MOST COMMON U.S. NON-IMMIGRANT VISAS

CORDERO & ASSOCIATES
ATTORNEYS AT LAW

2022

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COMMON NON-IMMIGRANT VISAS

FOR INVESTORS:

E-VISA

TREATIES between the United States and many countries allow foreign nationals to come to the United States to conduct trade or to manage substantial investments. Unlike the permanent resident investor visa (EB-5 visa), there is no fixed minimum dollar amount for treaty investment. Those qualifying for the E-1 (Trader) or E-2 (Investor) visas can pursue long-term business objectives using these practical visas. Be sure to consult with an attorney experienced in immigration matters to be certain that your case is prepared correctly.

Who Qualifies for an E-1 Treaty Trader Visa?

A person may be issued an E-1 Treaty Trader visa if:

- The individual or the company has the nationality of the treaty country (at least half of the company must be owned by nationals of the treaty country)

- There is a substantial trade (more than 50 percent of the company's international trade) between the United States and the treaty country. "Trade" includes the exchange, purchase, or sale of goods or services; the transfer of technology; and binding contracts that call for the immediate exchange of items of trade. Such trade must be continuous and ongoing

- The individual is either the principal trader who is coming to the United States to engage in substantial trade, or an executive, manager, or employee with special skills essential to the company

Countries with Treaties for E-1 Visas:

Argentina	Australia	Austria	Belgium
Bolivia	Bosnia Herzegovina	Brunei	Canada
Chile	China (Taiwan)	Colombia	Costa Rica
Croatia	Denmark	Estonia	Ethiopia
Finland	France	Germany	Greece
Honduras	Ireland	Israel	Italy
Japan	Jordan	Korea (South)	Kosovo
Latvia	Liberia	Luxemburg	Macedonia
Mexico	Montenegro	Netherlands	Norway
Oman	Pakistan	Paraguay	Philippines
Poland	Singapore	Slovenia	Spain
Suriname	Sweden	Switzerland	Thailand
Togo	Turkey	United Kingdom	Yugoslavia

Who Qualifies for an E-2 Treaty Investor Visa?

A person may be issued an E-2 Treaty Investor visa if:

- The individual or the company has the nationality of the treaty country (at least half of the company must be owned by nationals of the treaty country).
- The individual or the company has made or is in the process of making a substantial capital investment (relative to the total value of the company) in a bona fide business enterprise in the United States.
- The individual is either the principal investor who will direct and develop the enterprise, or an executive, supervisor, or employee whose services are essential to the efficient operation of the U.S. company.
- The investment has the present or future capacity to generate more than enough income to provide minimal living for the investor and his or her family, or has a present or future capacity to make a significant economic contribution.

Countries with Treaties for E-2 Visas:

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

How Long Can E Visa Holders Remain in the United States?

E visas are generally issued for five years. Nationals of certain countries are issued E visas for a shorter period of time, depending on reciprocity rules. Extensions of stay in the United States may be granted as long as eligibility continues and the treaty remains in force At the border, E visa holders are admitted to the United States for two years at each entry (notwithstanding the visa-validity period). Extensions of stay in the United States may be granted for up to two years at a time from the appropriate U.S. Citizenship and Immigration Services (USCIS) service center. An E visa may be reissued for up to five years at the home consulate with submission of appropriate documentation establishing the ongoing trade and continuing operation of the business investment enterprise. The spouse and children of E visa holder do not require treaty country nationality. Children may attend school and spouses in E status are eligible to apply for an employment authorization document.

FOR CORPORATE TRANSFERS, SUBSIDIARIES AND AFFILIATES:

L-1 VISA

THE SMOOTH TRANSFER of your company's key employees to the United States is always of great concern. Many executives, managers, and employees with specialized knowledge can come to work in the United States using the L-1 intracompany transferee visa. This brochure provides a brief description of some of the benefits, requirements, and procedures relating to L visas. It should not be taken as legal advice. To be certain your individual situation is handled properly, be sure to consult with an attorney experienced in immigration matters.

Which Companies Qualify to Transfer Employees to the United States?

