



FREQUENTLY ASKED QUESTIONS BY APPLICANTS

At Naidoo Law we provide complete transparency with our clients about how the process works and what will be expected of them in order for us to successfully serve as advocates on their behalf. We will clearly explain everything to you every step of the way.

To help you understand the process, what follows are a series of frequently asked questions and our answers.

Disclaimer: The content of this site is not intended to substitute accurate advice which is relevant to all of the facts and circumstances of your case. We recommend you seek a detailed legal consultation for that purpose.

To discuss your questions further and review your situation with us, please contact us for a consultation at: info@naidoolaw.com or call us at: 972-997-7233.

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Questions that are best addressed during a consultation:

- How do I determine the best immigration/visa option for me and my family?
- How long does a temporary residence or citizenship process take?
- How long does a permanent visa process take?
- What are the risks I could face if I don't follow the proper protocol?
- What should I do if I'm already here and I don't have an appropriate visa?

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Questions that are best addressed during a consultation:

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What should I do if I'm already here and I don't have an appropriate visa?

Because each case is unique and there are many options that can be utilized to manage each situation, it's important to discuss these questions through a consultation with an immigration attorney.

How can I enter the U.S. as an academic student?

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The wide variety of educational facilities in the U.S. offer great opportunities for students wishing to further their education and training. The intellectual stimulation and social experiences of studying in the U.S. will be vital parts of a student's growth and development.

Foreign national students who want to study in the U.S. usually apply for the F-1 visa. Although the J-1 and M-1 Visas (for vocational students) are sometimes used, most foreign students enter in F-1 status.

Your spouse and unmarried children under the age of 21 are allowed to join you in the U.S., under F-2 status. A prospective student's Form I-20A-B may be used to request an F-2 visa.

If your spouse and/or dependent children are joining you later, they will need to submit Form I-20A-B, endorsed from the school you are attending. F-2 visa holders cannot work while in the U.S. nor attend school without changing their status to F-1. An F-2 child may attend school-elementary through 12th grade.

How can I enter the U.S. as a vocational student?

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The M-1 visa offers a great opportunity for foreign nationals to gain new and strengthen existing technical, non-academic skills. The M-1 visa is offered to students who wish to pursue full-time study at a USCIS approved vocational or non-academic school in the U.S. M-1 visa vocational programs are meant to provide international students educational and vocational skills that will benefit them upon return to their home country.

M-1 students may also obtain work authorization in the U.S. after they have completed their vocational program(s). Spouses and unmarried children under age 21 may accompany or join the M-1 student to the U.S. in M-2 dependent status. However, spouses and children are not permitted to work. Children are permitted to attend school (kindergarten to 12th grade). Spouses may take recreational and a vocational courses but not full-course studies.

How can I enter the U.S. to work in a specialty occupation?

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The H-1B Visa has become a somewhat mythical visa category over the years. It's the visa everybody wants and thus it is the visa that receives the most attention. The laws regarding the H-1B Visa constantly change; interested candidates should stay informed about the frequent updates to the law.

The H-1B Visa allows foreign workers in "specialty occupations" to enter the U.S. and work in a variety of fields, including Architecture, Engineering, Modeling, Medicine, and Health. This visa is sometimes used to hire workers for the Department of Defense. The H-1B Visa offers a wide range of employment possibilities and is a substantial first step toward permanent immigration.

This visa is issued in three-year increments, for a maximum of six years.

Applicants must have a U.S. Bachelor's Degree in their specialty or a license in fields that require licensing, such as teaching or pharmacy. The visa is not self-petitioned, which means you will need an employer to sponsor you. You can stay in the U.S. for up to six years, after which you are required to leave the U.S. for at least one year before being eligible again.

Your spouse and unmarried children under the age of 21 may join you in the U.S. under H-4 status. However, they are not permitted to work unless they personally qualify for a work visa.

How can I receive training in the U.S.?

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The H-3 Visa is specifically designed to enable you to train in the U.S. in almost any discipline. The USCIS calls this loose classification, 'any field of endeavor'. This includes agriculture, technology, communications and governmental leadership. This loose classification does not include people seeking graduate medical training. Nurses and medical students on vacation, however, may be eligible for the H-3 Visa.

Your spouse and unmarried children under the age of 21 are allowed to join you in the U.S. under the H-4 status. Family members are not permitted to work while in the U.S.

How can a religious worker enter the U.S.?

