



## EMPLOYER TOOLKIT

We know how important it is for your business to get the immigration or naturalization process right for your employees. To help you along the way, we've developed an Employer Toolkit that includes an overview of both temporary and permanent immigration, the most frequently leverage options for businesses, an FAQ and list of resources that may be helpful.

The following information provides a high-level of information regarding immigration and naturalization in the U.S. Please click on the topic from the list below to get to the correct section featuring that information.

[An Introduction to U.S. Immigration/Naturalization](#)

[Most Frequently Used Options for Businesses](#)

[FAQs](#)

[Resources](#)

**Disclaimer:** The content of this fact sheet is not intended to substitute accurate advice which is relevant to all of the facts and circumstances of a 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](mailto:info@naidoolaw.com) or call us at: 972-997-7233.

### Temporary Immigration:

The non-immigrant visa classification covers a broad range of visas used to enter the United States for work, pleasure or study. Some visas are considered 'dual status'; you may attempt to obtain permanent residency (a green card) while under that classification. Most non-immigrant visas, however, require you establish the demonstration of non-immigrant intent. This means you should demonstrate that you have a permanent residence in your home country that you have no intention of abandoning. The duration of time you may spend in the U.S. can range from a few days to several years, depending on the visa. In most situations, your spouse and unmarried children under the age of 21 may accompany you on a derivative visa.

### Permanent Immigration:

As a general overview, immigrants to the U.S. are divided into two categories of permanent immigrant visas: individuals who may acquire permanent residency without numerical limitation and individuals who are subject to a yearly limitation.

For the second category of permanent immigrant visas, there are three sub-categories: family-based; employment-based; and diversity immigrants.

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

EB-1 Priority Workers:

The EB-1 classification is open for 3 types of foreign nationals that:

1. Possess Extraordinary Ability in the Sciences, Arts, Education, Business or Athletics, or
2. Are Outstanding Professors or Researchers, or
3. Managers and Executives of multinational business entities who are on international transfer to the U.S.

Persons in this category are allowed to file for permanent residency (green cards) and do not need to file labor certification application. Thus, beneficiaries in this group enjoy the highest priority among all employment-based green cards.

Individuals with extraordinary ability may self-petition. All other EB-1 petitions should be filed by your employer.

Either you or your employer should file-in Form I-140, the Petition for Alien Worker with the USCIS Regional Service Center that has jurisdiction over the location of your employment. This form should contain all necessary documents and evidence. Labor certification is not required for EB-1 petitions.

## EB-2 Professionals:

The EB-2 classification is open to 3 types of foreign nationals that:

1. Have exceptional Ability in the Sciences, Arts or Business, or.
2. are Advanced Degree Professionals, or
3. Qualified Alien Physicians who will practice medicine in an area of the U.S., which is underserved.

Your employer should file-in Form I-140, the Petition for Alien Worker with the USCIS Regional Service Center that has jurisdiction over the location of your employment. This form should contain all necessary documents and evidence. Perm Labor Certification is also required for most EB-2 petitions.

Individuals with exceptional ability in the sciences, arts or business may apply to waive the labor certification requirement if a waiver would be in the national interest.

## EB-3 Skilled or Professional Workers:

The EB-3 classification is open to foreign nationals with at least two years of experience as skilled workers, professionals with bachelors' degrees and the following:

1. Professionals with Bachelor's degrees who do not qualify for either categories EB-1 and EB-2, or
2. Aliens w/ at least two years of experience as skilled workers, professionals with a baccalaureate degree, or
3. Unskilled Workers who can contribute abilities unavailable in the U.S.

Your employer should file-in USCIS Form I-140 Petition for Alien Workers with the USCIS Regional Service Center that has jurisdiction over the location of your employment. EB-3 petitions also require an approved Perm Labor Certification from the Department of Labor.

## EB-5 Immigrant Investors:

Under U.S. immigration law, qualified individuals seeking permanent residence on the basis of their engagement in a new commercial enterprise can do so by applying for investor visas (i.e., EB-5 visas).

### Eligibility

Permanent resident status based on EB-5 eligibility is available to investors, either alone or coming with their spouse and unmarried children. Eligible application will need to meet the following requirements:

1. Establishment of a business.
2. Active involvement in the business.
3. Investment of at least \$1 million in the business (\$500,000 is acceptable in certain designated areas) which can be in cash, equipment, inventory, etc.
4. Benefiting U.S. economy through creation of full-time employment for not fewer than 10 U.S. workers

### Permanent Residence

Qualified EB-5 investors are subject to “conditional” permanent residence for a two-year period. During the two year’s conditional period, the EB-5 investor must continuously meet the legal requirements for EB-5 investors. 90 days before the second anniversary of the EB-5 investor’s admission to the U.S. as a conditional permanent resident, Form I-829 must be filed to remove the condition.

## H-1B Visa:

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.

#### H-2A Visa:

The H-2A Visa is the most functional of visa categories. It fills a specific need for the U.S. and for foreign nationals. The visa allows foreign workers entry to the U.S. to work in agriculture. Truthfully, the visa hasn't garnered much support in the community. Growers don't like the limits of the visa and advocates don't believe the laws give enough support to workers.

The H-2A visa is not self-petitioned. Employers must apply on behalf of their employees. The employer can be self-employed, a partnership, corporation or agricultural association. An agent may also apply on behalf of the employer. Workers' spouses and unmarried children under the age of 21 are allowed to join them in the US under the H-4 status. Dependents are not permitted to work, unless they personally qualify for a work visa.

