



TEMPORARY MIGRATION TO THE UNITED STATES

NONIMMIGRANT ADMISSIONS UNDER
U.S. IMMIGRATION LAW



U.S. Citizenship
and Immigration
Services

***Temporary Migration to the United States:
Nonimmigrant Admissions Under U.S. Immigration Law
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About this Edition

This document discusses nonimmigrants and the laws and regulations concerning their admission to the United States. The purpose of this report is to describe the various nonimmigrant categories and discuss the policy concerns surrounding these categories. Topics covered include: adjustment of status, temporary workers, work authorization, and visa overstays.

The United States welcomes visitors to our country for a variety of purposes, such as tourism, education, cultural exchange, and temporary work. Admittance to the United States as a nonimmigrant is intended to be for temporary visits only. However, some nonimmigrants are permitted to change to a different nonimmigrant status or, in some cases, to permanent resident status. This report provides an overview of the reasons for visiting the United States on a temporary basis and the nexus between temporary visitor and permanent resident.



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Research and Evaluation Division

**U.S. Citizenship and Immigration Services
Office of Policy and Strategy**

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and Immigration
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INTRODUCTION

The facilitation and promotion of international travel and the entry of people from all over the world to the United States for cultural, social, and economic reasons are integral parts of U.S. domestic and foreign policies. Each year, approximately 30 million people come to the United States for temporary stays for a variety of reasons, such as to conduct business, vacation, or study. These visitors, called nonimmigrants, make important contributions to the United States' economy and other social institutions.

Over the years, several nonimmigrant visa categories have been created to better accommodate the reasons people come to the United States. By far, the largest nonimmigrant category is “temporary visitors.” Temporary visitors for business or pleasure account for nearly 90 percent of all nonimmigrants entering the United States every year. In 2004, more than 9 million temporary visitors for pleasure and approximately 2 million temporary visitors for business arrived at U.S. ports of entry with nonimmigrant visas. In addition, 13.6 million tourists and 2.2 million business visitors entered under the Visa Waiver Program, which waives the nonimmigrant visa requirement for nationals of 27 countries. In addition, another 148 million Mexican and Canadian citizens visited the United States without nonimmigrant visas.

Other categories of nonimmigrants include foreign government officials, representatives of international organizations, foreign athletes and artists, students, cultural exchange visitors, religious workers, and foreign media representatives. Treaty traders, treaty investors, and professional workers admitted under the North American Free Trade Agreement and other trade agreements are also considered nonimmigrants. Nonimmigrant categories also include temporary workers and trainees and workers performing services for which workers are unavailable in the United States.

Some nonimmigrant categories facilitate the entry of noncitizen family members. This includes family members of U.S. citizens and legal permanent residents to minimize family separations while their applications for permanent residence are processed. It also includes the admission of the spouses and children of the principal nonimmigrant for many nonimmigrant categories.

This report examines many of the procedural requirements for nonimmigrants, including how to obtain nonimmigrant status, what restrictions and benefits apply to the various nonimmigrant categories, and the authorized purposes for coming to the United States as a nonimmigrant. The report also reviews the legal and historical development of the complex nonimmigrant classification system. In addition, it discusses specific policy issues, including guest workers, visa overstayers, and visa waiver policies.

SECTION I

OVERVIEW

Introduction

A foreign national who requests temporary entry to the United States for a specific purpose is considered to be a “nonimmigrant.” The law distinguishes among nonimmigrant aliens who may have *immigrant intent* (e.g., those seeking to remain in the United States permanently), those who may only have *nonimmigrant intent* (i.e., those who are not seeking permanent status), and those who may have *dual intent* (e.g., those who may seek admission for a temporary purpose while independently pursuing a related or unrelated purpose to remain in the United States permanently).¹

There are a variety of reasons an individual would wish to come to United States temporarily. In fact, there are more than 75 classifications of nonimmigrant visas – each based on the reason for entering the United States and having different terms of admission. Most nonimmigrants are temporary visitors coming to the United States as tourists, to visit friends or relatives, or on business trips. Some foreign nationals work as crew on international airlines or shipping vessels and need to be admitted temporarily into the United States, but do not intend to remain for any significant period of time. An example of this type of nonimmigrant is a flight attendant who works for an international airline that arrives at a U.S. airport with only a short layover before picking up new passengers and departing.

Additional nonimmigrant categories permit the entry of foreign students, certain temporary workers whose services are needed by U.S. employers, persons working for foreign companies who are temporarily transferred to affiliate offices in the United States, fiancé(e)s of U.S. citizens, and participants in cultural exchange programs. The nonimmigrant categories also include persons entering on a nonpermanent basis to engage in trading and investing under international treaties with the United States, representatives of foreign media, religious workers, artists, entertainers, and athletes. Each nonimmigrant category carries specific requirements and privileges related to permission to work in the United States, permission to bring family members, and length of stay.

Throughout the history of our Nation, immigration law has evolved and incorporated nonimmigrant categories as needed. With the Immigration and Nationality Act of 1952, which codified all existing immigration statutes into one body of law, the nonimmigrant categories were categorized alphabetically. Subsequent letters were assigned when the need for a new nonimmigrant category arose. As subcategories of nonimmigrants were needed, the original categories were expanded. Some categories, such as category H (temporary workers), have several subcategories to identify more precisely the reason for the nonimmigrant worker’s

admission. Subcategories also were created to accommodate the family members or personal employees of the principal alien.*

Overview of the Nonimmigrant Categories²

The nonimmigrant classifications are based on the reasons for entering the United States and many categories have different conditions of admission. For instance, some nonimmigrants are permitted to work, while others are not. Some periods of admission may be for the entire time that a nonimmigrant is in a particular status – such as a foreign government official or student – while others may be brief. Moreover, a few nonimmigrant categories are subject to annual numerical limits. This section presents an overview of the various nonimmigrant categories. The main categories of nonimmigrants are shown in alphabetical order in Table I.I and Appendix A. Detailed information concerning terms of admission and work authorization can be found in Appendix B.

