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Protect the refugee.**

OPPORTUNITIES FOR EMPLOYMENT VISAS IN THE UNITED STATES

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There are a few main immigration categories for people who wish to legally live and work in the United States.

Each year, hundreds of thousands of people from around the world obtain visas that allow them to work legally in the United States. Some of these visas are temporary, while others lead to legal permanent residence (a “green card”). Most employment visas require an employer who is willing to sponsor the future employee to work in the United States.

This document provides a general overview of the most common types of U.S. employment visas. For people without close family ties in the U.S. and who are not leaving their countries because they are persecuted, employment visas may be the only option for immigration to the United States.

While the focus of this document is immigration through employment, there are other categories of visas. One is permanent immigration through **family**. An immediate relative of a United States citizen – which includes the spouse, unmarried children under the age of 21, and parents of U.S. citizen petitioners age 21 or older – has special immigration priority, and there are an unlimited number of visas for this category. Visas are also available to unmarried sons and daughters of U.S. citizens over the age of 21, and their children; spouses, children, and unmarried sons and daughters (age 21 and over) of Lawful Permanent Residents and their children; married sons and daughters of U.S. citizens and their spouses and children; and brothers and sisters of U.S. citizens aged 21 years and older and their spouses and children. The number of these visas is limited and there can be long wait times before they become available. To learn more about visa availability and wait times for family visas go to: <http://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates>.

Asylum is another immigration category. Every year people come to the United States seeking protection because they have been persecuted or fear that they will be persecuted because of their race, religion, nationality, membership in a particular group, or political opinion. With some exceptions, an asylum seeker must file an application for asylum within one year of arriving in the United States. There is no fee to apply for asylum. For more information visit <http://www.uscis.gov/humanitarian/refugees-asylum/asylum>. If you think you may be eligible for asylum, please contact HIAS.

While not available to people from every country, the U.S. offers an opportunity for some people to apply for a visa through the **diversity visa lottery**. Those who are selected and meet the requirements are eligible to apply for lawful permanent residence in the United States. The United States awards approximately 50,000 visas through this program each year. Applicants must apply online and there is no filing fee. For more information about how to apply and to see if your country is eligible please go to:

www.travel.state.gov/content/visas/english/immigrate/diversity-visa/entry.html.

This document is not a substitute for the advice of a legal professional, but provides basic information so readers may consider their potential options. **Applying for any U.S. visa is complicated and, therefore, we strongly advise that no one file an application without the assistance of an experienced and reputable immigration lawyer or an immigration representative accredited by the Board of Immigration Appeals.**

Finding a reputable attorney is critically important. Attorneys who specialize in employment visas are located across the United States and in many countries abroad. However, before hiring any attorney, always inquire about the professional's training and experience. Asking for references is a good idea. Once you've decided on an attorney, be sure to discuss costs, a payment schedule, timing, and work expectations *in advance*. Be sure to obtain a written contract for the work, and make certain you understand it fully. One resource for finding an attorney is the American Immigration Lawyers' Association (AILA). Their referral service can be accessed at www.aialawyer.org.

Before you decide to pursue an employment visa, **there are some important things to know:**

Filing for an employment visa can be costly and can take months. Depending on the type of visa, preparation and processing times range from several weeks to several months. Attorney costs and filing fees typically cost several thousand dollars, and may be higher depending on the complexity of the application and any unusual circumstances that may apply in a particular case. An employer may request that a case be considered within 15 days, but must pay the U.S. government an additional fee of \$1,225, and there some petitions for which this expedited processing service is not available.

It is important to always obey the terms of your visa. The U.S. Government takes a harsh stance towards those who have violated the terms of their visa, particularly those stay longer than authorized. Even foreign nationals who overstay briefly can expect significant difficulties in obtaining their next visa. Those who have overstayed for 6 months or longer are almost certain to be refused entry for three years. Those who remain 12 months or more beyond their authorized stay are barred from re-entering the United States for ten years unless a hardship waiver is granted.