Only those companies that exactly meet the U.S. Citizenship and Immigration Services (USCIS) definitions of a parent, branch, subsidiary, or affiliate qualify to petition for an L-1 intracompany transferee visa. These definitions are very precise and require an analysis of both the foreign and U.S. ownership of the related companies. Both the foreign and U.S. operations must be doing business for the entire time that the L-1 employee is working in the United States.

There are provisions to allow a new office to open in the United States, provided that evidence is submitted to USCIS to prove that the new office has a suitable place to do business, a qualifying business structure exists, a viable business plan is in place, and the employer has the ability to pay the employee and to begin doing business in the United States. Each case must be well documented with evidence proving that all of the legal criteria are met.

Which Employees Qualify as L-1 Intracompany Transferees?

Intracompany transferees are executives, managers, and employees with specialized knowledge. The definition of manager includes an employee who manages an essential function of the business within a qualifying organization. An executive directs the management of the organization, establishes its goals and policies, exercises wide latitude in discretionary decisions, and receives only general supervision. In determining whether the positon is managerial or executive USCIS will look beyond mere job titles and descriptions. For example, it typically and seriously considers

staffing levels, among many other factors. Specialized knowledge employees must have special knowledge of the organization's products, services, research, equipment, management, or other interests, and its application in international markets, or an advanced knowledge or expertise in the organization's processes and procedures. Classifying the employee in the correct category is important, particularly if the company might later want to sponsor the employee for permanent residence. The intracompany transferee petition should always be structured to allow the easiest transition to permanent resident status.

A key qualification for all employees is continuous employment abroad with a qualifying foreign employer for one year within the three years preceding the time of the employee's application for admission into the United States.

How Long Can L-1 Employees Remain in the United States?

The L-1 is a temporary visa with specific limitations on periods of stay in the United States.

- If the employee is qualified as a *manager* or *executive*, he or she may remain in the United States for up to seven years.
- If the employee is classified in the *specialized knowledge* category, he or she may stay up to five years.
- An exception to these limits exists where the employment in the United States is seasonal, intermittent, or for an aggregate of six months or less per year.

How Does the Company Get an L-1 Visa for Its Employees?

A petition for an L-1 visa must be filed by the company with the USCIS service center having jurisdiction over the place of intended employment. Except for a company that is opening a new office in the United States, the initial petition may be granted for a three-year period and renewed in two-year increments up to the maximum permitted stay. New offices are limited to an initial 12-month period, with extensions depending on the business and financial performance of the new office. Once the petition is approved, the employee may apply for an L-1 visa at a U.S. consulate abroad. If the employee is in the United States and maintaining some other legal status, in many cases he or she may apply for a change of status in the United States. However, this option is not available to those who entered the United States pursuant to the Visa Waiver Program. A transferee's spouse or unmarried children under 21 years old may be granted L-2 visas. Spouses of L-1 visa holders may apply for work authorization. Other L-2 visa holders, however, are not permitted to work, although they may attend school.

FOR PERSONS WHO ARE EXTRAODINARY IN A PARTICULAR FIELD INCLUDING BUSINESS, ENTERTAINMENT, ATHELETICS AND THEIR SUPPORT:

O & P VISAS

ENTERTAINERS, ATHLETES, AND CERTAIN EXTRAORDINARY PERSONS have the ability to temporarily enter the United States with an O or P nonimmigrant visa. The O visa category enables foreign nationals who have demonstrated extraordinary ability or extraordinary achievement in certain fields, or those who have critical skills and experience with such an individual, to obtain a temporary working visa.

The P nonimmigrant visa is available to foreign entertainment groups, athletes, or entertainers who wish to enter the United States temporarily to perform under a reciprocal exchange program or a program that is culturally unique.

This brochure provides a brief description of some of the requirements and procedures relating to O and P visas. It should not be taken as legal advice. To be certain your individual situation is handled properly, be sure to consult with an attorney experienced in immigration matters.

Who Qualifies for an O Visa?

The O visa category is for highly talented or acclaimed foreign nationals who may not qualify in other work-related nonimmigrant categories such as H, L, or J, or who wish to avoid those classifications for various reasons. Especially helpful to artists, athletes, entertainers, high-end chefs, and business people lacking professional degrees, the O classification can be useful and flexible alternative to the H-1B program.