Table I.I Nonimmigrant Categories

A Foreign Government Officials	L Intracompany Transferees
B Temporary Visitors (business/pleasure)	M Vocational Students
C Aliens in Transit	N Parent/Child of Special Immigrants
D Crewmembers	O Workers with Extraordinary Abilities
E Treaty Traders and Treaty Investors	P Athletes and Entertainers
F Academic Students	Q International Cultural Exchange Visitors
G Foreign Government Officials to International Organizations	R Religious Workers
H Temporary Workers	S Witness or Informant
I Foreign Media Representatives	T Victims of a Severe Form of Trafficking In Persons
J Exchange Visitors	U Victims of Certain Crimes
K Fiancé(e)s and Spouses of U.S. Citizens	V Spouses of LPRs with applications for LPR status pending for at least 3 years.
<u>Additional Categories:</u>	
BE	Bering Straits agreement entrants
GB, GT	Temporary visitor for business, pleasure - Guam Visa Waiver Program
WB, WT	Temporary visitor for business, pleasure - Visa Waiver Program
NATO	North Atlantic Treaty Organization
TN, TD	North American Free Trade Agreement

* For the purposes of this report, the “principal alien” is the primary person applying for nonimmigrant status for entry into the United States for a specified purpose. For some nonimmigrant categories, the principal alien’s spouse and children may derive nonimmigrant status from the principal alien. In other words, some nonimmigrant categories permit the principal alien’s family members to accompany him or her to the United States.

The nonimmigrant classifications fall within eight overarching themes, based on the reason for the individual's entry to the United States: (1) temporary visitors; (2) temporary employees; (3) treaty traders, investors, and professionals; (4) students; (5) officials of foreign governments, organizations, and the media; (6) aliens in transit and crewmembers; (7) family members of U.S. citizens and legal permanent residents; and (8) witnesses, informants, and victims of certain crimes. The nonimmigrant classifications related to each of the eight themes are described briefly below and are shown in Table I.2.

Table I.2. Nonimmigrant Categories, by Purpose of Visit

Purpose of Visit	Categories Included
Temporary Visitors	B-1 B-2
Temporary Employees	H-1B, H-1C, H-2A, H-2B H-3, H-4 J-1, J-2 L-1, L-2 O-1, O-2, O-3 P-1, P-2, P-3, P-4 Q-1 Q-2, Q-3 R-1, R-2
Treaty Traders, Investors, and Professionals	E-1, E-2, E-3 TN, TD H-1B1
Students	F-1, F-2, F-3 M-1, M-2, M-3
Foreign Government, Organization, or Media Representatives	A-1, A-2, A-3 G-1, G-2, G-3, G-4, G-5 I NATO 1-7
Aliens in Transit and Crewmembers	C-2, C-3 D-1, D-2
Family Members of U.S. Citizens and Legal Permanent Residents	K-1, K-2, K-3, K-4 V-1, V-2, V-3
Witnesses, Informants, and Victims	S-5, S-6 T-1, T-2, T-3, T-4 U-1, U-2, U-3, U-4

Temporary Visitors: B-1, B-2, BE, WB, WT, GB, and GT

Temporary visitors account for the largest share of nonimmigrants entering the United States each year, with temporary visitors for pleasure representing the majority of entrants. A visitor visa is required of persons desiring to enter the United States temporarily for business (B-1) or for pleasure (B-2), unless they are nationals of the 27 countries participating in the Visa Waiver Program (discussed in Section VII). B-1 and B-2 visa holders may be authorized an initial length of stay of up to 1 year, with extensions of stay granted in increments of 6 months.

Foreign nationals usually need a B-1 visa to come to the United States to consult with business associates, negotiate a contract, buy goods, participate in conferences, and engage in similar activities. They must demonstrate that the purpose of their trip is for business, that they plan to remain for a specific, limited period of time, and that they have a residence outside of the United States as well as other foreign ties that will ensure their return home at the end of their visit.

Persons wishing to come to the United States for pleasure travel and tourism, such as to visit family or friends, or for medical treatment must obtain a B-2 visa. These temporary visitors must demonstrate that the purpose of their trip is for pleasure or medical treatment; they plan to remain for a specific, limited period; they have sufficient funds to cover expenses in the United States; and they have compelling social and economic ties abroad, including a residence outside the United States.

Not all temporary visitors for business or pleasure are required to obtain a B-1 or B-2 visa. Nonimmigrant categories WB and WT identify persons entering under the Visa Waiver Program (VWP) for business or pleasure, respectively. Under the VWP, nationals of 27 countries are not required to obtain a visa if certain conditions are met (see Section VII for information on the VWP). The BE category is for temporary entrants under the Bering Straits agreement. Visa waiver entrants and persons entering with BE visas are permitted a maximum stay of 90 days.³

Categories GB and GT signify temporary entrants for business or pleasure to Guam under the Guam Visa Waiver Program (GVWP). The GVWP, created by the Omnibus Territories Act of 1986,⁴ permits temporary visitors for business or pleasure from certain countries to enter Guam for stays of up to 15 days without obtaining a nonimmigrant visa.⁵ The law specified that eligible countries were those within geographical proximity to Guam, or that have a substantial volume of nonimmigrant admissions to Guam. Currently, nationals of the following countries may enter Guam under the GVWP: Australia, Brunei, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Solomon Islands, Taiwan (only if on a direct flight to Guam from Taiwan), the United Kingdom (including British National Overseas passport holders), Vanuatu, and Western Samoa.⁶

Canadian and Mexican citizens also are not necessarily required to obtain a nonimmigrant visa for business or pleasure trips. However, generally, citizens of Mexico wishing to visit the United States must present a passport and visa or a Border Crossing Card (BCC).⁷ Mexican visitors possessing BCCs are admitted for up to 72 hours for travel within 25 miles of the U.S.-Mexico border.⁸ To enter the United States, a Canadian citizen needs only to establish identity and citizenship. (See Section VII for more information on border crossers.)