Immigration laws are subject to frequent change. The information presented here is based upon the experience of HIAS legal staff and the most up-to-date published information available from U.S. Citizenship and Immigration Services (USCIS) and other sources at the time this document was prepared.

For more information about HIAS programs, please visit www.hias.org.

OPPORTUNITIES FOR TEMPORARY WORK VISAS IN THE U.S.

Each year, hundreds of thousands of people come to work in the United States with “nonimmigrant” visas that allow the visa holder to work legally in the U.S. for a temporary period of time. Nonimmigrant visas, while temporary, can in some cases be a bridge to permanent legal status in the United States.

Some of the main features of nonimmigrant visas are:

- They are typically **valid for work only for the employer who sponsors the foreign worker**. While it is sometimes possible to change jobs, it can be costly and time consuming to make changes to the visa.
- They are **available only for certain occupations**.
- Their duration is typically **limited to two or three years at a time**. While extensions are often possible, for many employment visas the total time a foreign worker is allowed to remain working in the United States is limited to five or six years, unless the employer sponsors the worker for “permanent residence” – a lengthy process.
- **Applications must generally be filed weeks or months before the worker may actually start working in the United States.**
- **If the employment relationship ends for any reason, the visa becomes void automatically**, and the worker and accompanying family members can lose the legal right to remain in the United States.

With few exceptions, a U.S employer must submit the work visa application (rather than the employee). This means that a worker must secure a qualifying job offer in the U.S. *before* filing the application. This can be a serious challenge, particularly for workers with limited English skills. Individuals with unique skills may be better positioned to find employment. Workers must have perseverance, a well-written résumé and, most of all, personal and community contacts. Personal interviews are almost always required.

Coming to the United States for a temporary job search or temporary job interview on a tourist, business visitor, or through the visa waiver program is generally allowed. If, however, the immigration inspector or the consular officer believes it is the intention of the applicant to seek permanent resident status or to otherwise remain permanently in the United States, he or she may deny the applicant a visa or admission to the United States.

Typically, the visa petition is first filed inside the United States with U.S. Citizenship and Immigration Services (USCIS). Once this petition is approved, the worker then completes the second step of the process at a U.S. consulate or embassy outside the U.S., usually in one's country of residence. Exceptions to this general rule are applicants for "E" (treaty investors and their employees) visas, who can file their petitions directly with the U.S. consulate or embassy abroad. Because these applicants can bypass USCIS, the visa processing time is significantly reduced.

An individual who has entered the United States with a valid visa (for example, a visitor or student) may be able to change to a status that allows him to work by filing an application in the U.S. This allows the applicant to start work without first leaving the country to obtain a visa. This is not a possibility for those who have entered under the "Visa Waiver" program. Visa Waiver entrants are visitors from designated countries on business or pleasure trips who may enter the U.S. for up to 90 days without a visa. For a current list of countries whose citizens may enter the U.S. under a visa waiver, check the U.S. Department of State internet website at www.state.gov and follow the links to "visa waiver." Chile is the only Latin American country that participates in the visa waiver program; most European countries participate. Israel does not participate in the visa waiver program.

A worker who has received an employment visa can bring his/her spouse and unmarried, minor children (under 21) to the U.S. with them. The ability of the spouse to work depends on the type of visa that the foreign worker has obtained (see below), but spouses and children can attend school and travel within and outside of the United States with any type of visa. Changes to the law enacted in 2002 expand the number of visa categories that permit spouses to work. However, the most popular employment visa – the "H-1B" for temporary professional workers – still does *not* allow spouses to seek employment. Embassies and consulates will adjudicate visa applications based on same-sex marriage in the same way they adjudicate applications based on opposite-sex marriage.

Nonimmigrant Employment Visas

Employment visas are available for work at small and large companies, including for-profit, non-profit, and government employers. Following is a brief description of some of the most commonly used employment visas.

The H-1B Visa Professional Workers

Many specialized professionals qualify for the most popular employment visa, known as the H-1B. These include computer analysts, architects, executive chefs, economists, financial or marketing analysts, psychotherapists, teachers, accountants, chemists, biologists, registered nurses and physical therapists, and other professionals.