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R-1 Visas are available to members of the clergy and also to key employees of religious organizations. The R-1 Visa enables religious workers to temporarily enter the United States. A religious vocation is defined as a calling to religious life, shown by a demonstration of a lifelong commitment; for instance, taking vows. Nuns, monks, and religious brothers and sisters are examples of religious workers. A religious occupation is defined as a continual engagement in an activity related to a traditional religious function. This definition includes liturgical workers, religious instructors or cantors, catechists, workers in religious hospitals, missionaries, religious translators and religious broadcasters. However, it doesn't include janitors, maintenance workers, clerks, fund raisers or solicitors of donations.

The spouse and/or unmarried children under 21 years of age may be granted derivative status to enter the U.S. They are not authorized to work while in the U.S., but may attend school.

How can an individual with extraordinary abilities enter the U.S.?

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The O-1 Visa is for outstanding individuals. The visa enables people with extraordinary ability in the sciences, arts, education, business, athletics, motion picture or television industry to enter the US for temporary periods of time. USCIS loosely defines this category, and the spectrum of eligible individuals also includes chefs, carpenters and lecturers. To be considered an outstanding individual, you should be highly regarded in your field, and can only work in the U.S. in that area of expertise.

Your spouse and unmarried children under the age of 21 may join you in the US under O-3 status. While they may not work while in the U.S., family members are allowed to attend school.

How can support personnel of people with extraordinary abilities enter the U.S.? >> [back to list](#)

Support personnel of O-1 visa holders in the fields of athletics, entertainment, motion picture and television production may request an O-2 visa to work in the U.S. temporarily. This status is not applicable to personnel in the sciences, business or education.

Spouses and unmarried children under age 21 are allowed to accompany or join the O-2 worker, in O-3 dependent status. However, they cannot work unless they independently qualify for a work visa. Spouses and children are permitted to attend school while in O-3 status.

How can entertainers, artists or athletes enter the U.S.? >> [back to list](#)

Artists and athletes are an essential portion of healthy cultural exchange. The global community benefits greatly from the work of each country's greatest thinkers and performers. P-1 visas are issued to entertainers, circus artists, and athletes who wish to work in the U.S. Outstanding athletes may apply for this visa in order to compete in the U.S., either as individuals or as members of an internationally recognized athletic team.

Entertainment groups with an outstanding international reputation can be granted P-1 classification as a unit; however individual entertainers within these groups cannot apply for separate visas. Your spouse and unmarried children under the age of 21 are permitted to accompany you to the United States, under a P-4 status. P-4 visa holders are not allowed to work, but may attend schools or colleges. Servants of a P-1 visa holder may receive a B-1 visa with work authorization.

How can artists or entertainers involved in an exchange program enter the U.S.? >> [back to list](#)

Artists and athletes are an essential portion of healthy cultural exchange. The global community benefits greatly from the work of each country's greatest thinkers and performers. P-2 Visas are issued to troupes or bands entering the U.S. as a part of an exchange program. There should be two organizations involved in this exchange program: one in the US and one abroad. Your spouse and unmarried children under the age of 21 are permitted to accompany you to the United States, under a P-4 status. P-4 visa holders are not allowed to work without being granted permission.

How can art educators enter the U.S.?

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The P-3 visa is for artists or entertainers, individually or as a group, who are coming to the U.S. for developing, interpreting, representing, coaching or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical artistic performance or presentation.

The spouse and unmarried children under the age of 21 are permitted to accompany the P-3 to the United States, under a P-4 status. P-4 visa holders are not allowed to work, but may attend schools or colleges.

What is the best way to enter the U.S. to engage in a business venture?

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The B-1 visa is a popular visa because it allows foreign nationals to enter the U.S. for up to 180 days for business related purposes. This visa allows foreign nationals access to a variety of business and economic ventures in the U.S.

B-1 visitors may engage in commercial transactions and to participate in scientific, academic or business meetings. However, the visa specifically forbids productive work or work that may be construed as gainful employment.

Spouses and unmarried children under age 21 are allowed to accompany or join a B-1 visitor in the U.S., in B-2 visitor status. Spouses and children are not permitted to work or attend school.

What is the ideal tourist visa?

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The B-2 visa enables foreign nationals interested in visiting the U.S. for pleasure for up to 180 days. The U.S. is world renowned for its many tourist attractions and events, including many of the world's leading travel destinations.

Pleasure activities include touring, amusement, visits to family and/or friends, medical treatment and activities of a social nature. Foreign students wishing to visit or tour U.S. schools and universities prior to enrollment may also enter on a B-2 status.

What is the visa classification for ‘treaty traders’?

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U.S. immigration policy supports investors and foreign commerce in a variety of ways. The E-1 visa is one method for ensuring healthy commerce with the world. The E-1 visa is issued to individuals known as ‘treaty traders’. A treaty trader is defined as a national of a country with which the U.S. maintains a treaty of commerce and navigation.