Temporary Employees: H, J, K, L, O, P, Q, and R

There are several nonimmigrant categories for persons wishing to come to the United States to work on a temporary basis. These categories differ not only by the type of work permitted, but also by duration of stay and whether they may bring family members. These categories also differ significantly from the B-1 nonimmigrant category, temporary visitors for business, which is

for visitors who are admitted temporarily to conduct business for a non-U.S. establishment, and who maintain their homes abroad. (See Section V for more information on temporary employees.)

H: Temporary Workers

The H nonimmigrant category covers a wide spectrum of workers entering the United States on a temporary basis in order to fill the needs of U.S. employers. The category applies to persons in specialty occupations, fashion models of distinguished merit and ability, and persons performing services of an exceptional nature for cooperative research and development projects administered by the Department of Defense (H-1B);⁹ registered nurses hired under the authority of the Nursing Relief for Disadvantaged Areas Act of 1999 (H-1C);¹⁰ temporary or seasonal agricultural workers (H-2A);¹¹ temporary workers coming to the United States to perform nonagricultural work of a temporary nature (H-2B);¹² persons coming temporarily to the United States for training provided primarily at academic or vocational institutions (H-3);¹³ and their spouses and children (H-4).¹⁴

The H-1B1 category, created in 2003 for professionals entering the United States pursuant to free trade agreements between the United States and Chile and Singapore, is discussed below under the heading of “Treaty Traders, Investors, and Professionals.”

J and Q: Exchange Visitors

The J-1 visa is for persons seeking entry into the United States to participate in an approved exchange visitor program for the purpose of teaching, lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.¹⁵ The exchange visitor program is designed to promote the interchange of persons, knowledge, and skills in the fields of education, arts, and sciences between the United States and other countries. The Mutual Educational and Cultural Exchange Act of 1961,¹⁶ also referred to as the Fulbright-Hays Act, promotes mutual understanding between the United States and other countries by means of educational and cultural exchange. The Act specifically created the J visa category to facilitate the entry of exchange program participants into the United States.¹⁷

The U.S. Department of State administers the Mutual Educational and Cultural Exchange Act and designates sponsors to administer individual exchange visitor programs. Sponsors are U.S. organizations such as government agencies, academic institutions, educational and cultural organizations, and corporations. Persons participating in these programs include:¹⁸

- Students at all academic levels
- Trainees obtaining on-the-job training with firms, institutions, and agencies
- Teachers at primary, secondary, and specialized schools
- Professors coming to teach or do research at institutions of higher learning
- Research scholars
- Professional trainees in the medical and allied fields

- International visitors coming for the purpose of travel, observation, consultation, research, training, sharing, or demonstrating specialized skills, or participating in organized people-to-people programs

The principal program participant may apply for a J-1 nonimmigrant visa. Accompanying spouses and children may apply for J-2 visas. Some exchange programs provide for on-the-job training, teaching, research, or other activities that involve paid employment. However, participants in programs that do not involve work, such as high school foreign exchange students, may not accept paid employment.¹⁹

The Q-1 nonimmigrant category is designated for individuals participating in an international cultural exchange program, the purpose of which is to provide practical training, employment, and the sharing of the history, culture, and traditions of the individuals' home countries.²⁰ The Q-1 exchange visitor must be at least 18 years old and be able to communicate effectively about the cultural attributes of his or her country. They must be paid by their employing U.S. sponsor at the same rate paid to local domestic workers similarly employed.²¹

Q-2 applies to persons in the Irish Peace Process Cultural and Training Program, the purpose of which is to provide "practical training, employment, and the experience of coexistence and conflict resolution in a diverse society."²² Participants come from disadvantaged areas of Northern Ireland and the six border counties of the Republic of Ireland. The program provides employment and vocational training opportunities in selected cities in the United States for up to 24 months. The goal is to help the participants develop and enhance personal and professional skills which can then be applied in their home countries. This is a temporary program, with the final participants expected to depart the United States in 2008. Spouses and children of program participants are classified as Q-3 nonimmigrants.²³

L: Intracompany Transferees

Intracompany transferees are individuals who have been employed continuously for 1 year by a non-U.S. firm or corporation who are temporarily transferred to an office, branch, or subsidiary of that company in the United States. Intracompany transferees must perform work in a managerial or executive capacity, or in a position involving specialized knowledge. The L-2 nonimmigrant category is for the spouse and children of the L-1 nonimmigrant.²⁴

O: Individuals with Extraordinary Ability

O-1 applies to persons who have extraordinary ability in the sciences, arts, education, business, or athletics, or extraordinary achievements in the motion picture and television field, who have received "sustained national or international acclaim." An individual's authorized stay is only for the specific event for which the visa is requested. Individuals accompanying and assisting the principal alien, as well as the alien spouse or child of the principal alien, may also be granted entry with O-2 and O-3 visas, respectively.²⁵

P: Athletes, Artists, and Entertainers

P-1 applies to individual or team athletes, or members of an entertainment group that are internationally recognized, such as an athlete coming temporarily to the United States to perform at a specific athletic competition at an internationally recognized level of performance.²⁶ Internationally recognized is defined as “[h]aving a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.”²⁷

Individual athletes are permitted an initial stay of up to 5 years. Extensions are permitted in increments of up to 5 years, with the total stay limited to 10 years. For athletic groups and entertainment groups, the initial stay is 1 year, with extensions possible in increments of 1 year in order to continue or complete the same event or activity for which they were admitted.²⁸

P-2 applies to artists or entertainers who will perform in the United States under a reciprocal exchange program. They are permitted an initial stay of up to 1 year, with extensions of up to 1 additional year. P-3 applies to artists or entertainers who perform under a program that is culturally unique. Culturally unique is defined as “a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.” These nonimmigrants are permitted an initial stay of up to 1 year, with extensions of up to 1 year.²⁹ Persons providing essential support for P-1, P-2, and P-3 nonimmigrants are classified in the same category as the principal nonimmigrant for whom they work. Spouses and children of P-1, P-2, and P-3 principal aliens are classified as P-4 nonimmigrants.³⁰

R: Religious Workers

The R nonimmigrant category applies to religious workers. Religious workers include ministers who are authorized by a recognized denomination to conduct religious worship and perform other duties usually performed by members of the clergy. To qualify for this category, an individual must be a member of a religious denomination that has a religious organization in the United States, and must have been a member of that denomination for the 2 years immediately preceding his or her application for admission to the United States.³¹

Religious workers are permitted an initial stay of up to 5 years for the following purposes: to work as a minister of the religious denomination, to work for the organization in a professional capacity, or to work for the denomination in a religious vocation or occupation.³² This category does not include lay preachers.

