



7 Frequently Used Business and Professional Visas

Whether you are a foreign national wishing to live and work in the U.S., an investor seeking business opportunities in the US, an executive of a multinational company planning to open or expand a US office or a US company seeking to recruit the best available talent for your business you may be faced with a significant challenge when it comes to finding the best immigration option for you or your employees.

Below we have outlined seven of the most frequently utilized US business and professional visas. Read through this guide to see if any could be right for you or your company, and be sure to speak with a qualified business immigration attorney like Linda M. Kaplan before taking action. *US immigration law is complex and the procedures are equally challenging making it essential that you have an attorney guide you throughout the process in order to ensure the best possible outcome.*

Contact the Law Office of Linda M Kaplan, PA today to discuss your immigration needs and options.

E-1 & E-2 Visas – Treaty Trader or Treaty Investor

The E-1 and E-2 Visas were created specifically for citizens of a ‘treaty country’ to come to the US to conduct international trade or invest in a business in the US. A treaty country is any country with which the US has a treaty of commerce and navigation. A list of treaty countries may be found here:

<https://travel.state.gov/content/visas/en/fees/treaty.html>

Please note that some treaties provide only for E-1 visas, some provide only for E-2 visas and some provide for both types of E visas.

The E-1 ‘Treaty Trader’ visa is for individuals who are coming to the US to engage in international trade principally between the US and the treaty country.



For the trade to be considered principally between the US and the treaty country, more than 50% of the dollar volume of the international trade must be between the US and the treaty country.

To qualify as a treaty trader, the business owned by the treaty national must conduct 'substantial' trade. The trade can consist of goods, services, banking, insurance, transportation, tourism, technology and certain news-gathering activities. No specific minimum dollar amount is required to meet the requirement of substantial trade. Instead the dollar amount and the number of transactions are taken into account as well as the requirement that the trade be continuous. A single large transaction will not qualify while numerous small transactions may.

The person who is accorded E-1 visa status must be coming to the U.S. as the principal trader or in a supervisory or executive position or must have "skills which are essential to the successful operation of the enterprise".

The E-2 'Treaty Investor' visa was created to allow nonimmigrants to come to the United States to make and oversee substantial investments in a US business. The investor in question must have invested or be in the process of investing substantial amounts into a bona fide enterprise within the United States. There is no specific dollar amount which must be invested to meet the "substantial" requirement but the investment must meet one of two tests:

- It must represent a significant proportion of the total value of the business enterprise (this test is usually applied to investments in existing businesses), or
- It must be sufficient to establish a profitable and viable business of the type contemplated.

The E-2 visa applicant must play a key role in the operation of the business. The visa applicant must either be the investor who is coming to the US to develop or direct the investment or must be an executive or manager or a highly trained employee with special skills necessary for the development of the investment.

E visas are generally issued for five years. E visa holders are admitted to the US for two years and extensions of stay may be granted for up to two years at a



time. Extensions and Visa Renewals are generally unlimited as long as the trade or investment continues.

L-1 Visa - Transfer of Foreign Employees to the US.

The L-1 visa allows Business Executives, Managers and employees with "specialized knowledge" to transfer from a foreign company to a US office, subsidiary, or affiliate. This visa may be used to allow the transfer of key personnel to open a new office in the United States or to an established office within the US.

Basic Qualifications for an L-1 Visa:

There must be a "Qualifying Organization". To have a qualifying organization there must be a foreign business operation that remains an active ongoing business during the entire time that the L-1 employee is working in the United States. This foreign business must be related to an existing U.S. business or in the process of establishing a new business in the US. The US business must be a parent, branch, subsidiary, or affiliate of the foreign business or must be a 50/50 joint venture partner of the foreign business.

The employee to be transferred must be an "Executive", "Manager" or have "Specialized Knowledge" and must be coming to the U.S. to fill one of these capacities with the US employer.

The employee must have worked abroad for the foreign company for at least one year in the last three years.

The foreign company for which the employee has worked must be the same employer or a parent, subsidiary, affiliate or 50/50 joint venture partner of the US company.



The L-1 employee must intend to depart the US upon completion of his/her authorized stay. However, due to changes made to the US Immigration laws in 1990, the filing of permanent residence papers by the L-1 employee will no longer be considered in determining whether an L-1 visa petitions will be issued or extended.

For purposes of the L-1 visa Executive, Manager and Specialized Knowledge are defined as set forth below.

EXECUTIVE

An Executive employee is one whose primary duties are to direct the management of the business or a major component of the business and establish business goals and policies, exercise a wide latitude of discretionary decision-making, and receive only general supervision or direction from higher level executives, the board of directors, or shareholders of the company. An employee with titles (and corresponding responsibilities normally relevant to these titles) such as President, Vice President or Treasurer should generally qualify as an Executive.