#### H-2B Visa:

The H-2B visa is reserved for individuals who will be performing temporary nonagricultural services or labor. The U.S. employer's need for the service or labor should be a one-time occurrence, a seasonal need, a peak-load need or an intermittent need. Similar to the H-2A visa, the H-2B visa also requires a U.S. employer to submit a temporary labor certification to the Department of Labor demonstrating a shortage of U.S. workers.

Spouses and unmarried children under age 21 are allowed to accompany or join the H-2B worker, in H-4 dependent status. However, they cannot work unless they independently qualify for a work visa. Spouses and children are permitted to attend school while in H-4 status.

## L-1 Visa:

Businesses that function both in the United States and in their home country gain the benefits of the best of both areas. The L-1 visa is open to international organizations with offices in the U.S., and who transfer employees to the U.S office for temporary periods of time. This visa is sometimes referred to as the 'intra-company transferee' visa.

To obtain an L-1 visa, you must be able to prove that you have worked for the non-U.S. company for at least one full year within the last three years as an executive, manager or employee with specialized knowledge. The L-1 visa enables the transfer of managers, executives and specialized knowledge personnel to a U.S. office, subsidiary or affiliated company. This visa comes in the following categories:

- L-1A visas – for executives and managers
- L-1B visas – for personnel with specialized knowledge.

Your spouse and unmarried children under the age of 21 are allowed to join you in the U.S., under L-2 status. The L-2 spouse is allowed to work provided that s/he first obtains employment authorization from the USCIS. L-2 spouses as well as L-2 children can attend school or college. Servants may be eligible for a B-1 visa with work authorization.

## TN Visa:

Under the North American Free Trade Agreement (NAFTA), certain citizens of Canada and Mexico are eligible to enter the U.S. under the nonimmigrant Trade NAFTA (TN) status. The TN Visa enables Canadian and Mexican citizens to temporarily work in U.S. in a NAFTA-approved professional occupation.

The following are the requirements to be eligible for the TN Visa:

- The profession be on the NAFTA list.
- The foreign national must possess the necessary training for that profession.
- The proposed position must be classified as a professional position.
- The foreign national must work for a U.S. employer.

Spouses and/or unmarried children under the age of 21 are eligible to enter the U.S. under the derivative TD visas. Family members are not required to be Canadian or Mexican citizens, and are eligible to remain in the U.S. for the duration of the TN Visa holder's stay. They may either accompany the TN Visa holder to the U.S. or come at a later time.

Canadian applicants may apply for the TN Visa either at a port of entry or at a preclearance station and must provide the following information:

- Proof of Canadian citizenship.
- An offer of employment letter from the sponsoring employer detailing the duties to be performed.
- Copies of all relevant college degrees and employment records. This data should prove the applicant is sufficiently qualified for the proposed position.
- A processing fee.

Mexican citizens must apply for the TN visa at a U.S. Consulate and must provide the following information:

- A valid passport.
- Visa application form.
- Letter of employment from a U.S. employer indicating the position and why the position requires a professional.
- Evidence that the applicant is a professional.



Click on a question below to jump to the page with the answer >>

Questions best addressed through a consultation:

- How do we determine the best immigration/visa option for our overseas talent?
- How long does a temporary residence or citizenship process take?
- How long does a permanent visa process take?
- What are the risks to my business if we don't follow the proper protocol?
- What should we do if my company believes we may have an employee who doesn't have the appropriate visa?

How can I transfer employees to a U.S. operation?

How do I fill a temporary need for foreign workers?

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

What is the process underlying the hiring of foreign agricultural workers?

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

## Questions best addressed through a consultation:

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- What should we do if my company believes we may have an employee who doesn't have the 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 transfer employees to a U.S. operation?

Businesses that function in the U.S. and in their home country gain the benefits of the best of both areas. The L-1 visa is open to international organizations with offices in the U.S., and who transfer employees to the U.S. office for temporary periods of time. This visa is sometimes referred to as the 'intra-company transferee' visa.

To obtain an L-1 visa, you must be able to prove that you have worked for the non-U.S. company for at least one full year within the last three years as an executive, manager or employee with specialized knowledge. The L-1 visa enables the transfer of managers, executives and specialized knowledge personnel to a U.S. office, subsidiary or affiliated company. This visa comes in the following categories:

- L-1A visas – for executives and managers
- L-1B visas – for personnel with specialized knowledge.

## How do I fill a temporary need for foreign workers?

The H-2B visa is reserved for individuals who will be performing temporary nonagricultural services or labor. The U.S. employer's need for the service or labor should be a one-time occurrence, a seasonal need, a peak-load need or an intermittent need. Similar to the H-2A visa, the H-2B visa also requires a U.S. employer to submit a temporary labor certification to the Department of Labor demonstrating a shortage of U.S. workers.

Spouses and unmarried children under age 21 are allowed to accompany or join the H-2B worker, in H-4 dependent status. However, they cannot work unless they independently qualify for a work visa. Spouses and children are permitted to attend school while in H-4 status.

## What is the process underlying the hiring of foreign agricultural workers?

The H-2A Visa is the most functional of visa categories. It fills a specific need for the U.S. and for foreign nationals. The visa allows foreign workers entry to the U.S. to work in agriculture. Truthfully, the visa hasn't garnered much support in the community. Growers don't like the limits of the visa and advocates don't believe the laws give enough support to workers.

The H-2A visa is not self-petitioned. Employers must apply on behalf of their employees. The employer can be self-employed, a partnership, corporation or agricultural association. An agent may also apply on behalf of the employer. Workers' spouses and unmarried children under the age of 21 are allowed to join them in the US under the H-4 status. Dependents are not permitted to work, unless they personally qualify for a work visa.

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

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.

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.

### Resources

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**Note:** these are all hyperlinks.

[U.S. Citizenship and Immigration Services](#)

[U.S. Department of State](#)

[U.S. Department of Labor](#)