Treaty Traders, Investors, and Professionals: E, TN, TD, and H-1B1

E-1, E-2, and E-3

Currently, nationals of countries with which the United States has a treaty concerning commerce and navigation who are coming to the United States to carry out substantial trade, or to direct operations of an enterprise in which the national has invested, are permitted to

enter the United States for a stay of up to 2 years as nonimmigrant treaty traders or investors. These individuals are classified as E-1 and E-2 nonimmigrants, respectively.³³ For treaty traders, the trade must be “substantial” in size or volume and must be principally between the United States and the treaty country. The applicant must be employed in a supervisory or executive capacity, or possess highly specialized skills. For treaty investors, the investment also must be substantial and must be sufficient to ensure the successful operation of the enterprise and to have a significant economic impact in the United States. A speculative or idle investment does not qualify; the investment must be in a real, operating enterprise. If the applicant is not the principal investor, he or she must be employed in a supervisory, executive, or highly specialized skill capacity.³⁴ The spouse and minor children accompanying or following to join an E-1 or E-2 nonimmigrant may obtain derivative status.³⁵

In 2005, the E-3 nonimmigrant visa category was added by the REAL ID Act.³⁶ This category is reserved for Australian nationals working in specialty occupations. There is a limit of 10,500 visas, and the intending employer must file a labor attestation with the Department of Labor.³⁷

TN and TD

Certain professionals from Canada or Mexico may enter the United States for temporary employment under the provisions of the North American Free Trade Agreement (NAFTA).³⁸ Signed on December 17, 1992 by the Presidents of the United States and Mexico and the Prime Minister of Canada, NAFTA became effective on January 1, 1994.³⁹ Entrants under the agreement are admitted under the TN classification. Spouses and unmarried minor children accompanying or following to join the principal nonimmigrant are admitted as TD nonimmigrants; however, they are not authorized to work in the United States.⁴⁰

Chapter 16 of NAFTA, “Temporary Entry for Business Persons,” was designed to facilitate the movement of businesspersons among the United States, Canada, and Mexico for investment, trade, and professional commerce services. NAFTA professionals may enter as temporary visitors for business (B-1), treaty traders (E-1), treaty investors (E-2), intracompany transferees (L-1), and NAFTA professionals (TN).⁴¹ An applicant seeking admission under NAFTA must demonstrate that he or she will be conducting business at a professional level in one of the 63 professions identified in the law, and that the job has been prearranged. These professions include: accountant, architect, economist, engineer, interior designer, lawyer, librarian, vocational counselor, dentist, pharmacist, nutritionist, veterinarian, meteorologist, zoologist, horticulturalist, and college or university teacher.⁴² (The complete list of professions can be found at 8 CFR 214.6(c)).

A visa is not required for Canadian and Mexican workers entering under the terms of NAFTA.⁴³ Upon entry to the United States, they are issued an I-94, Arrival/Departure Record, stamped “multiple entry” and they are not charged a fee for entering the United States.⁴⁴

H-1BI

The United States signed free trade agreements with Chile and Singapore in 2003.⁴⁵ These agreements resulted in the creation of the H-1BI nonimmigrant category for the entry of

persons from Chile and Singapore in specialty occupations requiring “(A) theoretical and practical application of a body of specialized knowledge; and (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent)... .”⁴⁶ There is an annual limit of 1,400 visas for Chilean workers and 5,400 visas for Singaporean workers. These visas count against the existing annual numerical limit (currently 65,000) for H-1B nonimmigrants.⁴⁷

Students: F and M

The United States has long recognized the importance of permitting nationals of foreign countries to enter the United States for the purpose of obtaining an education. This nonimmigrant category has evolved over the years to include six subcategories. The primary distinction is between academic students (F) and vocational students (M). Each of these is further divided to distinguish among the principal alien attending an educational institution on a full-time basis (F-1 or M-1) and his or her spouse and minor children (F-2 and M-2), or a national of Canada or Mexico who lives in his or her country of nationality and crosses the border to attend an educational institution on a full-time or part-time basis (F-3 or M-3).⁴⁸ (See Section VI for more information on permission to study in the United States.)

Foreign Government, Organization, or Media Representatives: A, G, I, and NATO

Many individuals enter the United States in their official capacities as diplomats, government officials, and other persons working for foreign-based or international organizations. In some cases, such individuals may be permanently assigned to the United States, in others, they may merely be passing through on their way to another destination, such as the United Nations headquarters.

Foreign Government Officials

Foreign government officials traveling to the United States in their official capacity are designated as nonimmigrants. Nonimmigrant category A-1 applies to ambassadors, public ministers, or career diplomatic or consular officers who have been accredited by a foreign government recognized by the United States and their immediate families. Category A-2 applies to other officials and employees who have been accredited by a foreign government recognized by the United States and the members of their immediate families. Category A-3 applies to attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have A-1 or A-2 nonimmigrant status.⁴⁹

Officers and Employees of International Organizations

Other foreign officials reside and work in the United States during their appointments to foreign governments or international organizations and are assigned to the G nonimmigrant category. “Designated principal resident representative[s]” of foreign governments that are recognized by the United States, accredited resident members of the staff of such representatives, and members of their immediate families, are designated as G-1 nonimmigrants. The foreign government representative must be a member of an international

organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of 1945.⁵⁰

Other accredited representatives of such governments to international organizations, such as the United Nations, and their immediate families are accorded G-2 nonimmigrant status. Individuals who represent foreign governments that are not recognized by the United States or that are not members of an international organization and their immediate family members are designated as G-3 nonimmigrants.⁵¹