To be eligible, the employee must have a university degree in an area related to the field of requested employment, or the equivalent in experience (generally, three years of related full-time work experience for each year of university education generally required for the job in question). The employer must require the equivalent of a university degree from all similar employees, and must pay the foreign employee the “prevailing wage” for that profession in that geographic area, or the wage the employer pays others in similar positions – whichever is higher. The employee usually must also hold all U.S. federal, state and local licenses required for the occupation (exceptions are made in limited instances for those working under the supervision of a licensed professional). An H-1B visa is initially valid for three years, with one possible extension of up to three more years. A seventh year may be available if the worker is being processed for permanent resident status.

A frequently asked question is whether sales positions qualify for H1-B visas. While a position with sales responsibilities that justifiably requires a specific university degree or the equivalent may qualify, most sales positions do not – even if they require a license (i.e. real estate). Moreover, any position that is dependent on commissions and does not have a guaranteed salary which is equal to the prevailing wage will not qualify.

Currently, there is a limit on the number of H1-B visas that can be granted each year. In 2015, there are 65,000 visas allocated for professionals, with an additional 20,000 visas allocated for workers with a master or other advanced degree. In most years, the demand for these visas is greater than the supply, and the visas run out before the year is over. For this reason it is important to file early. The ideal time to file is on April 1st, which is six months before the new visas become available on October 1st of each year and the earliest date that applications can be filed. The visa quota for visas becoming available on October 1, 2014 was met on April 7, 2014. Note that some employers are exempt from these caps, including university and other educational employers and some non-profit employers.

The spouse of an H-1B may not work, unless the spouse finds an employer who is willing to sponsor him or her for a visa.

The R-1 Visa Religious Workers

Religious organizations in the United States employ workers in a variety of fields under the R-1 religious worker visa. These include teachers or administrators in religious schools, rabbis, priests, sextons, cantors, nuns, and other specialized religious workers. To be eligible, the employee must have been a member of the religion for at least two years, and must have the skills necessary to perform the job. The R-1 visa is not limited to professional positions that require a university degree.

Jobs in religious institutions that do not relate to the performance of religious functions do NOT qualify for an R-1 visa. Examples of such non-qualifying work include maintenance workers, clerks, fundraisers, etc. If a position is for a rabbinical

(or similar clergy) position, the applicant must document ordination and, if the professional position requires a degree, a U.S. baccalaureate degree or the foreign equivalent.

To obtain this visa, the U.S. religious organization sponsoring the foreign religious worker must first file a petition with USCIS. The R-1 is valid for an initial period of 30 months, with a possible extension of 30 more months. A religious organization may also sponsor an R-1 visa holder for permanent resident status. However, the religious worker must have two years of religious work experience immediately preceding the permanent visa petition in order to qualify for permanent status.

The spouse or unmarried minor child of an R-1 visa holder may study and live – but not work – in the United States (unless the family member finds an employer to sponsor him or her).

The R-1 visa program for non-clergy religious workers is scheduled to expire on September 30, 2015 (the program for clergy does not expire). Unless Congress extends the program, which it has done past years but is not certain, all R-1 visas must be approved before September 30, 2015.

*The **H-2B** Visa Seasonal Workers*

Many fields in the United States experience seasonal or temporary worker shortages. For example, in the travel industry, large numbers of hotel and resort workers are needed during the peak vacation seasons. Foreign workers filling these seasonal non-agricultural positions may be eligible for an H-2B visa.

Employers must show that the need for the prospective worker is temporary (regardless of whether the underlying job is temporary), that unemployed persons capable of performing the job are not available, and that employing the foreign worker will not adversely affect the wages and working conditions of similarly employed workers. The H-2B is valid for an initial maximum period of one year, with extensions for up to a total of three years. There is a cap of 66,000 H-2B visas that can be issued each year, with 33,000 to be allocated for employment beginning in the 1st half of the fiscal year (October 1 - March 31) and 33,000 to be allocated for employment beginning in the 2nd half of the fiscal year (April 1 - September 30). Any remaining visas from the first half of the year will be made available during the second half of the year, but any remaining at the end of the year will not carry over to the next year. These quotas are often met before their deadlines.

