

LIVING AND WORKING IN THE U.S.A.PRIVATE **AN OVERVIEW OF IMMIGRATION LAWS AND JOB CATEGORIES**

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I. INTRODUCTION

For those persons who desire to live and work in the United States, the U.S. Immigration Laws can be quite vague, confusing, overwhelming, and even contradictory. The purpose of this pamphlet is to give you an overview of U.S. Immigration Laws as it relates to living and working in the United States.

The pamphlet will be divided into two general sections. The first section will deal with immigrant visas of a permanent basis (green card). The second section will deal with nonimmigrant visas, that is, those persons coming to the U.S. on a temporary basis to live and work.

II. IMMIGRANT-PERMANENT VISAS

1. Family-Based Immigration

First: Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are

exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

III. EMPLOYMENT-BASED IMMIGRATION

There are currently five preference-based categories for permanent employment-based visas.

1. Priority Workers.

There are currently three groups of Priority Workers all of whom are equally entitled to available visas within this category. These visas do not require a labor certification requirement. That is to say, none of them require that the U.S. Department of Labor certify that there is a shortage in this particular job for which there is no U.S. citizen available to work. Those sub-categories are as follows:

(i) Persons of extraordinary ability.

Non U.S. citizens of extraordinary ability are defined by statute as those who can show "extensive documentation" that they have "extraordinary ability in the sciences, art, education, business or athletics, which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation." Neither a job offer, nor a labor certification is required for aliens of extraordinary ability.

(ii) Outstanding professors and researchers.

To qualify as an outstanding researcher, the alien must be internationally recognized as outstanding in a specific academic area and have a minimum of three years of experience teaching or researching in that area, and be entering the United States in a tenure or "tenure track" teaching or comparable research position at an institution of higher education. Alternatively, the employer may be a private company with at least three full-time research employees and who has "documented accomplishments in an academic field."

(iii) Multi-National executives and managers.

The third group of priority workers includes executives and managers of international employers who are coming to the United States in a managerial or executive capacity, and who has been employed as such outside the United States in the same company for at least one of the last three years preceding the filing of the petition. The petitioning company must be a U.S. employer, which is an affiliate, a subsidiary, or the same employer as a firm, corporation, or other legal entity that employed the alien abroad. The U.S. company must have been doing business for at least one year.

2. Managerial.

Requires a job in which the employee primarily manages the organization or a department, subdivision, function, or component of the organization, or supervises or controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization or a department or subdivision of the organization, or who has the authority to hire and fire and make personnel decisions and exercises discretion over the operations or a function of the company.

3. Executive capacity.

Requires an assignment within an organization in which the executive directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component or function; exercises wide latitude and discretionary decision making; and receives only general supervision or direction from higher level executives, the board of directors, or stock holders of the organization.

An offer of employment is required and the petition must be filed by the U.S. employer. No labor certification is required.

4. Members of the Professions holding Advance Degrees or Aliens of Exceptional Ability in the Sciences, Arts, Businesses or Professions.

This division is composed of two categories (1) Aliens showing possession of an advanced degrees and (2) aliens of exceptional abilities in the sciences, arts, or business who will substantially benefit the national economy, cultural or educational interests. All persons in these categories must obtain a labor certification unless the job has been pre-certified under what has been termed Schedule "A" from the Department of Labor. There must also be a job offer by a U.S. employer. An advanced degree is defined as any degree

beyond a baccalaureate and professions include lawyers, certified accountants, and other persons similarly qualified. Waivers and exemptions from the job offering labor certification can be given if it is in the national interest to do so.

5. Third Preference: Skilled Workers, Professionals and Other Workers.

In this category there are three types of aliens who may be allowed to apply for permanent work visas and green card in the U.S. There must be a job offer and a labor certification must be approved. The first group includes skilled workers who have a minimum of two years of training or experience. Post secondary education counts as training. The second group includes professionals who possess a baccalaureate degree or foreign equivalent which is required by the job. The third group is unskilled workers which is limited to 10,000 visas per year. These positions required less than two years experience or training and labor certification or Schedule A application as well as a job offer is required for these categories.

IV. SPECIAL IMMIGRANTS

There are three groups of special immigrants for which a labor certification is not required, they are:

1. Ministers of Religion.

They require least two years of continuous ministerial experience in the subject denomination immediately preceding the application and other religious workers who meet the two year experience requirement and who will work either for the denomination in a professional religious capacity or for the denomination of affiliated tax exempt organization and in a nonprofessional religious occupation.