You should be coming to the U.S. to carry on substantial trade, or to develop and direct the operations of a business in which you have invested or will soon invest a substantial amount of capital. You must also be a national of a treaty country and you must be involved in international trade. Your spouse and children may join you under the same status. Your employees, or the employees of your treaty company, may also receive E-1 visas.

What is the visa classification for ‘treaty investors’?

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U.S. immigration policy supports investors and foreign commerce in a variety of ways. The E-2 visa is one way the U.S. ensures healthy commerce with the world. The E-2 visa is issued to individuals known as ‘treaty investors’. A treaty investor is defined as a national of a country with which the United States maintains a treaty of commerce and navigation.

You should be coming to the U.S. to partake in a substantial investment. Your investment may be less than that required for the EB-5 (\$500,000). However, if the investment becomes equal or greater than \$500,000, you may petition for permanent immigration status. Your spouse and/or children under the age of 21 may accompany you under E-2 status. Your employees may also be eligible for the E-2 Visa.

I am an exchange visitor. What visa should I apply for?

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The J-1 visa is designed to provide educational and cultural exchange programs, and to promote the sharing of individuals, knowledge and skills in education, arts and sciences. This visa enables people to participate in exchange visitor programs in the United States. Participants in this visa include students, trainees involved in on-the-job training, teachers engaged in research and teaching and international visitors interested in traveling, researching, consulting and demonstrating specific knowledge. Your spouse and/or unmarried children under the age of 21 may apply for entry under J-2 status.

I am an exchange visitor interested in receiving training in the U.S.

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What visa should I apply for?

The Q-1 international cultural exchange program provides practical training, employment and the sharing of the history, culture, and traditions of the participant's home country in the United States. This visa enables individuals to participate in exchange visitor programs in the United States.

Can I enter the U.S. for a brief period of time without obtaining a visa?

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The Visa Waiver Program offers an easy, effective method for foreign nationals to travel to the U.S. for business or pleasure for up to 90 days without having to apply for a B-1 or B-2 visitor visa. The program is only available to foreign nationals of participating countries. The list is updated by the U.S. Department of State.

Foreign nationals interested in visiting the U.S. for business or pleasure under the Visa Waiver Program must first register in the Electronic System for Travel Authorization (ESTA) before traveling to the U.S. Registering with ESTA enables the U.S. to determine in advance if the foreign national is eligible to visit the U.S. without having to apply separately for a B-1 or B-2 visa. Although ESTA was initially free upon its initial release, fees for ESTA were imposed in September of 2010.

I am traveling through the U.S.

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Can I visit family/friends while waiting for my departing flight?

Travelers passing through the United States don't need to be trapped in the airport. The C-1 Visa, also known as the transit visa, enables traveling nonimmigrant's to leave the airport and visit family or friends or partake in tourist or shopping ventures. While you are required to leave the U.S. on your departing flight, you are able to spend your waiting time enjoying your surroundings. Each family member should apply for a separate C-1 visa, which will enable the entire family eligible to travel through the U.S.

What visa can I use to travel to the UN?

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Individuals involved in the United Nations may use the C-2 Visa to travel to the U.N.

I am a foreign government official.

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How can I visit family/friends while waiting for my departing flight?

Foreign government officials on official business traveling through the U.S. may enter in C-3 status. The visa is issued for a short duration and allows C-3 travelers the ability to leave the airport during layovers in order to visit family or friends, tour or shop in the U.S. Group travelers or families should ensure that each individual in their group has their own C-3 visa.

How can foreign media representatives enter the U.S.?

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The I Visa is a vital tool in a global system, where news and cultures are shared and dispatched across national lines. The I Visa is available to media employees including reporters, freelance journalists and film crew members; mainstream filmmakers are not eligible for this status. I visas are available to persons only to work for a foreign media outlet, or a U.S.-based subsidiary of a foreign media company.

Your spouse and unmarried children under the age of 21 may be eligible for a derivative I status. Your employer must offer a letter detailing your position. I visas, however, are not available to fiancées. If your spouse or children wish to visit you in the U.S., they may choose to apply for a B-2 visa. They may also be eligible to travel under the Visa Waiver Program.

Is there a temporary visa classification for fiancées?

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A fiancé (e) of an American citizen who will be entering the U.S. solely to marry that American citizen should apply for a K-1 Visa. The marriage should take place within 90 days of entering the U.S. Minor children of the fiancées can apply for a K-2 status and enter the U.S. The K-1 Visa enables one to apply for conditional permanent resident status.

Where can I find out more information about the LIFE Act and Amendments?