Other officers or employees of international organizations of which foreign governments are members, and the members of their immediate families, are classified as G-4 nonimmigrants. Finally, the attendants, servants, and personal employees of any representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees are G-5 nonimmigrants.⁵²

Foreign Media Representatives

An individual who is a bona fide representative of foreign press, radio, film, or other information media, who seeks to enter the United States solely to engage in his or her vocation, as well as his or her spouse and minor children, are accorded I nonimmigrant status.⁵³ Prior to the INA of 1952, these nonimmigrants were classified as temporary visitors for business. This category was added by the 1952 Act to facilitate the exchange of information among nations.⁵⁴

This status is only for representatives of foreign media who are traveling to the United States to work in their profession and who have a home office in a foreign country. Reciprocity to U.S. media in foreign countries is taken into consideration when the visa application is reviewed. Applicants for media nonimmigrant visas must demonstrate that they will be in the United States for a temporary, specific period; they have sufficient funds to cover their expenses in the United States; and they have significant ties abroad which will insure their return at the end of their visit.⁵⁵

Individuals traveling to the United States for the purpose of engaging in their profession as media representatives or journalists may not travel without a visa under the Visa Waiver Program (VWP). Media representatives coming to the United States to attend conferences or meetings or to purchase media equipment or broadcast rights can be considered ordinary business visitors, as long as they are not reporting on anything newsworthy. In this case, they may enter with B-2 visas or, if applicable, as visitors for business under the VWP. Spouses and/or minor children may accompany or join the principal media visa holder for the duration of his or her stay with their own media visas. Their applications must include a copy of the principal visa holder's media visa.⁵⁶

Representatives of NATO

The admission to the United States of foreign armed forces personnel under the North Atlantic Treaty Organization (NATO) is addressed in the NATO Status of Forces Agreement, which was signed in 1951.⁵⁷ This agreement defines the terms of the status of NATO members'

armed forces while serving abroad. Terms of admission for NATO employees and persons associated with NATO are not covered under the INA, but are found in the Treaty and codified in the CFR.⁵⁸ Nonimmigrants entering with NATO visas are generally exempt from inspection at U.S. ports of entry; thus, the recorded number of entries for these nonimmigrants is low.

Nonimmigrant aliens classified as NATO-1 through NATO-5 are officials, employees, or persons associated with NATO, and members of their immediate families, who may enter the United States in accordance with the NATO Status of Forces Agreement or the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (Paris Protocol). Civilians (and members of their immediate families) who are employed as members of a civilian component of NATO are classified as NATO-6 nonimmigrants. NATO-7 applies to the attendants, servants, or personal employees of nonimmigrant aliens classified as NATO-1 through NATO-6.⁵⁹ The categories of NATO nonimmigrants are explained below in Table 1.3.

Table 1.3. Nonimmigrant Categories for NATO Employees

NATO-1	Principal permanent representative of member state to NATO and resident members of official staff or immediate family.
NATO-2	Other representatives of member state; dependents of member of a force entering in accordance with the provisions of NATO Status of Forces agreement; members of such force if issued visas.
NATO-3	Official clerical staff accompanying representative of member state to NATO or immediate family.
NATO-4	Official of NATO other than those qualified under NATO-3, employed on behalf of NATO and immediate family.
NATO-5	Expert other than NATO officials qualified under NATO-4, employed on behalf of NATO and immediate family.
NATO-6	Civilians, and members of their immediate families, who are employees of a force entering in accordance with the NATO Status of Forces Agreement, or as members of a civilian component attached to or employed by NATO Headquarters, Supreme Allied Commander, Atlantic (SACLANT), set up pursuant to the Paris Protocol.
NATO-7	Attendants, servants, or personal employees of nonimmigrant aliens classified as NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6.

Aliens in Transit and Crewmembers: C and D

Because of the prevalence of international travel, each year numerous foreign nationals enter the United States en route to other destinations. Such visitors are required to obtain transit visas (C-1, C-2, or C-3) which are valid for a maximum of 29 days. Nonimmigrants with C visas may not change their status to any other nonimmigrant status and may not accept employment in the United States.

A C-1 nonimmigrant is a foreign national proceeding in immediate and continuous transit through the United States to another country. Persons in the C-2 category are entitled to pass in transit to and from the United Nations Headquarters District and foreign countries. The C-3 visa is for foreign government officials in transit through the United States.⁶⁰ In some cases,

an individual who qualifies for a transit visa will also qualify for and receive a B-1 or B-2 nonimmigrant visa instead.⁶¹

Previously, an alien in immediate and continuous transit through the United States while traveling from one foreign country to another was permitted to enter the United States without first obtaining a nonimmigrant visa. This status, equivalent to a C-1 nonimmigrant visa, was valid only for travel involving layovers of no more than 8 hours and no more than 2 transfers. However, use of this status was suspended in 2003. On August 7, 2003, the Secretary of Homeland Security and the Assistant Secretary of State for Consular Affairs published an interim rule suspending the Transit without Visa (TWOV) and International-to-International (ITI) transit programs based on credible intelligence concerning a specific threat of exploitation of these programs by terrorist organizations.⁶²

Non-U.S. crewmembers serving aboard a vessel or aircraft that will land in the United States also must obtain a visa. D visas are issued to crewmembers serving in good faith in a capacity required for normal operation and service on board a vessel or aircraft who intends to (a) land temporarily and solely in his or her role as a crewmember, and (b) to depart from the United States with the vessel or aircraft on which he or she arrived or on some other vessel or aircraft. The D-1 classification is for those crewmembers who are departing on the same vessel on which they arrived; D-2 is for crewmembers who have been discharged and intend to work on another vessel. Persons traveling with D-1 and D-2 visas may be permitted entry for the duration of their status as an alien crewmember.⁶³