The O visa is available for:

- A foreign national who has demonstrated extraordinary ability the sciences, arts, education, business, or athletics (or extraordinary achievement in the fields of film or television), proven by sustained national or international acclaim or the receipt of internationally recognized awards;
- An individual who has the critical skills and experience necessary to assist in the artistic or athletic performance of an O visa holder for a specific event, and is an integral part of the actual performance; or
- A dependent spouse or child of an O visa holder. Dependents in this derivative visa category are not authorized to work while in the United States.

What Are "the Arts"?

The law broadly defines the term "arts" to include any field of creative activity or endeavor, including (but not limited to) fine arts, visual arts, culinary arts, and performing arts. Persons engaged in the field of arts include not only the principal creator and performers, but other essential persons such as directors, set designers, lighting designers, choreographers, conductors, orchestrators, coaches, makeup artists, and animal trainers.

What is Extraordinary Ability?

In the field of arts, it means a high level of achievement evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such a prominent foreign national is described as "renowned, leading, or well-known in the field of arts."

In the field of science, education, business, or athletics, it means a level of expertise sufficient to put the petitioner
among "the small percentage who have arisen to the very top" of his or her field of endeavor.

With respect to motion picture and television production, it is evidenced by a degree of skill and recognition significantly above that ordinarily encountered, to the extent that the foreign national is recognized as "outstanding notable, or leading in the motion picture or television field."

Who Qualifies for a P Visa?

The P visa is another category available for athletes, as well as for members of entertainment groups. In general, P visas a more appropriate than O visas for group artists entering the United States on trips of limited duration. And, for many athletes, P visas are easier to obtain. More specifically, the P visa may be issued to a foreign national who is temporarily coming to the United States:

- ✓ To perform with an entertainment group that has been internationally recognized in its field, provided the individual has had at least a one-year relationship with the group as a performer or provides functions integral to the performance;
- ✓ To perform with an entertainment group that has been internationally recognized in its field, provided the individual has had at least a one-year relationship with the group as a performer or provides functions integral to the performance;
- ✓ To perform in a reciprocal exchange program between a U.S. organization and one or more foreign exchange organizations that provide for the exchange of artists and entertainers; or
- ✓ To perform, teach, or coach as an individual or part of a group on a program that is culturally unique.

  Dependents of a P visa holder can also obtain P VISA. These derivative visa holders are not authorized to work while in the United States.

What Must the Employer Do?

Petitions for O and P visas may be filed by a U.S. company or an authorized U.S. agent with a U.S. Citizenship and Immigration Services (USCIS) service center having jurisdiction over the place of intended employment U.S. agents may file petitions on behalf of those who are traditionally self-employed, on behalf of those who use agents to arrange short-term employment with numerous employers, and on behalf of foreign employers. The petitions must be filed with accompanying documentation to prove that the individual is qualified for the visa. In most cases, the employer must also obtain a consultation from an appropriate union or peer group (and management organization for motion picture and television cases) regarding the nature of the work to be done and the qualifications of the foreign national.

How Long Can the Employee Stay in the United States?

An O visa may be granted for the period of time required for the event(s) or activities states in the petition, but may not exceed three years. Further extensions are available. P visas may be granted for the period required to complete the competition or event. The maximum initial term allowable for an individual athlete is five years, for a total period of stay not exceed 10 years. The maximum initial term for athletic teams, entertainers, and entertainment groups is one year. Extensions in these categories may be granted increments of one year to continue or complete the activity or event for which they were admitted.

FOR STUDENTS:

F-1 VISA

FOREIGN STUDENTS are permitted, under U.S. immigration laws, to come to America to go to college, a language school, or a private elementary or secondary school). U.S. schools can obtain authorization from U.S. Immigration and Customs Enforcement (ICE) (a division of the Department of Homeland Security) to admit foreign students and to issue documentation allowing students to obtain F-1 nonimmigrant visa classification. Dependents are allowed to accompany students in F-2 visa classification.
A foreign student in F-1 classification may stay in the United States for extended periods of time to complete degrees or other academic goals, and, under certain circumstances, may be allowed to work in the United States.