2. Various Threatened Employees.

These include threatened employees at the U.S. Consulate in Hong Kong possessing at least three-year experience with the consulate.

3. Special juveniles.

They must be under court supervision in which the court has determined it is not in the best interest to return them to their home country. Only 2,000 visas per year may be given to special immigrants.

V. EMPLOYMENT CREATION VISAS

The 1990 Act provides a yearly maximum of 10,000 visas for applicants from \$1,000,000.00 or \$500,000.00 in a rural or high unemployment area to invest in a new commercial enterprise employing 10 full-time U.S. workers. To qualify under this category, the new enterprise must have been established by the alien and in which the alien has invested or is in the process of investing at least \$1,000,000.00 (or \$500,000.00 in a target area) and which will benefit the U.S. economy and create full time employment for not fewer than 10 U.S. workers, not including the immigrant, the immigrant's spouse, sons or daughters.

An alien can qualify for a investor/employment creation classification in one of three ways; (1) by either creating an original business; or (2) purchasing and restructuring an existing business; or (3) expanding and thereby substantially changing the net worth or the number of employees in a current business. Special rules govern investments and troubled businesses by reorganizing or restructuring an existing business, an investor may

create a new commercial enterprise and therefore qualify for a permanent visa but an investor can also create a new enterprise by expanding an existing business.

VI. LOTTERY IMMIGRANTS

Another 55,000 visas will be available each year.

VII. LABOR CERTIFICATION

Most preference aliens must obtain a certification from the Department of Labor as there are no U.S. workers available to fill the designated position prior to applying for an immigrant visa. There are certain occupations which have already been pre-certified under a list designated as Schedule "A" which includes nurses, physical therapists, and aliens of extraordinary or exceptional ability in the sciences and the performing arts, as well as intracompany transfers who are exempt from obtaining labor certification. An attorney must analyze each application to determine whether it qualifies and under what category the application may fall for a permanent green card visas

VIII. TEMPORARY-NONIMMIGRANT VISAS

Under U.S. law if you do not qualify for a permanent or green card visa, you may come to the United States to work on a temporary basis. The following nonimmigrant visa categories allow for working and living in the U.S.:

E-1/E-2: These visas are available to nationals of countries having a treaty of commerce and navigation with the United States. They may come to the United States for the sole purpose of either carrying on substantial trade, or commerce between the two countries, or to develop or direct an enterprise in which they have invested or are actively in the process of investing a substantial amount of capital. This is also available to employees of the firms owned by the nationals owned by the treaty country.

1. Treaties applicable to treaty traders only:

Argentina, Austria, Belgium, Bolivia, Brunei, Canada, China (Taiwan), Columbia, Costa Rica, Denmark, Estonia, Ethiopia, Finland, France, Germany (FRG), Greece, Honduras, Iran, Ireland, Israel, Italy, Japan, Korea, Latvia, Liberia, Luxembourg, the Netherlands, Norway, Oman, Pakistan, Paraguay, Philippines, Spain, Suriname, Switzerland, Thailand, Togo, Turkey, the United Kingdom, Yugoslavia.

2. Treaties applicable to treaty investors only:*

Argentina, Austria, Bangladesh, Belgium, Canada, Cameroon, China (Taiwan), Colombia, Costa Rica, Ethiopia, France, Germany (FRG), Grenada, Honduras, Iran, Italy, Japan, Korea, Liberia, Luxembourg, Morocco, the Netherlands, Norway, Oman, Pakistan, Panama, Paraguay, Philippines, Senegal, Spain, Suriname, Switzerland, Thailand, Togo, Turkey, the United Kingdom, Yugoslavia, Zaire.

Canada was added to both the treaty trader and treaty investor list by passage of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, 102 Stat. 1851, effective Jan. 1, 1989. Cameroon (effective April 6, 1989), Grenada (effective March 3, 1989), Bangladesh (effective July 25, 1989), Zaire (effective July 28, 1989), Turkey (effective May 18, 1990), Senegal (effective Oct. 25, 1990), Morocco (effective May 29, 1991), and Panama (effective May 30, 1991) were added, to the treaty investor list only, by the ratification of bilateral investment treaties with the

respective countries. As of March, 1991, a treaty had also been ratified with Egypt.