Crewmembers traveling to the United States for the purposes of joining a ship or aircraft must also obtain a C-1 transit visa. In most cases, qualified applicants will receive a combined C-1/D visa, which enables them to travel to the United States by boat or plane in order to join their ships.⁶⁴ However, in some cases, reciprocity does not allow for a combined C-1/D visa to be issued. When the reciprocity schedules for C-1 and D visas differ with regard to the number of applications or period of validity permitted in each category, the consular officer will issue separate C-1 and D visas. Spouses and children accompanying crewmembers, and not performing services on the vessel or aircraft, must obtain B-2 visas or other applicable nonimmigrant visas, unless they qualify under the Visa Waiver Program.⁶⁵

Certain Family Members of U.S. Citizens and Lawful Permanent Residents: K, N, and V

K-1 and K-2

The K and V nonimmigrant categories were created to eliminate unnecessary family separations caused by delays for applications to be adjudicated and/or for visas to become available. A foreign national who is coming to the United States to marry an American citizen in the United States may obtain a K-1 “fiancé(e)” visa. The minor children of a K-1 nonimmigrant will derive K-2 status as long as the children are named in the K-1 petition. The marriage must take place within 90 days of the K-1 nonimmigrant entering the United States, and the K-1 nonimmigrant is expected to apply for adjustment to permanent resident status as the spouse of a U.S. citizen upon marriage.⁶⁶ After arriving in the United States, the K-1 fiancé(e) may apply for work authorization (although USCIS might not be able to process the work permit within the 90-day

time limit for the marriage to take place). However, when the fiancé(e) applies for adjustment to permanent resident status after the marriage, he or she must re-apply for a new work permit.⁶⁷

K-3 and K-4

Similarly, the K-3 and K-4 nonimmigrant categories apply to the alien spouse and unmarried, minor children of a U.S. citizen. These visas permit the family members to enter the United States while awaiting adjustment of status, rather than having to remain overseas until the application is adjudicated and/or until a visa becomes available.⁶⁸ K-3 and K-4 nonimmigrants are expected to apply for adjustment of status after they enter the United States.⁶⁹ They may elect to apply for an immigrant visa instead of adjustment of status and may wait in the United States until they must appear at the consulate in the home country for their visa interview. They may also apply for authorization to work in the United States while they wait for their immigrant status.⁷⁰

V-1, V-2, and V-3

The V nonimmigrant category allows the spouses and children of U.S. lawful permanent residents (LPRs) to live and work in the United States while they wait for an immigrant visa. V-1 applies to the spouses of LPRs whose petitions for immigrant visas are pending, V-2 is for the children of LPRs, and V-3 is for the dependent children of V-2 visa holders.⁷¹ Only aliens who are the beneficiaries of immigrant visa petitions filed on or before December 21, 2000 are eligible to apply for V nonimmigrant status, and only if one of the following circumstances has occurred: (1) the immigrant petition has been pending for 3 years or more, or (2) the petition has been approved and 3 or more years have passed since the filing date because an immigrant visa is not immediately available or because the alien's application for adjustment of status under section 245 of the INA remains pending.⁷²

N-8 and N-9

Created by the Immigration Reform and Control Act (IRCA) of 1986,⁷³ nonimmigrant categories N-8 and N-9 are for the parents and children of special immigrants who had worked for international organizations in the United States as G-4 nonimmigrants.

The special immigrant categories (SK-1 through SK-4 and SK-6 through SK-9) were created to alleviate the hardship imposed upon such individuals if required to return to their home countries after having spent a substantial amount of time in the United States.⁷⁴ The N-8 and N-9 nonimmigrant classifications for their family members were intended to minimize family separations caused by the fact that some family members were not accorded special immigrant status.⁷⁵

In 1998, the American Competitiveness and Workforce Improvement Act (ACWIA) extended N-8 and N-9 status to the parents and children of NATO civilian employees (classified as NATO-6 nonimmigrants) who were given special immigrant status under ACWIA.⁷⁶

Witnesses and Victims: S, T, and U

S-5 and S-6

There are times when U.S. officials may deem it necessary to permit foreign nationals to enter the United States because their assistance is vital to the investigation and prosecution of a criminal case. Respectively, the S-5 and S-6 nonimmigrant categories apply to certain alien witnesses and informants who possess “critical reliable information” concerning a criminal or terrorist organization or enterprise. Such aliens must be willing to supply such information to U.S. officials, and the alien’s presence in the United States must be deemed essential to a criminal investigation or successful prosecution.⁷⁷

T-1, T-2, T-3, and T-4

The Victims of Trafficking and Violence Protection Act (VTVPA) permits individuals who have been victimized in the most severe fashion to remain in the United States temporarily (and in some cases longer) and receive certain types of Federal and State assistance. This law created the T-1 nonimmigrant category, which allows victims of severe trafficking in persons to remain in the United States and assist federal authorities in the investigation and prosecution of human trafficking cases. The T-1 classification applies to an alien whom the Attorney General determines is or has been a victim of a severe form of trafficking in persons; is at a port of entry or physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands on account of such trafficking; has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking (or is under 18); and who would suffer extreme hardship involving unusual and severe harm upon removal. The T-2 category is for the spouse of a victim of a severe form of trafficking in persons. T-3 is for the unmarried children, and T-4 is for the parents of the principal alien, if that person is under 21.⁷⁸

U-1, U-2, U-3, and U-4

Category U is for individuals who have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; domestic violence; sexual assault; sexual exploitation; peonage; involuntary servitude; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; murder; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit such crimes. An alien is eligible for U-1 status if he or she possesses information concerning the criminal activity; the alien has been helpful or is likely to be helpful to Federal, State, or local law enforcement officials investigating or prosecuting the criminal activity; and the criminal activity involved violated the laws of the United States or occurred in the United States or its territories and possessions. The spouse, child, or parent (in the case of an alien child) of the alien may be granted U-2, U-3, or U-4 nonimmigrant status, respectively, if it is determined to be necessary to avoid extreme hardship.⁷⁹

Individuals who are identified as possible T or U victims may be granted work authorization pursuant to existing authority and utilizing existing application procedures. For instance, potential applicants who are paroled may be granted work authorization pursuant to 8 CFR § 274a.12(c)(11); potential applicants who are placed on deferred action may be granted work authorization pursuant to 8 CFR § 274a.12(c)(14); and potential applicants who are granted a stay of removal may be granted work authorization in accordance with the provisions of 8 CFR § 274a.12(c)(18).⁸⁰

SECTION II

HOW DID NONIMMIGRANT POLICY EVOLVE?

