensate the employee and begin doing business in the United States.

Period of Stay

Qualified employees entering the United States to establish a new office will be allowed a maximum initial stay of one year. All other qualified employees will be allowed a maximum initial stay of three years. For all L-1B employees, requests for extension of stay may be granted in increments of up to an additional two years, until the employee has reached the maximum limit of five years.

Family of L-1 Workers

The transferring employee may be accompanied or followed by his or her spouse and unmarried children who are under 21 years of age. Such family members may seek admission in L-2 nonimmigrant classification and, if approved, generally will be granted the same period of stay as the employee.

Change/Extend Status

If these family members are already in the United States and seeking change of status to or extension of stay in L-2 classification, they may apply collectively, with fee, using Form I-539, Application to Extend/Change Status.

Spouses

Spouses of L-1 workers may apply for work authorization by filing a Form I-765, Application for Employment Authorization with fee. If approved, there is no specific restriction as to where the L-2 spouse may work.

Blanket Petitions

Certain organizations may establish the required intracompany relationship in advance of filing individual L-1 petitions by filing a blanket petition. Eligibility for blanket L certification may be established if:

- The petitioner and each of the qualifying organizations are engaged in commercial trade or services;
- The petitioner has an office in the United States which has been doing business for one year or more;
- The petitioner has three or more domestic and foreign branches, subsidiaries, and affiliates; and
- The petitioner along with the other qualifying organizations, collectively, meet one of the following criteria:
    - Have obtained at least 10 L-1 approvals during the previous 12-month period;
    - Have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or
    - Have a U.S. work force of at least 1,000 employees.

Where an L-1 visa is required

In most cases, once the blanket petition has been approved, the employer need only complete a Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, and

send it to the employee along with a copy of the blanket petition Approval Notice and other required evidence, so that the employee may present it to a consular officer in connection with an application for an L-1 visa.

Optional filing of Form I-129S with USCIS

If the prospective L-1 employee is visa-exempt, the employer may file the Form I-129S and supporting documentation with the USCIS Service Center that approved the blanket petition, instead of submitting the form and supporting documentation directly with CBP.

INTRODUCTION TO H1B

H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models

This visa category applies to people who wish to perform services in a specialty occupation, services of exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project, or services as a fashion model of distinguished merit or ability.

Eligibility Criteria

Visa Category	General Requirements	Labor Condition Application Required?
H-1B Specialty Occupations	The job must meet one of the following criteria to qualify as a specialty occupation:Bachelor's or higher degree or its equivalent is normally the minimum entry requirement for the position • The degree requirement for the job is common to the industry or the job is so complex or unique that it can be performed only by an individual with a degree • The employer normally requires a degree or its equivalent for the position • The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.* For you to qualify to accept a job offer in a specialty occupation you must meet one of the following criteria: • Have completed a U.S. bachelor's or higher degree required by the specific specialty occupation from an accredited college or university • Hold a foreign degree that is the equivalent to a U.S. bachelor's or higher degree in the specialty occupation	Yes. The prospective employer must file an approved Form ETA-9035, Labor Condition Application (LCA), with the Form I-129, Petition for a Nonimmigrant Worker. See the links to the Department of Labor's (DOL) Office of Foreign Labor Certification and USCIS forms to the right. For more information see the "Information for Employers & Employees" link to the left.

	• Hold an unrestricted state license, registration, or certification which authorizes you to fully practice the specialty occupation and be engaged in that specialty in the state of intended employment • Have education, training, or progressively responsible experience in the specialty that is equivalent to the completion of such a degree, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.	
H-1B2 DOD Researcher and Development Project Worker	The job must meet both of the following criteria to qualify as a DOD cooperative research and development project: • The cooperative research and development project or a co-production project is provided for under a government-to-government agreement administered by the U.S. Department of Defense • A bachelor's or higher degree, or its equivalent is required to perform duties. To be eligible for this visa category you must meet one of the following criteria: • Have completed a U.S. bachelor's or higher degree required by the specific specialty occupation from an accredited college or university • Hold a foreign degree that is the equivalent to a U.S. bachelor's or higher degree in the specialty occupation • Hold an unrestricted State license, registration, or certification which authorizes you to fully practice the specialty occupation and be engaged in that specialty in the state of intended employment • Have education, training, or progressively responsible experience	No.

	in the specialty that is equivalent to the completion of such a degree, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.	
H-1B3 Fashion Model	The position/services must require a fashion model of prominence. To be eligible for this visa category you must be a fashion model of distinguished merit and ability.	Yes. The prospective employer must file an approved LCA with the Form I-129. See the links to the Department of Labor's Office of Foreign Labor Certification and USCIS forms to the right.

Application Process

Step 1: (only required for specialty occupation and fashion model petitions): Employer Submits LCA to DOL for certification.

