

## *NONIMMIGRANT (TEMPORARY) WORK VISAS FAST FACTS*

*How can an employer determine whether a candidate requires employment visa sponsorship?*

The Office of Special Counsel has stated that the following questions are acceptable for employers to use in determining whether a candidate needs visa sponsorship to be authorized to work in the United States:

- Are you presently legally authorized to work in the United States for any U.S. employer?
- Will you now or in the future require an employer to sponsor you for an employment-based visa/status in the U.S. (e.g. H-1B status)?



## Nonimmigrant Status vs. Nonimmigrant Visa

The terms “status” and “visa” are often used interchangeably when discussing the immigration status and employment sponsorship of a foreign national for work in the United States but there are distinct concepts for each of these terms:

### Status – What is It?

Status is the designation of the visa classification held by a foreign national while in the U.S. An individual acquires nonimmigrant status upon entry into the U.S. after the presentation of a nonimmigrant visa to U.S. Customs and Border Patrol (CBP). An extension or change of nonimmigrant status can also be granted to an individual after USCIS approves a nonimmigrant petition for the individual while he/she is in the U.S.

### Visa – What is it?

A nonimmigrant visa is issued by a U.S. Consulate and allows an individual to apply for admission into the United States upon presentation of the visa to CBP. A visa, by itself, is not evidence of an individual’s lawful status in the United States. All nonimmigrant visas, except for the B-1/B-2 visitor visa and E visas, must be accompanied by a valid USCIS petition in the corresponding visa category. Note: Canadians do not require visas except in the E-1/E-2 Investor category.

### What Documentation Serves As Evidence of Legal Nonimmigrant Status in the United States?

An individual’s nonimmigrant status in the U.S. is governed by the I-94 Arrival/Departure record. The I-94 record can be obtained electronically at <https://i94.cbp.dhs.gov/i94/#/home>. USCIS can also issue the I-94 record/card when a nonimmigrant petition is filed with USCIS requesting a change or extension of status. This card notes the status held by the individual as well as the duration of the individual’s status in the United States. The individual must either leave the U.S. by the noted expiration date or file a petition for an extension or change of status prior to that date. Note: F-1 students are granted D/S for Duration of Status and are not given a specific departure date and their lawful status is governed by the date on the I-20, Certificate of Eligibility for Nonimmigrant Student.

### What Documentation Services as Evidence of a Valid Nonimmigrant Visa?

U.S. consulates issue visa stamps in an applicant’s passport. A nonimmigrant visa must be valid in order for an individual to enter the U.S. but does not need to be valid for the duration of the individual’s stay.

## Nonimmigrant (Temporary) Business/Work/Training Visas

Visa Category	Employer Sponsorship Required?	Description	Duration of Stay	Is Dependent Spouse Authorized to Work in US?
<b>B-1 Business Visitor (Nationals of certain countries can enter on the Visa Waiver Program as business visitors)</b>  8 CFR §214.2(b)(1)	Depends on the purpose of the visit. If visa is required, apply at a U.S. consulate	Visitor for short-term business or professional activities including the following: business meetings, training, contract negotiation, consulting with business associates, and litigation	6 month initial stay – extension possible in certain circumstances	May not engage in US employment or receive US remuneration
<b>E-1 Treaty Trader/ E-2 Treaty Investor</b>  E-1: 8 CFR §214.2(e)(1)  E-2: 8 CFR §214.2(e)(2)	Yes – Authorized to work only with sponsoring employer	Perform services as investor (E-2) or trader (E-1); or executive, supervisor or essential skills employee of company that is majority owned by citizen/s of country with a treaty of commerce and navigation with the U.S. Applicant must have the same citizenship as qualifying E entity	No maximum limitation on stay in the US  Admitted for two years and can extend in two year increments	Yes, with I-94 designation of E2 spouse.
<b>E-3 (for Australians)</b>  20 CFR §655.700/  22 CFR §41.51€	Yes – Authorized to work only with sponsoring employer	Similar to H-1B (see below), available to citizens of Australia for employment in professional position requiring at least a Bachelor’s degree (a specialty occupation) and who possess at least a Bachelor’s degree in a related field	No maximum limit to length of stay  Granted for two years and can be extended in two year increments	Yes, with I-94 designation of E3 spouse.

