



# Overview: U.S. Immigration Law

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## What is U.S. Immigration Law?

It is the system of laws passed by Congress and implemented by several federal agencies governing the movement of foreign nationals into and out of the U.S.; their rights and responsibilities; their eligibility to work or attend school; and the possible grounds for their removal.

Rights and obligations of aliens vary according to their visa and immigration status.

Example:

B-1 F-1 H-1B/E-3 LPR (Green Card) U.S. Citizen



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## Nonimmigrant vs. Immigrant

Two Categories of Visas:

### Nonimmigrant

Nonimmigrant visas are issued to individuals who intend to work, study, or visit the U.S. for a temporary period.

### Immigrant

Immigrant visas are issued to individuals who intend to reside in the United States permanently.



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## Nonimmigrant Visas

• Have various time restrictions and alphabetical designations (A-V). Key categories:

- B-1/B-2 Visitors for Business or Pleasure.
- E-1/E-2 Treaty Traders/Investors.
- E-3 Australian Specialty Occupation Workers.
- F-1 Students.
- H-1B Specialty Occupation Workers.
- J-1 Exchange Visitors.
- L-1 Intracompany Transferees.
- O-1 Aliens of Extraordinary Ability.

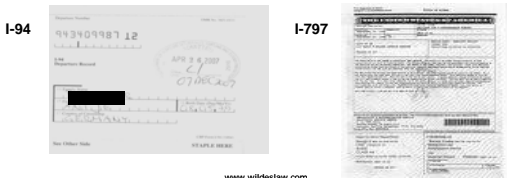
- Issued by Foreign Service Officers of the U.S. Department of State at U.S. Embassies and Consulates abroad.
- Stamped into a valid passport.
- Specify the period of the validity and the number of requests for admission authorized.
- Only used for admission into the U.S. (does not control duration or conditions of stay).
- Can in certain circumstances be renewed or revoked.
- Provide for dependent visa for spouse or unmarried children under age 21. In certain situations, spouses may be granted employment authorization after entering U.S.

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## Border Entry

- At the border, DHS admits the alien in the classification for which the visa has been granted by endorsing the admission slip (Form I-94). This document records the date of entry, the status in which the alien is admitted, and the duration of authorized stay.
- Future extensions of stay or changes of nonimmigrant visa status are noted on Form I-797 Notice of Approval with a replacement I-94.
- The expiration date on the I-94 is controlling and supersedes the expiration date on any other document, including the visa stamp.



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## E-3 Visa

- Only available for citizens of Australia to work in the U.S. in a "specialty occupation".  
("Specialty occupation" requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty or its equivalent).
- Similar to the H-1B visa **except**:
  - Spouses may work in the U.S. without restrictions.
  - Visa may be renewed indefinitely (in two year increments).
  - Annual quota of 10,500 (compared to the 65,000 cap for the H-1B visa that applies to all countries).
- Spouses of E-3 need not be Australian.
- Requires sponsorship of an employer.
- May apply directly for an E-3 visa at an American Consulate or if already in the U.S., may apply for change of status (with the exception of Australian citizens who entered under the visa waiver program) or extension of stay.

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## H-1B Visa

- Aliens who perform services in a "professional specialty occupation" (those which require at least a 4-year baccalaureate degree related to the job or its equivalent) as a prerequisite to entry-level employment.
- Need approval of a petition filed by a sponsoring U.S. employer.
- Capped at 65,000 annually (plus an additional 20,000 for individuals holding U.S. Master's degrees).
- THE H-1B CAP FOR THIS YEAR HAS NOT YET BEEN REACHED. ANYONE IN E-3 STATUS WHO IS CONSIDERING PERMANENT RESIDENCE IN THE U.S. SHOULD CONSIDER CHANGING TO H-1B NOW.**
- Employer must file a "labor condition application" with the Department of Labor attesting that the foreign professional will be paid at least the prevailing wage for the occupation, etc.
- Spouses CANNOT work without separate authorization.
- Limited to six years unless an application for permanent residence has been started

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## L-1 Visa

- For individuals being transferred to the United States
- Must have worked for overseas company for at least one year out of the past three
- Employment (both overseas and in the U.S.) must be executive, managerial or specialized knowledge
- U.S. and overseas firms must be related
- Need approval of a petition filed by a sponsoring U.S. employer ("blanket" approval available for large employers).
- Spouses may work
- Limited to seven years for executives or managers (L-1A) or five years for specialized knowledge (L-1B)

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## Visa Waiver Program

- Under the Visa Waiver Program, nationals visiting the U.S. from countries with a historically low rate of nonimmigrant visa refusals and overstays are permitted to enter as visitors for business or pleasure without first obtaining visas.
- Individuals entering under this program are permitted to remain for a maximum period of up to 90 days, and in most circumstances are barred from extending or changing their status while in the U.S.
- These visitors are also prohibited from attending school or engaging in employment.
- Effective January 12, 2009, must use Electronic System for Travel Authorization (ESTA).