The spouse or unmarried minor child of an H-2B visa holder may study and live – but not work – in the United States (unless the family member finds an employer to sponsor him or her).

The L-1 Visa
Intra-company Transferees

Those who work at companies abroad can sometimes be transferred to affiliated organizations in the United States under the L-1 visa category. To be eligible, the employee must have specialized skills essential to the company, or be an executive or manager. The transferee must have worked at a non-U.S. affiliate of the company for at least one year. This visa is typically valid for three years, with possible extensions of up to two years for employees with specialized skills essential to the company until the employee has reached the maximum limit of five years, and for executives or managers until the employee has reached the maximum limit of seven years.

An intra-company transferee may be transferred to the United States to work for an established affiliate of the company, or to establish a new affiliate in the United States. When the purpose is to open a new affiliate of the company, USCIS pays particularly close attention to the economic viability and the business plan of the new affiliate, and only grants the initial petition for one year (renewable, however, up to five or six years). The intra-company transferee visa is only valid so long as the company continues to maintain at least one operating affiliate outside the United States.

The spouse of an L-1 visa holder may obtain permission to work in the U.S. without a sponsoring employer.

The H-3 Visa
Trainees

Many people come to the United States for training that is unavailable in their home countries. Once they find U.S. sponsors, these workers may be eligible for H-3 training visas. Before granting an H-3 visa, the sponsor must convince USCIS that the requested worker will actually return home when the training period is over. The H-3 visa is granted for the duration of the training, up to two years. It may be applied to any field of endeavor – agriculture, commerce, communications, finance, government, transportation or other professions – with the exception of medicine. One important restriction on the H-3 visa is that trainees may not engage in productive employment that would displace a U.S. worker during the duration of their training period in the U.S.

The spouse of an H-3 trainee is not permitted to work.

The J-1 Visa
Scholars, Researchers & Exchange Visitors

Scholars, professional trainees and researchers invited to the United States as J-1 exchange visitors are typically paid for their work. The permitted duration of the J-1 visa ranges from several months to several years, depending on the activity to be performed in the United States. While physicians, professors, scholars, and post-

doctoral students with J-1 visas are generally authorized to work for longer periods, most exchange visitors are limited to working for no more than 18 months.

A J-1 exchange visitor in a qualifying professional position, may remain in that position while an application for change of status to H-1B is pending. However, medical doctors of all nationalities, and members of certain other professions suffering personnel shortages in their home countries, must return to their home countries for two years before they may enter the United States to work under a different visa classification. Waiving this requirement is sometimes possible, but involves a difficult and lengthy procedure.

The spouse of a J-1 visitor may apply for employment authorization without a sponsoring employer.

The F-1 & M-1 Visas Students & Practical Training

Foreign nationals coming to the United States to pursue full-time academic or vocational studies are admitted under the F-1 or M-1 nonimmigrant category. The F-1 category includes academic students in colleges, universities, seminaries, conservatories, academic high schools, other academic institutions, and in language training. The M-1 category includes vocational students. To qualify for an F-1 or M-1 visa, you first must apply to study at an approved school in the United States.

Foreign students are eligible for 12 months of work authorization by participating in the Optional Practical Training program (OPT). If a student has been enrolled for one academic year, he or she may participate in “pre-completion OPT.” Students may seek on-campus employment for up to 20 hours per week if they are employed as part of the terms of a scholarship or will not displace a U.S. worker. Students may receive authorization for up to 20 hours per week of off-campus employment during the course of their studies only if they can demonstrate, among other things, that an unexpected change in their financial circumstances has necessitated their employment. Students in OPT status may work full-time when school is not in session. Vocational students are ineligible for pre-completion OPT.

Following graduation, an F-1 student may participate in 12 months of “post-completion OPT.” Like pre-completion OPT, this work must be related to the student’s course of study. Any time engaged in pre-completion OPT will be deducted from the post-completion OPT available to a student.