*Nonimmigrant (Temporary) Business/Work/Training Visas (continued)*

Visa Category	Employer Sponsorship Required?	Description	Duration of Stay	Is Dependent Spouse Authorized to Work in US?
<b>F-1 Students</b> 8 CFR §214.2(f)	No – work authorization requires permission from USCIS or University	Student can be granted employment authorization off campus through Optional Practical Training (OPT) or Curricular Practical Training (CPT)	F-1 can obtain a total of up to 12 months of CPT. Can obtain up to 12 months of OPT if the full 12 months of CPT has not been used. OPT can be extended for another 24 months on or before the 12 month expiration date if the individual is eligible for STEM OPT.	No
<b>H-1B Specialty Occupation Workers/H-1B1</b> 8 CFR §214.2(h)(1)(ii)(B) 20 CFR §655.700	Yes – Authorized to work only with sponsoring employer	Employment in a specialty occupation that requires at least a Bachelor's degree or equivalent with at least a Bachelor's or equivalent in a related field. Employment in a specialty occupation that requires at least a Bachelor's degree or in a specific field to perform. Maybe subject to H1B lottery, may qualify for portability if in H1B status. Exemptions for qualifying Cap Exempt Employers.	6 year total stay – 3 year initial stay – 3 year extension  H-1B status can be extended beyond the six years under certain circumstances	Generally no  An H-4 can apply for EAD if H-1B spouse has an approved I-140 immigrant petition and the priority date is not current
<b>H-2A Agriculture Temporary Visa, H-2B Non Agriculture Temporary Visa</b>  H-2A: 8 CFR §214.2(h)(1)(ii)€  H-2B: 8 CFR §214.2(h)(1)(ii)(D)	Yes – Authorized to work only with sponsoring employer	Short-term skilled/unskilled workers for temporary agricultural (H2A) or nonagricultural (H2B) positions	H-2A/H-2B – varies depending upon the position but no more than 10-12 months per petition	No
<b>H-3</b> 8 CFR §214.2(h)(1)(ii)€	Yes – Authorized to work only with sponsoring employer	For training unavailable in their home country, to gain skills to use abroad.	Up to 24 months maximum	No
<b>J-1 Trainee/Intern</b> 8 CFR §214.2(j)	Must be sponsored by qualifying J program sponsor	Intern or trainee with an employer under authorized J program sponsor	Up to 18 months as a J-1 trainee or intern	Yes, with Employment Authorization Card
<b>TN (NAFTA Treaty Visa)</b> 8 CFR §214.2(b)(4)/ 8 CFR §214.6	Yes – employer specific (available only to Canadians and Mexicans)	Limited to certain professional occupation including lawyers, scientific technologists, systems analysts, engineers, etc.  Canadians can apply at port of entry, pre-flight inspection, or with USCIS  Mexicans can apply at U.S. Consulates in Mexico or with USCIS	3 year initial stay  3 year extension (indefinite stay)	No
<b>O-1 Outstanding Ability</b> 8 CFR §214.2(o)	Yes – employer or agent specific	Available to individuals with sustained national or international acclaim in arts, athletics, science, or business	Duration of event up to 3 years – annual renewals thereafter	No

## Nonimmigrant (Temporary) Business/Work/Training Visas (continued)

Visa Category	Employer Sponsorship Required?	Description	Duration of Stay	Is Dependent Spouse Authorized to Work in US?
<b>L-1 Intracompany Transferee</b>  L-1A: 8 CFR §214.2(l)  L-1B: 8 CFR §214.2(l)	Yes – Authorized to work only with sponsoring employer	Entering the US from qualifying foreign entity (subsidiary, affiliate, branch, or joint venture) to fill L-1A executive/managerial position or L-1B specialized knowledge position and must have worked abroad for at least one year with qualifying legal entity  Canadians can apply at port of entry, pre-flight inspection, or with USCIS  Other foreign nationals can apply at U.S. Consulates if employer has an approved Blanket L petition	3 year initial stay – 2 year extensions  7 year limit for L-1A manager/ executive and 5 years for L-1B specialized knowledge employee  New office L-1 – 1 year initial stay	Yes, with I-94 designation as L2 spouse.

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