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On December 21, 2000 the President signed into law significant new immigration legislation, effective April 1, 2001. The Legal Immigration and Family Equity (LIFE) Act and amendments have effectively created new categories of nonimmigrant visas, including three V Visas, the K-3 Visa and the K-4 Visa. Extremely helpful for second preference beneficiaries and spouses of U.S. citizens, these visas will help ease the immigration process for thousands of individuals, and reunite families separated for long periods of time during the process of immigration.

The new categories will allow the issuance of nonimmigrant visas to spouses, children and, in some cases, grandchildren of both lawful permanent resident aliens and spouses of U.S. citizens. Beneficiaries may apply for admission to the U.S. as nonimmigrant's and then remain in the U.S. until the visa petition is approved or denied. If the petition is approved, beneficiaries may continue to remain in the U.S. until the application for adjustment of status is approved or denied, or may seek an immigrant visa at a consular office abroad.

These new categories specifically relate to spouses and children for whom an immigrant visa or adjustment of status is not available even though the petition has been filed. This unavailability may be due to lengthy processing delays or the absence of available visa numbers due to annual visa limitations.

Where can I find out more information about employment-based immigration?

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One of the most widely used methods to obtain legal permanent residence in the U.S. is through an employment-based immigrant visa petition, which allows for five classifications commonly referred to as preferences.

EB-1: First Preference, Priority Workers

EB-2: Second Preference, Professionals with Advanced Degrees or Persons with Exceptional Ability

EB-3: Third Preference, Skilled or Professional Workers

EB-4: Fourth Preference, Special Immigrants

EB-5: Fifth Preference, Immigrant Investors

I am a U.S. citizen or lawful permanent resident.

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Can I sponsor my family for immigration to the U.S.?

Permanent immigration in the US comes with a variety of rights and privileges. One method to obtaining lawful permanent residency is through a relative who is either a citizen of the US or a lawful permanent resident.

There are two categories for unlimited family-based immigration:

1. Immediate Relatives of US Citizens (IR): A spouse, widow or unmarried child under the age of 21 of a US citizen. This category also includes parents of adult US citizens.
2. Returning Residents (SB): Immigrants who previously lived in the US under lawful permanent resident status. These individuals should be returning to live in the US after being abroad for more than one year.

There are four preference categories for limited family-based immigration:

1. First Preference: Unmarried children over the age of 21 of US citizens.
2. Second Preference: Spouses of lawful permanent residents, their unmarried children under the age of 21, and unmarried children under the age of 21 of lawful permanent residents.
3. Third Preference: Married children of US citizens.
4. Fourth Preference: Siblings of adult US citizens.

Your relative should first submit an immigrant visa petition, I-130 Petition for Alien Relative. This form should be accompanied by proof of your relationship to your relative.

Upon approval of this petition, the Department of State will determine if an immigrant visa number is available for you. When a number becomes available, you may apply for assignment of that number.

What is the process for sponsoring a spouse?

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U.S. Immigration law allows two methods for U.S. citizens to bring future spouses to the U.S.: the K-1 Fiance Visa and the Alien-Spouse Immigrant Visa. The K-1 Visa generally takes less time to process than the Alien-Spouse Visa. The Alien-Spouse Visa, however, is a proven path toward lawful permanent residency for your spouse.

If the marriage takes place abroad, an I-130 petition should be filed after the marriage. This petition should be filed either with USCIS in the U.S., or at a U.S. Embassy or Consulate abroad.

Where can I get more information about the Diversity Lottery?

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Each year since 1994, the Diversity Lottery Program allocates 55,000 new immigrant visas each year for individuals from underrepresented nations. A nation is considered underrepresented if less than 50,000 people from that nation immigrated to the US in the past five years.

To be eligible for the Diversity Lottery Program, you should have either a high school education, its equivalent or two years work experience within the last five years in a job which demands two years training.

You or your spouse must be a native of a nation eligible for the Diversity Lottery Program. You may be eligible if your parent was born in a country eligible to participate in the lottery.

The Diversity Lottery Program randomly picks the 55,000 visa candidates. Individuals are chosen to receive the visa by chance, not by merit. For the annual Diversity Lottery, check the State Department site: www.travel.state.gov.

I am an asylee/refugee. How can I change status to permanent residency?

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The U.S. immigration allows people who have well-founded fear of persecution to seek asylum or refugee status that will allow them to obtain permanent residency (green card). However, to qualify the applicant need to belong to one or more of the 5 categories of people who have well-founded fear of persecution because of his or her:

- race,
- nationality,
- religion,
- membership of a particular social group or because he or she is identified with a particular social group,
- political opinion that will subject him to persecution.

Also, the law requires that an applicant must apply within 1 year of arriving in the U.S. otherwise; applicant must show either extraordinary circumstances or changed circumstances in his or her home country.