MANAGER

A Managerial employee is one whose primary duties are to direct a customarily recognized department or subdivision of the organization, or a function, or one who controls the work of other professional, supervisory, or managerial employees, who has the authority to hire and fire or recommend those actions as well as other personnel actions, and who exercises discretionary authority over day-to-day operations.

SPECIALIZED KNOWLEDGE

An employee is considered to have specialized knowledge with respect to a company if the employee has a special knowledge of the company products and its application in international markets, or has an advanced level of knowledge of processes and procedures of the company.

DURATION OF STAY IN US



The initial petition may be approved for a maximum of three years. Extensions can be granted to a total period of stay of seven years for Executives and Managers. Employees transferring based on specialized knowledge may stay up to a total period of five years. When the employee is coming to the US to open a new office, the initial petition will be approved for one year. After one year, an extension can be obtained upon providing proof that the company has been doing business both in the US and abroad during the initial one year.

H-1B Visa - Professionals Working in the US

H-1B specialty worker visa petitions may be filed with US Citizenship & Immigration Services. (USCIS) by US organizations which seek the temporary services of persons whose work requires a bachelors or higher degree in a specific occupational specialty. These fields of endeavor include, but are not limited to, most computer science jobs, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, physical therapy, business specialties, accounting, law, and many teaching positions.

Prior to filing a petition with USCIS, it is necessary to complete the following processes:

1. The "prevailing wage" for the position must be determined. We help employers obtain "prevailing wage" determinations and can also provide advice for the employer to use in determining the "actual wage".
2. The filing of Labor Condition Application (LCA) with the Department of Labor (DOL). We prepare and file the employer's LCA.

In recent years, the processing of the H-1B visas has been complicated because there are a limited number of H-1B visas issued each year and there are many more applications in one year than the number of visas available. Accordingly, it is important to begin processing as soon as possible and to obtain advice as to the availability of visa numbers.

H-1B1 Visa - Chile and Singapore Free Trade – Professional Visas

The H-1B1 visa is part of the US-Chile Free Trade Agreement and allows citizens of both Chile and Singapore to live and work in the US. In order to qualify, the applicant must be offered a position in a specialty occupation, which requires



specialized knowledge or experience. They must also have at least a post-secondary degree or similar experience.

One of the main benefits of the H-1B1 visa is that you stand a better chance of successfully obtaining an H-1B1 than you would an H-1B visa since the pool of potential applicants is limited to only those two countries.

O Visa - Individuals with Extraordinary Ability or Achievement

The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry and has been recognized nationally or internationally for those achievements. O visas include the following:

The O-1A visa is for individuals with extraordinary abilities in the sciences, education, business, or athletics

The O-1B is for individuals with extraordinary ability in the arts or achievements in the motion picture or television industry

The O-2 visa is for individuals who will accompany the O-1, artist or athlete to assist in a specific event or performance.

The O-3 visa is for spouses and children of persons with O-1 or O-2 visas.

This is a very subjective visa category, with applicants being required to demonstrate that they have risen to the very top of their field of endeavor

Those who use this visa will be coming to the US temporarily to work in their area of expertise. The O visa allows people to come to the US for periods of one year at a time, up to three years total. Many who use this visa, however, will stay for a significantly shorter period of time as they can only stay as long as they are working in their area of expertise. Professional athletes, for example, may use this visa to come in for just a period of a few weeks to participate in a sporting event.



TN Visas - North American Free Trade Agreement – for Canada and Mexico

The United States has negotiated employment provisions with Canada and Mexico as part of the North American Free Trade Agreement (NAFTA). The TN visa allows American companies to hire qualified professional employees from either Canada or Mexico to work in their US offices. The TN visa is similar to the H-1B in many ways and may be a useful alternative for employment when the H-1B is unavailable. Unlike the H-1B there is no limit on the number of TN visas which may be issued which means that they can be obtained any time of the year without concern for the cap or the April 1st deadline that is a problem with H-1B visas.

P Visa - Athletes, Artists and Entertainers

The P Visa is for athletes, artists and entertainers who want to come to America to perform. It comes in several subcategories, including the P-1A for internationally recognized athletes, the P-1B for members of an internationally recognized entertainment group, P-2 for performers or group members who are part of a reciprocal entertainment exchange program, and P-3 for artists and entertainers who are coming to the US to be part of a culturally unique program. Generally speaking, the artist or entertainer must be coming to the US for a specific event, tour or presentation and can only stay for the duration of the scheduled event.

Working with a Qualified Attorney

Immigration law is quite complex and the procedures are a challenge as well. Mistakes can be costly and may prevent you from obtaining the desired visa.

With this in mind, make sure you contact us and work with an experienced immigration attorney so you can be confident that the correct visa is being sought and that all the paperwork is being completed properly. We look forward to assisting your business!

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