Before granting a Student or an Exchange Visitor visa, the applicant must convince the U.S. consulate (or USCIS if one is applying for a change of status in the United States) that he will return to his home country. The spouse of an F-1 or M-1 student may not apply for employment authorization.

The E Visa
Businesspersons & Self-Employed Workers

As mentioned above, employment visas almost always require that one work for a U.S. company or organization, rather than be self-employed. Limited exceptions are available to persons who own or work for businesses abroad, or to those who establish (and manage) businesses in the U.S. While there is no specific level of investment required, the U.S. branch of the business must be expected to generate enough income to support more than just the investor and his or her family. The appropriate visas for these independent workers are the “L-1” visa (mentioned above) or the “E” visa.

To qualify for an E-1 (“treaty trader”) visa, the applicant must intend to engage in international trade in the U.S. The applicant’s company or its affiliate overseas must already be engaged in “substantial and ongoing” as well as “principal” trade in goods and/or services with the U.S., and the employee must be coming to the U.S. to fill a managerial or specialist position.

For the E-2 (“treaty investor”) visa, the applicant must seek to enter the U.S. solely to develop and direct an enterprise in which the applicant is an investor. Along with the investor, an employee of an E-2 visa holder may qualify for an E-2 visa if (s)he is a manager or hold some other essential position that a U.S. worker could not easily fill. The E-2 applicant must also be the same nationality as the principal alien employer, or if the principal alien employer is not an individual, the applicant must be the same nationality as individuals who own controlling shares of the company.

An E visa is typically issued for an initial two-year period and can be extended indefinitely in two year increments, so long as the business continues to function at an acceptable level. Unlike the L-1 Intra-Company Transferee Visa, an E visa does not require the individual to work for an affiliated company overseas prior to coming to the U.S.

The spouses of E visa holders are able to apply for employment authorization without a sponsoring employer.

The E visa is nationality-specific and depends on treaty provisions between the U.S. and the applicant’s country of nationality. Some nationalities are eligible only for the Treaty Trader (E-1) visa, others only for the Treaty Investor (E-2) visa, others for both types of visas and yet others for neither type. For a current list of eligible nationalities, check the U.S. Department of State internet website at www.state.gov and follow the links to “Treaty Trader and Investor Visas.” Note that nationals of Venezuela are not eligible for E visas. Nationals of Colombia, Argentina, and France are eligible for both E-1 and E-2 visas; nationals of Israel are eligible for E-1 visas.

The O and P Visas
Athletes, Entertainers, and Extraordinary Ability

The O-1 visa is available for individuals who demonstrate an “extraordinary ability” in the sciences, arts (including culinary arts), education, business, or athletics, which has been “demonstrated by sustained national or international acclaim.” It is also available to those who can show “extraordinary achievement” in motion picture or TV production. The O-2 visa is available for those required to assist the O-1 visa holder for a specific event or events because (s)he has critical skills and experience with the O-1 visa holder which cannot be readily performed by a U.S. worker and which are essential to the O-1 visa holder’s successful performance. An employer or U.S. agent (for those that are self-employed) must file the O-1 petition. O visas are issued for an initial period of up to three years with possible extensions available to complete the same event or activity in increments of up to a year.

The P visa is available for athletes that are “internationally recognized with a high level of achievement and group entertainers that have been “recognized internationally as outstanding in the discipline for a sustained and substantial period of time.” For group entertainers, at least 75 percent of the members of the group must have had a substantial and sustained relationship with the group for at least one year. P visas are generally issued for the time needed to complete the event not to exceed one year (except for individual athletes, where the initial period is not to exceed five years). Extensions are available to continue or complete the event in increments of up to one year or five years depending on the category of the applicant.

The spouse of O or P visa holder is not eligible for employment authorization.

OPPORTUNITIES FOR PERMANENT IMMIGRANT VISAS IN THE UNITED STATES

Foreign citizens who want to live permanently in the United States must first obtain an immigrant visa. This is the first step to becoming a Lawful Permanent Resident.