This brochure provides a brief description of some of the requirements and procedures relating to job options for F-1 students. It should not be taken as legal advice. To be certain your individual situation is handled properly, be sure to consult with an attorney experience in immigration matters.

EMPLOYMENT

Allows students the opportunity to gain experience, interact with American business, and, where necessary, supplement family support or personal resources due to changed financial need.

On-Campus Employment

F-1 students may be employed on campus as long as the student works no more than 20 hours a week while school is in session. Students may be employed full-time during vacations and recess periods as long as they intend to register for the next term.
On-campus employment means employment performed on the premises of the school or an affiliated off-site location. It includes employment of a type normally performed by students, such as work in the school library, cafeterias, or a student store, or employment that is part of a student's scholarship, fellowship, or assistantship.

Off-Campus Cooperative Programs and Internships

Cooperative (or co-op) training programs and paid internships (called "curricular practical training") are work study programs that are part of or related to a student's degree. A student cannot qualify for curricular practical training until he or she has completed nine months of study or is enrolled in graduate studies that require immediate participation in curricular practical training. Curricular practical training can be either part-time or full time. Once students work in full-time curricular practical training for 12 months or longer, they will be ineligible for post-completion practical training at the academic level.

Pre-Completion Practical Training

Off-campus pre-completion practical training in a field related to studies is permitted for F-1 students as long as the work is for no more than 20 hours a week while school is in session. Full-time employment under this category is allowed during vacations and recess periods as long as the student intends to register for the next term. Time spent in pre-completion practical training will be deducted from the 12 months full-time employment available for post-completion practical training at that academic level.

Employment Authorization Based on Severe Economic Hardship

Where unforeseen circumstances lead to a change in the student's economic situation, the student may apply for permission to work off-campus in any job of the student's choosing for 20 hours per week and full time when school is not in session. Employment based on necessity is not deducted from the time allowed for post-completion practical

training, but the student must have completed one academic year in F-1 status to qualify. The student must be in good academic standing.

Internship with International Organization

An F-1 student may be granted employment authorization to work for an "international organization" that is recognized under the International Organization Immunities Act.

Post-Completion Optional Practical Training (OPT)

An F-1 student is eligible for up to one year post-completion practical training. However, students who have received one year or more of full-time curricular practical training are ineligible for post-completion practical training. Time spent in pre-completion practical training is deducted from the 12-month maximum. Authorization for post-completion practical training may be granted for a maximum of 12 months and takes effect only after the student has graduated or completed a course of study. In any event, practical training must be completed within a 14-month period following the completion of studies. An F-1 student may be authorized to engage in post-completion practical training after each higher educational level.

Dependents

An F-1 student's dependent spouse and unmarried children under the age of 21 may be granted F-2 status. These F-2 dependents may not be employed while in the United States. Moreover, F-2 *spouses* are prohibited from engaging in full-time studies at any level. A dependent child in F-2 status, on the other hand, may attend primary and secondary schools full-time, but may not (without changing from F-2 to F-1 status) proceed to any post-secondary schooling on a full-time basis.

Application Procedures

All categories of employment for F-1 students require the prior approval of the college or university's international advisor. Additionally, students seeking pre- or post-completion practical training, hardship-based employment, or an internship with an international organization need to apply to U.S. Citizenship and Immigration Services (USCIS) for a work permit by submitting a Form I-765, along with a fee, and an I-20 endorsed by the school within 30 days prior to applying. The student may work only after USCIS issues the work permit. When applying for post- completion OPT, the application must be submitted to USCIS before completion of studies.

FOR PROFESSIONALS:

H-1B VISA

What does the Employer Do?

The employer must have a federal tax identification number. Foreign businesses not established in the United States cannot use this visa to bring employees here.

Obtain an Approved Labor Condition Application

The employer must prepare and file a Labor Condition Application (LCA) with the Department of Labor (DOL). The LCA is a form that must be carefully prepared and posted in two conspicuous places at the worksite. It requires the employer to describe the position and salary. The LCA also requires the employer to attest to complex facts concerning the wage, working conditions, labor conditions, and the giving of notice.