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## Changing Status While in the U.S.

### CHANGE FROM ONE NONIMMIGRANT VISA CLASSIFICATION TO ANOTHER

- Foreign national who enters the U.S. in one nonimmigrant classification may apply to change to another nonimmigrant status provided he/she is maintaining a valid nonimmigrant status at the time of the filing of the application.

### ADJUSTMENT TO IMMIGRANT CLASSIFICATION

- Foreign national who enters in a nonimmigrant classification such as H or L may apply for Lawful Permanent Residence.
- Petitions may be filed by employers, by certain family members, or in limited circumstances, by self.

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## Violation of Status

- Remaining in the U.S. beyond the expiration date stamped on I-94 renders the individual "unlawfully present" in the U.S.
- Short-term overstays (even one day) requires individual to depart the U.S. and file a new visa application.
- Long-term overstays render an individual inadmissible as follows:
  - Overstay of 180 days – 364 days: 3 year bar.
  - Overstay of 365 days or more: 10 year bar.



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## Presumption Of Immigrant Intent

- By law, all persons applying for visas or for admission at the border as nonimmigrants are presumed to have the intention of residing in the U.S. permanently as immigrants. This presumption must be overcome in order to be issued the visa and admitted.
  - **Exception:** H-1B and L-1 status (*but not E-3 status*) provide for "dual intent" -- the alien may enter the U.S. for a temporary period yet intend to apply for permanent residence as well.
- The burden of proving nonimmigrant intent rests with the applicant. One way of doing so is through evidence of an unrelinquished foreign domicile.
- The same presumption applies when applications are filed for extensions of nonimmigrant status in the U.S. or visa reissuance abroad.

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## Permanent Resident Procedure ("Green Cards")

### Obtained by:

- Family preference classification based upon the petition of specified close relatives who are citizens or lawful permanent residents of the U.S.
- Petition filed by sponsoring employer (or self in certain limited circumstances).
- Major investment in a U.S. commercial enterprise.
- Selection in the Diversity Visa Lottery program.
- Certain Special Categories (Asylum, Refugee, Battered Spouse).
- National and worldwide quota limitations often result in extended waiting periods before permanent resident status can finally be obtained.
- Such status may be sought either through an immigrant visa application before a U.S. Consular Officer abroad or adjustment of status proceedings within the U.S.

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## Employment With The Sponsor

- An applicant who is seeking permanent residence based upon an offer of employment requires a representation to Immigration authorities that the applicant intends to be employed on a full-time and permanent basis.
- In the event that the proposed employment is terminated all parties must show that they acted in good faith as to their intentions at the time of entry into the U.S. The alien may still be entitled to permanent resident status.
- There is no set employment period required after grant of permanent residence. However, to avoid any future problems the longer one remains employed with the sponsor, the less likely it is that the government will challenge the good faith of the parties.

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## Employment-Sponsored Preferences

### INCLUDES:

- Aliens with "extraordinary ability" in arts, sciences, education, business or athletics.
- Outstanding Professors/Researchers.
- Multinational Executives/Managers who worked within the organization for one year abroad.
- Aliens of "exceptional ability" -- those with advanced degrees who will benefit our national economy, culture and educational interests.
- Advanced Degree Professionals.
- Skilled Workers or Professionals.
- Unskilled Workers.
- Pre-certified shortage occupations such as nurses and physical therapists.
- Special Immigrants:
  - Religious worker.
  - Victims of spousal abuse.
  - Certain former UN employees.
  - Investors (employment-creation immigrants) who invest \$1 million (\$500,000 in a targeted employment area) and create employment for a least 10 qualifying U.S. workers.

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## PERM (Program Electronic Review Management)

- Is an electronic filing system.
- The process includes a set of mandatory recruitment efforts by the employer to test the American labor market, which must be completed within a specific time-frame, before an application can be filed and a certification can be issued by the Department of Labor.
- The Department of Labor must certify that the employer has tested the labor market and found that there are no qualified U.S. workers available to fill the offered position.

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