3. Executive or Supervisory Employees or Employees with Essential Skills:

In addition to treaty traders and investors, employees whose permanent function will be to direct the company's operations or to supervise other company personnel are entitled to E-visas. Additionally, employees with essential skills may also be entitled to an E-visa.

H-1: Temporary employees. These are professional visas and are issued to aliens who generally have a professional degree. These include registered nurses, and person who perform services in a specialty occupation. A specialty occupation is essential a professional occupation that requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires the completion of a specific course of education resulting in a baccalaureate or higher degree. Occupations included in this definition include architects, engineers, mathematicians, physical scientists, social scientists, occupations in medicine and health, education, business specialties, accounting, law, theology, and the arts. A labor condition application must be filed.

H-2: Are available for temporary agricultural workers, aliens who are temporarily coming to the U.S. as a trainee other than to receive graduate medical education or training.

J-1: The Exchange visa is used infrequently but is used at Epcot or at certain organizations which are allowed to give up to two years. Persons in this category may be paid for their work.

L-1: Intra-company transfer visas are available for aliens who have been employed continuously for at least one year abroad during the three-year period immediately preceding the filing of the petition for the U.S. employment by a firm or corporation or other legal entity or parent, branch, affiliate, subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to a branch of the same employer or a parent subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge. Employment with the company for at least one year out of the last three years is required.

O-1: Available for persons with extraordinary ability in the sciences, arts, education, business or athletics, or extraordinary achievement in the motion picture and or television productions.

O-2: Are available to aliens assisting in artistic or athletic performances who accompany O-1 visas.

O-3: Are available for spouses, unmarried children under 21.

P: Are available for certain athletes and entertainment groups as well as spouses and unmarried children.

TC: Is available for temporary entry of Canadian citizens business persons to engage in their professional activities in the U.S. through their Canadian company.

There are other nonimmigrant visas available, such as F-1 and M-1 visas for students, Q visas for cultural exchange programs, and the B-1/B-2 visa for business and pleasure.

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during March. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Immigration and Naturalization Service reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by February 9th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

IX. CONCLUSION

The foregoing is just a general overview of U.S. immigration laws for those who wish to live and work in the U.S. The U.S. immigration laws are quite extensive, vague, confusing and contradictory. In order to determine if you are qualified, please write to any one of our three offices for further assistance.

FREQUENTLY CERTIFIED PROFESSIONS

1-2 years

Acupuncturist
Animal Breeder
Animal health Technician
Anthropologist
Apartment Manager
Archeologist
Assembler & Tester, Electronics
Baker
Barber
Bookkeeper
Butler
Buyer
Cabinetmaker
Community Worker
Computer Operator (clerical)
Contact Representative
Correspondence Clerk
Cosmetologist
Customs Inspector
Dental Assistant
Electrical Appliance Repairer
Electronics Inspector
Floral Designer
Gem Cutter
Hair Stylist
Home Health Technician
Interpreter
Jockey
Locksmith
Luggage Repairer
Machine Operator
Machine Set-Up Operator
Machine Setter
Manufacturers Rep.
Meat Cutter
Medical Assistant
Mental Retardation Aide
Merchandise Displayer
Nurse, Licensed
 Practical
Optician (dispensing)
Oriental Rug Repairer
Pastoral Assistant
Production Supervisor, (build. mat. nec.)
Recreational or Respiratory Therapist

Research Assistant II
Sales Agent (fin.svcs.)
Sample Stitcher
Scientific Helper
Secretary (not admin.)
Shorthand Reporter
Social Services Aide
Supervisor, Garment Mfr.
Tester (adv'd ind.)
Teacher Aide I
Welder, Combination
Welding Machine Operator
Wine Steward/Stewardess
Wire Walker

2-4 years

Acupressurist
Administrative Assistant
Alteration tailor
Auto Body Repairer
Automobile Mechanic
Beekeeper
Carpenter
Caseworker
Cement Mason
Chef
Chemist
Clothes Designer
Computer Applications Engineer
Cook (hotel)
Cook, Specialty, foreign food
Copy Writer
Counselor
Customer Support Specialist
Department Manager
Diesel Mechanic
Drafter, Architectural
Drafter, Electrical
Drafter, Electronic
Economist
Editorial Assistant
Educational Therapist
Electrician
Electrician, Automotive
Electronics Tester I
Engineering Analyst