Once the LCA is approved, the employer files a petition with U.S. Citizenship and Immigration Services (USCIS), a part of the Department of Homeland Security. The employer must document that the position requires the service of a person in a "specialty occupation". This means a person who is working in a professional position that requires a minimum of a bachelor's degree or its equivalent in experience and/or education in a specific field related to the job. H-1B visas are limited to 65,000 with an additional 20,000 for applicants with advanced degrees. Applications may be filed up to 6 months prior to commencement date. Since more applicants apply for H-1B visas than are available, 6 months prior to October 1st (that is April 1st), USCIS chooses the 65,000 + 20,000 on a random basis. There are some exceptions to this CAP, however.

THE H-1B VISA may be used to bring a worker temporarily to the United States if the employee will work in a "specialty occupation" or a professional position. Legislation in 1990, 1998, 2000, and 2004 made significant changes in the employer's obligations with respect to obtaining and maintaining the H-1B visa, the forms used to apply for the visa, the application filing fees and procedures. The H-1B visa is also subject to caps, and the visa may not be available if the H-1B quota for any given fiscal year (October 1st to September 30th) has been reached.

What Are the Employer's Liabilities?

Completing the LCA is just the beginning. The employer must maintain a public access file containing information about the required wage paid to the H-1B worker and the posting of the notice. The employer must also maintain wage and hour records, as well as information concerning working conditions for all similarly situated employees. Upon request, these records must be provided to DOL's Wage and Hour Division.

If an employer does not document the wage, pay the required wage, or maintain the required records, the employer could be liable for substantial penalties, including back pay and fines up to $35,000 per violation. The employer could even lose the right to apply for H-1B workers as well as all other immigrant and nonimmigrant petitions for up to three years.

Employers are required to pay a fee for each H-1B application; check with your attorney to find out the current fee. If the employer terminates the services of the employee prior to the expiration of the H-1B status, the employer is responsible for paying the employee's return transportation to his or her last foreign residence.

What Must a Dependent Employer Do?

A "dependent employer" is one who has employed more than the specified percentage of H-1B workers relative to the workforce, determined by the size of the employer. Dependent employers are required to additionally attest that they have not displaced U.S. workers and have taken steps to recruit U.S. workers. The dependent employer may be exempt from these attestations, however depending on the salary and degree-requirement of the H-1B worker.

What Does the Employee Do?

The employee must prove that he or she is qualified for the specialty occupation and the specific job offered by the employer. The employee must be able to show that his or her foreign university degree and/or work experience is the equivalent of a U.S. degree.

Workers in the United States who currently hold a valid nonimmigrant visa may apply in the United States for H-1B status. For example, if a worker is in lawful student status (an F-1 visa), he or she may seek a change from F-1 to H-1B. This change gives the person the ability to work in the United States for the sponsoring employer. However, the H-1B employee may change employers if the new employer files a petition on his

or her behalf. If the worker needs to travel abroad, he or she will need to apply for an H-1B visa at a U.S. Consulate. Workers not in lawful status in the United States or those residing abroad must apply for an H-1B visa at a U.S. consulate, and may not apply for H-1B Status in the United States.

What Are the Employee's Liabilities?

Under current law, a person who fails to maintain status (*e.g.*, by engaging in unauthorized employment, or by staying beyond the authorization period) may be required to depart the United States and may be ineligible to return, depending upon how long such failure to maintain status existed.

How Long Can the H-1B Employee Remain in the United States?

The H-1B is a temporary status with specific limitations on periods of stay in the United States. The initial petition may be approved for up to three years. After the initial period, three more years are available. The employer must update or refile the LCA and must file H-1B petition extensions. After six years, the worker must spend one year outside the United States before he or she is entitled to have another H-1B visa. Many workers on H-1B visas obtain permanent resident status (the "Green Card") during their initial stay in the United States. H-1B visa holders pursuing a Green Card may, in some cases, extend their stay beyond the six-year limit, the H-1B employee's spouse and unmarried children under 21 years old may be granted an H-4 visa. H-4 visa holders are not permitted to work in the United States. They may, however, attend school.