The Evolution of Nonimmigrants in Immigration Law

Over time, the nonimmigrant categories have been expanded to meet the evolving needs of society. Industrialization and globalization have had a direct impact on the numbers of temporary visitors as well as the purposes of their visits. Business expansion into new technologies and international markets has had an impact on U.S. employers and their need for human resources. International travel has become commonplace, providing millions of visitors the opportunity to visit the United States. This section provides a brief overview of the historical development of U.S. nonimmigrant laws. This evolution is depicted in Figure 2.1.

Early U.S. Immigration Laws: Before 1952

The Steerage Act of 1819 established the official collection of immigrant arrival data and was the first Federal law to distinguish between permanent immigrants and temporary visitors. The reporting of “temporary arrivals” separately from permanent immigration was not required until the Act of 1855. It was not until the Immigration Act of 1907 that arriving aliens were required to declare their intention of permanent or temporary stay. This law officially classified arriving aliens as either immigrants or nonimmigrants.⁸¹

Throughout the 1800s, the United States was expanding rapidly and immigrants and temporary workers were a welcome addition. However, as the 19th century drew to a close, the needs of the nation had changed. The western frontier had been settled, and some Americans had become concerned about the impact of population growth on wages and working conditions.⁸² By the end of World War I, the United States had entered into a period characterized by nationalism and isolationism, resulting in the increasing regulation of immigration and foreign visitors to the United States.⁸³

The Immigration Act of 1917

The Immigration Act of 1917⁸⁴ incorporated and codified earlier immigration laws. Though not the first law to address the admission of aliens, the Act contains several provisions related to temporary admissions that were included in later laws. Section 16 of the Act required all aliens coming to the United States:

to state under oath the purposes for which they come, the length of time they intend to remain in the United States, whether or not they intend to abide in the United States permanently and becomes citizens thereof, and such other items of information that will aid the immigration officials in determining whether they belong to any of the excluded classes...⁸⁵

Figure 2.1 Timeline of the Evolution of Nonimmigrant Categories

A, B, C, D, E, AND F RECOGNIZED BY THE IMMIGRATION ACT OF 1924*	1924	
G ADDED BY THE INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT*	1945	
H AND I CREATED BY THE IMMIGRATION AND NATIONALITY ACT OF 1952	1952	
J CREATED BY THE MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE ACT OF 1961	1961	F-2 ADDED BY MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE ACT OF 1961
K AND L CREATED BY PUBLIC LAW 91-225	1970	H-4 CREATED BY PUBLIC LAW 91-225
M CREATED BY THE IMMIGRATION AND NATIONALITY AMENDMENTS OF 1981	1981	
N CREATED BY THE IMMIGRATION REFORM AND CONTROL ACT (IRCA) OF 1986	1986	H-2 SPLIT INTO H-2A AND H-2B BY IRCA
	1989	H-1A CREATED BY THE NURSING RELIEF ACT OF 1989
O, P, Q AND R CREATED BY THE IMMIGRATION ACT OF 1990	1990	
S CREATED BY THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994	1994	
	1999	H-1C (REPLACING H-1A) CREATED BY THE NURSING RELIEF FOR DISADVANTAGED AREAS ACT OF 1999
T AND U CREATED BY THE VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000	2000	
V CREATED BY THE LEGAL IMMIGRATION FAMILY EQUITY (LIFE) ACT OF 2000		K-3 AND K-4 ADDED BY THE LIFE ACT
	2002	F-3 AND M-3 CREATED BY THE BORDER COMMUTER STUDENT ACT OF 2002
	2003	H-1B1 CREATED BY THE UNITED STATES-CHILE AND THE UNITED STATES-SINGAPORE FREE TRADE AGREEMENTS
	2005	E-3 CREATED BY THE REAL ID ACT

* Nonimmigrant categories were designated by number, not letter, prior to 1952.

The list of aliens to be excluded from admission to the United States included a variety of “defective persons,” including polygamists, criminals, professional beggars, persons likely to become public charges, and persons afflicted with “a loathsome or dangerous contagious disease.”⁸⁶ Exempt from some of the exclusion provisions, however, were: government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, and certain family members of such individuals.⁸⁷

The Immigration Act of 1924

After World War I, the number and character of both immigrants and foreign visitors began to change as a result of the increasingly restrictive immigration legislation. For example, the Immigration Act of 1924 created a permanent quota system for immigration and also defined who was not an immigrant. Persons in these categories were considered “nonimmigrants”:

When used in this Act the term “immigrant” means an alien departing from any place outside the United States destined for the United States, except (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation.⁸⁸

The Immigration Act of 1924 also provided for the admission of foreign students, although not as nonimmigrants. The law exempted alien students from quota limitations and classified them as immigrants to be granted temporary residence only.⁸⁹ The Act included in its definition of nonquota immigrant “an immigrant who is a bona fide student at least fifteen years of age and who seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary, or university, particularly designated by him and approved by the Attorney General...”⁹⁰ Because students were given this special classification (compared to immigrants admitted for permanent residence and nonimmigrants admitted temporarily), it was concluded that they should be admitted for a longer period than other visitors, and while they were in the United States they were “entitled to the privileges similar to those enjoyed by aliens admitted for permanent residence.”⁹¹ However, foreign students enrolled as part-time students, in short courses, or in schools that had not been approved were admitted as nonimmigrant visitors for periods ranging from 3 months to 1 year.⁹²

World War II Era

During the pre- and post-World War II era, much of U.S. immigration legislation focused on control of the alien population (such as with the Registry Act of 1929 and the Alien Registration Act of 1940), protecting the Nation (e.g., the Public Safety Act of 1941 and the Internal Security Act of 1950), and facilitating the entry of certain noncitizens, such as war brides and fiancé(e)s

(e.g., the War Brides Act of December 28, 1945 and the G.I. Fiancées Act of June 29, 1946), and refugees (the Displaced Persons Act of 1948 and its amendments).⁹³

During World War II several measures were passed to facilitate the admission of temporary workers to meet seasonal and temporary labor shortages. In 1943, Congress passed a joint resolution that exempted alien workers from the contract labor laws.⁹⁴ In addition, the Attorney General authorized the temporary admission of agricultural workers under the Ninth Proviso of Section 3 of the Immigration Act of 1917, and later legislation provided for the temporary admission of seasonal farm labor in what would become known as the Bracero Program.⁹⁵ (The Bracero Program is discussed in greater detail in Section V.)