The employer must apply for and receive DOL certification of an LCA. For further information regarding LCA requirements and DOL's inert process, see the "Foreign Labor Certification, Department of Labor"

Step 2: Employer Submits Completed Form I-129 to USCIS.

The employer should file Form I-129, Petition for a Nonimmigrant Worker, with the correct USCIS Service Center. The DOL-certified LCA must be submitted with the Form I-129 (only for specialty occupation and fashion models).

Step 3: Prospective Workers Outside the United States Apply for Visa and/or Admission.

Once the Form I-129 petition has been approved, the prospective H-1B worker who is outside the United States may apply with the U.S. Department of State (DOS) at a U.S. embassy or consulate abroad for an H-1B visa (if a visa is required). Regardless of whether a visa is required, the prospective H-1B worker must then apply to U.S. Customs and Border Protection (CBP) for admission to the United States in H-1B classification.

Labor Condition Application (LCA)

Prospective specialty occupation and distinguished fashion model employers must obtain a certification of an LCA from the DOL. This application includes certain attestations, a violation of which can result in fines, bars on sponsoring nonimmigrant

or immigrant petitions, and other sanctions to the employer. The application requires the employer to attest that it will comply with the following labor requirements:

- The employer will pay the beneficiary a wage which is no less than the wage paid to similarly qualified workers or, if greater, the prevailing wage for your position in the geographic area in which you will be working.
- The employer will provide working conditions that will not adversely affect other similarly employed workers. Period of Stay

  As an H-1B nonimmigrant, you may be admitted for a period of up to three years. Your time period may be extended, but generally cannot go beyond a total of six years, though some exceptions do apply under sections 104(c) and 106(a) of the American Competitiveness in the Twenty-First Century Act (AC21).

  Your employer will be liable for the reasonable costs of your return transportation if your employer terminates you before the end of your period of authorized stay. Your employer is not responsible for the costs of your return transportation if you voluntarily resign your position.

H-1B Cap

The H-1B visa has an annual numerical limit "cap" of 65,000 visas each fiscal year. The first 20,000 petitions filed on behalf of beneficiaries with a U.S. master's degree or higher are exempt from the cap. Additionally, H-1B workers who are petitioned for or employed at an institution of higher education or its affiliated or related nonprofit entities or a nonprofit research organization, or a government research organization are not subject to this numerical cap.

Family of H-1B Visa Holders

Your spouse and unmarried children under 21 years of age may seek admission in the H-4 nonimmigrant classification.

INTRODUCTION TO H2B

H2-B Temporary Non-Agricultural Workers

The H-2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary nonagricultural jobs. A U.S. employer, or U.S. agent as described in the regulations, must file Form I-129, Petition for Nonimmigrant Worker, on a prospective worker's behalf.

Who May Qualify for H-2B Classification?

To qualify for H-2B nonimmigrant classification, the petitioner must establish that:

- There are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work.

- The employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- Its need for the prospective worker's services or labor is temporary, regardless of whether the underlying job can be described as temporary. The employer's need is considered temporary if it is a(n):
    - *one-time occurrence* – A petitioner claiming a one-time occurrence must show that it has:
        - Not employed workers to perform the service or labor in the past, and will not need workers to perform the services or labor in the future; or
        - An employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker.

        or
    - *seasonal need* – A petitioner claiming a seasonal need must show that the service or labor for which it seeks workers is:
        - Traditionally tied to a season of the year by an event or pattern; and
        - Of a recurring nature.

    Note: Employment is not seasonal if the period during which the service or labor is needed is:

        - Unpredictable;
        - Subject to change; or
        - Considered a vacation period for the employer's permanent employees.

        or
- peakload *need* – A petitioner claiming a peakload need must show that it:
    - Regularly employs permanent workers to perform the services or labor at the place of employment;
    - Needs to temporarily supplement its permanent staff at the place of employment due to a seasonal or short-term demand; and
    - The temporary additions to staff will not become part of the employer's regular operation.

    or
- intermittent need – A petitioner claiming an intermittent need must show that it:
    - Has not employed permanent or full-time workers to perform the services or labor; **and**

- Occasionally or intermittently needs temporary workers to perform services or labor for short periods.

H-2B petitioners must also provide a single valid temporary labor certification from the U.S. Department of Labor (DOL), or, in the case where the workers will be employed on Guam, from the Guam Department of Labor (Guam DOL).

H-2B Cap

There is a statutory numerical limit, or "cap," on the total number of individuals who may receive H-2B nonimmigrant classification during a fiscal year.

Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are exempt from the H-2B cap.

H-2B Program Process

- ***Step 1****:* Petitioner submits temporary labor certification application to DOL. Before requesting H-2B classification from USCIS, the employer must apply for and receive a temporary labor certification for H-2B workers with the U.S. Department of Labor (or Guam DOL if the employment will be in Guam).