Engineer, Soils
Engraver
Estimator & Drafter
Financial Analyst
Food Technologist
Furniture designer
Horse Trainer
Illustrator
Import-Export Agent
Industrial Designer
Industrial Engineer
Information Scientist
Instructor, physical Ed.
Instructor, Vocational Training
Interior Designer
Jeweler or Apprentice
Land Surveyor
Landscape Gardener
Librarian
Librarian, Special Lib'y
Machine Repairer, Maintenance
Machinist
Make-Up Artist
Maintenance Repairer, Building
Management Analyst
See Manager, Department
Manager, food Service
Manager, Office
Manager, Retail Store
Manager, travel Agency
Marble Setter
Market Research Analyst I
Materials Scientist
Mechanical Engineering Technician
Medical Secretary
Medical Technologist
Millwright
*Model Maker
Occupational Therapist
Operations Research Analyst
Package Designer
Painter (const.)
Paralegal
Perfumer
Pharmacist
Physician Assistant

Plasterer
Plumber
Printed Circuit Designer
Programmer, Business
Programmer, Chief, Business
Programmer, Information System
Programmer, Process Control
Psychologist, Developmental
Psychometrist
Public Relations Rep.
Purchasing Agent
Radiological Technologist
Reporter
Research Associate, Museum
Research Worker, Social Welfare
Restorer, Papers and Prints
Roofer
Security Consultant
Secretary, Medical
Service Manager (ret. tr.)
Sewing Machine Repairer
Sheet Metal
Worker
Shoe Repairer
Sales Rep., Data Processing Service
Sign Painter
Social Worker, Psychiatric
Sociologist
Software Technician
Statician, Applied
Steeplejack
Stonecutter, hand
Stonemason
Stone Setter
Structural Steel Worker
Surveyor, Geodetic
Systems Analyst
Tailor, Alterations
Teacher (Preschool, Kindergarten, Elementary, Secondary, Adult Education)
Teacher, Blind Students
Teacher, Deaf Students
Teacher, Handicapped
Teacher, Mentally Ret.
Tester (high technology)
Technical Support Specialist
Tile Setter

Tool & Die Maker
Training Representative
Translator
Upholsterer
Wholesaler II

4 – 10 years

Accountant
Accountant, Budget, Cost, System, Tax
Actuary
Administrative Secretary
Anesthesiologist
Animal Scientist
Application Engineer, Manufacturing
Aquatic Biologist
Architect
Art Conservator
Astronomer
Auditor
Auditor, Internal
Biochemist
Biologist
Biophysicist
Botanist
Bricklayer
Cantor
Chemical Design Engineer, Processes
Chemical Research Engineer
Chemist
Choral Director
Civil Engineer
Custom Tailor
Director, Quality Control
Director, Religious Ed.
Director, Research & Dev.
Documentation Engineer
Editor, Department
Electrical Engineer
Electrical Design Engineer
Electrical Research Engineer
Electrical Test Engineer
Electronics Engineer
Electronics Design Engineer
Electronics Research Engineer
Electronics Test Engineer
Executive Chef

Faculty Member, College/University
General Practitioner, Medicine
Geneticist
Geologist
Industrial Hygienist
Instructor, Sports
Landscape Contractor
Lawyer
Librarian, Special Collections
Manager, Bakery
Manager, Brokerage Office
Manager, Customer Technical Services
Manager, Education & Training
Manager, Electronic Data Processing
Manager, Export
Manager, Financial Inst'n
Manager, Industrial Org'n
Manager, Records Analysis
Manager, Sales
Materials Engineer
Mechanical Engineer
Mechanical Design
 Engineer, Products
Microbiologist
Mold Maker (jewelry)
Musician, Instrumental
Nuclear Engineer
painter (profess.&kin)
Paintings Restorer
Pathologist
Pharmacologist
Physicist
Physiologist
Professional Athletes
Production Superintendent
Programmer, Engineering and scientific
Project Director
Project Engineer
Psychologist, Clinical
Psychologist, Engineering
Psychologist, Experimental
Psychologist, Educational
Psychologist, Ind. Org.
Psychologist, Social
Quality Control Engineer
Reliability Engineer

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