Under U.S. law, there is a limit to the number of immigrant visas that may be issued each year. The U.S. State Department is the agency that distributes visa numbers. Certain applicants have priority over others. Family sponsored preference categories are limited to 226,000 per year and employment based preference visas are limited to 140,000 per year. In addition, there are limits to the percentage of visas that can be allotted to each country. The Employment-based preference and Family-sponsored preference categories are detailed below.

Due to visa allocation limitations, there are not always sufficient immigrant visas available for the number of foreign nationals who seek to obtain them. The Department of State allocates a certain number of visas per preference category. To learn more about visa availability and how to determine your priority date go to:

<http://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates>.

To see the current priority date see the Visa Bulletin calendar here:
<http://travel.state.gov/content/visas/english/law-and-policy/bulletin.html>

Employment-Based Immigrant Visas

The five categories of immigrant visas available to foreign nationals based on their job skills are described below. Some of these visas require that applicants already have a job offer from a U.S. employer who is referred to as a “sponsor.” For some of the categories, the sponsor must first obtain an approved “labor certification” from the U.S. Department of Labor prior to submitting an immigrant petition. The labor certification verifies that there are insufficient available, qualified, and willing U.S. workers to fill the position being offered at the prevailing wage, and that hiring a foreign worker will not adversely affect the wages and working conditions to similarly employed U.S. workers.

The labor certification and application process for a permanent employment visa is a lengthy, costly, and complicated process. For this reason, most foreign workers first obtain a temporary nonimmigrant employment visa before applying for a permanent one.

*The **EB-1** Visa: First Preference Extraordinary Ability, Outstanding Professor or Researcher, and Multinational Executive or Manager*

First preference employment visas are based on either extraordinary ability, being an outstanding professor or researcher, or a multinational executive or manager. Extraordinary ability or outstanding achievement in a field can be demonstrated by having national or international acclaim or international recognition for one’s achievements. These applicants do not need to have an offer of employment prior to applying.

Foreign nationals seeking EB-1 visas as multinational executives or managers must have been employed in that capacity at a company outside the U.S. in the three years prior to applying for an immigrant visa. These applicants must have a job offer prior to applying, and an employer must file the petition for them.

*The **EB-2** Visa: Second Preference Advanced Degree or Exceptional Ability*

EB-2 visas are available for members of professions holding an advanced degree or its equivalent, or foreign nationals with exceptional ability in the sciences, arts or business. A petition for an EB-2 visa must generally be accompanied by a labor certification. An individual applying based on an advanced degree must show that the job applied for requires an advanced degree or that they have a baccalaureate degree plus five years progressive work experience in the field.

If a foreign national has exceptional ability and can demonstrate that it is in the U.S.'s national interest that the individual work permanently in the U.S., (s)he may seek a National Interest Waiver requesting that the labor certification be waived.

*The **EB-3** Visa: Third Preference
Skilled Workers, Professionals and Other Workers (Unskilled Workers)*

Foreign nationals may seek to obtain an EB-3 visa as skilled workers, professionals or as unskilled workers. All foreign nationals seeking an EB-3 visa are required to provide a labor certification and a permanent, full-time job offer.

*The **EB-4** Visa: Fourth Preference
Special Immigrants.*

The EB-4 visa is used for a variety of unrelated "special" circumstances, and therefore is called a "special immigrant" visa. The specific circumstances covered by this category are the following: religious workers, broadcasters, Iraqi/Afghan translators, Iraqis who have assisted the U.S., international organization employees, physicians, armed forces members, Panama Canal Zone employees, retired NATO-6 employees, spouses and children of deceased NATO-6 employees.

In most cases, an employer must file the petition, but there are some exceptions in which the foreign national may self-petition.

*The **EB-5** Visa: Immigrant Investor*

Foreign nationals who want to invest in a new commercial enterprise may be eligible for an EB-5 visa. In addition to the investment requirements, to qualify for an EB-5 visa, an applicant must fulfill a job creation requirement.

For more detailed information on each of the visa categories you can go to:
<http://www.uscis.gov/working-united-states/permanent-workers>