- ***Step 2:*** Petitioner submits Form I-129 to USCIS. After receiving a temporary labor certification for H-2B employment from either DOL or Guam DOL (if applicable), the employer should file Form I-129 with USCIS. With limited exceptions, the original temporary labor certification must be submitted with Form I-129.

- ***Step 3:*** Prospective workers outside the United States apply for visa and/or admission. After USCIS approved Form I-129, prospective H-2B workers who are outside the United States must:
  - Apply for an H-2B visa with the U.S. Department of State (DOS) at a U.S. Embassy or Consulate abroad, then seek admission to the United States with U.S. Customs and Border Protection (CBP) at a U.S. port of entry; **or**
  - Directly seek admission to the United States in H-2B classification with CBP at a U.S. port of entry.

*** Note**: Employers requesting employment in a position that is exempt from the U.S. Department of Labor's temporary labor certification application filing requirement may skip step 1 in the H-2B process.

Except as noted below, H-2B petitions may only be approved for nationals of countries that the Secretary of Homeland Security has designated, with the concurrence of the Secretary of State, as eligible to participate in the H-2B program.

The Department of Homeland Security publishes the list of H-2A and H-2B eligible countries annually in a Federal Register notice. Designation of eligible countries is valid for one year from publication.

Effective Jan. 18, 2014, nationals from the following countries are eligible to participate in the H-2B program:

H-2B Eligible Countries List

Argentina	Fiji	Moldova	Slovenia
Australia	Grenada	Montenegro	Solomon Islands
Austria	Guatemala	Nauru	South Africa
Barbados	Haiti	The Netherlands	South Korea
Belize	Honduras	Nicaragua	Spain
Brazil	Hungary	New Zealand	Sweden
Bulgaria	Iceland	Norway	Switzerland
Canada	Ireland	Panama	Thailand
Chile	Israel	Papua New Guinea	Tonga
Costa Rica	Italy	Peru	Turkey
Croatia	Jamaica	The Philippines	Tuvalu
Czech Republic	Japan	Poland	Ukraine
Denmark	Kiribati	Portugal	United Kingdom
Dominican Republic	Latvia	Romania	Uruguay
Ecuador	Lithuania	Samoa	Vanuatu
El Salvador	Macedonia	Serbia	Ethiopia
Estonia	Madagascar	Slovakia	Mexico

A national from a country not on the list may only be the beneficiary of an approved H-2B petition if the Secretary of Homeland Security determines that it is in the U.S. interest for him or her to be the beneficiary of such a petition.

Note: If you request H-2B workers from both eligible and non-eligible countries, USCIS suggests that you file two separate petitions. Filing one petition for workers from eligible countries and a separate petition for workers from non-eligible countries may help decrease delays.

Period of Stay

Generally, USCIS may grant H-2B classification for up to the period of time authorized on the temporary labor certification. H-2B classification may be extended for qualifying employment in increments of up to 1 year each. A new, valid temporary labor certification covering the requested time must accompany each extension request. The maximum period of stay in H-2B classification is 3 years.

A person who has held H-2B nonimmigrant status for a total of 3 years must depart and remain outside the United States for an uninterrupted period of 3 months before seeking readmission as an H-2B nonimmigrant. Additionally, previous time spent in other H or L classifications counts toward total H-2B time.

Exception: Certain periods of time spent outside of the United States may "interrupt" an H-2B worker's authorized stay and not count toward the 3-year limit.

Family of H-2B Workers

Any H-2B worker's spouse and unmarried children under 21 years of age may seek admission in H-4 nonimmigrant classification. Family members are not eligible for employment in the United States while in H-4 status.

Employment-Related Notifications to USCIS

Petitioners of H-2B workers must notify USCIS within 2 workdays if any of the following occur:

- **No show**: The H-2B worker fails to report to work within 5 work days of the latter of:
  - The employment start date on the H-2B petition; **or**
  - The start date established by the employer;
- **Abscondmen**t: The H-2B worker leaves without notice and fails to report for work for a period of 5 consecutive workdays without the consent of the employer;
- **Termination**: The H-2B worker is terminated prior to the completion of the H-2B labor or services for which he or she was hired; **or**
- **Early Completion**: The H-2B worker finishes the labor or services for which he or she was hired more than 30 days earlier than the date specified in the H-2B petition.

Additionally, to assist USCIS with identification of the H-2B worker, submit the following for each H-2B worker, if available:

- Social Security Number, and
- Visa Number

Note: USCIS defers to DOL's definition of "workday." According to the Fair Labor Standards Act (FLSA), this generally means the period of time on any particular day when an employee begins and ends his or her "principal activities."

How do I notify USCIS?

Notification should be made via email or mail to the USCIS Service Center that approved the I-129 petition. Although not required, email notification is strongly recommended to ensure timely notification.