International Organizations and Exchange Programs

During this time, the United States also increasingly recognized the importance of international cooperation with its allies. It was during this period that legislation was passed that permitted certain foreign nationals to enter the United States on a temporary basis, thus amending the Immigration Act of 1924 to create new nonimmigrant categories.

In 1945, the International Organizations and Immunities Act was passed to “extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof...”⁹⁶ Section 7 of the Act added to the list of individuals not considered to be immigrants, i.e., nonimmigrants. Representatives, officers, and employees of foreign governments or international organizations, as well as their family members, attendants, servants and employees, were permitted to enter the United States on a temporary basis.⁹⁷

Three years later, Congress passed the U.S. Information and Educational Exchange Act, also known as the Smith-Mundt Act.⁹⁸ As the predecessor to the Fulbright-Hayes Act of 1961 (discussed below), the law provided “for interchanges on a reciprocal basis between the United States and other countries of students, trainees, teachers, guest instructors, professors, and leaders in fields of specialized knowledge or skill...”⁹⁹ Such persons were to be admitted as nonimmigrant visitors for business.¹⁰⁰ In the Senate report accompanying the bills, the Committee on Foreign Relations emphatically recommended the enactment of the legislation, stating:

... the committee believes that the enactment of the bill is essential if we are to have mutual understanding between the people of the United States and the people of other nations which will serve as a firm and lasting foundation for world peace. Today that peace is endangered by the weapons of false propaganda and misinformation and the inability on the part of the United States to deal adequately with those weapons. Truth can be a powerful weapon on behalf of peace.¹⁰¹

Consolidation of Immigration Laws: 1952

The Immigration and Nationality Act (INA) of 1952, also known as the McCarran-Walter Act, was enacted, in part, to “preserve the social and cultural balance of the United States.”¹⁰² This law reaffirmed the national origins quota system for immigrants and combined the many existing immigration laws into the new law.¹⁰³ The INA of 1952 also recognized the existing

categories of nonimmigrants, while adding two additional categories: persons approved to work temporarily in the United States for U.S. employers and representatives of international media.

The temporary worker category, H, was created to accommodate the entry of persons from other countries who had been approved to work temporarily in the United States for a U.S. employer. This category differed significantly from the B-1 nonimmigrant (temporary visitor for business) who was admitted temporarily to conduct business for a non-U.S. business but also maintained his or her home abroad. Prior to the creation of the H nonimmigrant category, the provision of law regarding the admittance of temporary visitors for business was interpreted to exclude persons seeking to enter the United States temporarily to engage in employment. The Act of 1952 sought to remedy this by establishing a separate nonimmigrant class for temporary workers.¹⁰⁴ The Act authorized two types of workers: “aliens of distinguished merit and ability ... coming to the United States to perform temporary services of an exceptional nature requiring such merit and ability” (H-1), and temporary workers coming to fill temporary jobs, provided that there were no U.S. workers available to fill the positions (H-2).¹⁰⁵ In addition, the Act provided for the admission of individuals coming temporarily to the United States as industrial trainees (H-3).¹⁰⁶

Under the INA of 1952, representatives of foreign media who are traveling to the United States to work in their profession and who have a home office in a foreign country are eligible to apply for an I nonimmigrant visa. Prior to 1952, these nonimmigrants were classified as temporary visitors for business. This new category was added to facilitate the exchange of information among nations.¹⁰⁷

Thus, at the dawn of the second half of the 20th Century, the United States recognized these categories of temporary visitors: (A) officials of foreign governments and their families, (B) temporary visitors (such as tourists, persons visiting relatives, or persons conducting business), (C) foreign nationals in transit through the United States to another country, (D) crewmembers on foreign vessels, (E) traders and investors (and their spouses and/or children) who are doing trade or overseeing investments in the United States under existing international treaties, (F) academic students, (G) foreign government officials representing international organizations (such as employees and representatives of organizations like the United Nations and the World Bank), (H) persons approved to work temporarily in the United States for a U.S. employer, and (I) representatives of international media.

The Expansion of International Relationships: 1960s and 1970s

As international communications, cooperation, and travel expanded throughout the 20th century, it became apparent that additional nonimmigrant categories for the temporary entry of foreign nationals were needed. Increased commerce, ease of travel, the expansion of U.S. armed forces stationed at various locations around the world, and the rise in the number of students from abroad attending universities and colleges in the United States were just some of the issues affecting global travel and migration at that time. Thus, immigration law was modified to accommodate these societal changes by adding more categories of nonimmigrants.

Exchange Visitors

In 1961, the Mutual Educational and Cultural Exchange Act, also known as the Fulbright-Hayes Act, was enacted to further the U.S. commitment to international exchange programs.¹⁰⁸ The Act created the J-1 nonimmigrant category specifically for educational and cultural exchange program participants. The new category was necessary because “exchange aliens [were] variously, and rather haphazardly, issued different types of statutorily established nonimmigrant visas,” primarily B and F.¹⁰⁹ The legislative history notes that the main purpose of the new category was to reserve the F visa for students other than exchange students and to make the J visa available solely to nonimmigrants selected under exchange programs.¹¹⁰

Family Members

Congress also recognized that provision needed to be made to permit the spouses and minor children of foreign students and exchange visitors to enter with the family member participating in such programs. It is important to distinguish between the principal alien (the student or the exchange visitor) and his or her dependents because the principal may be authorized to do things that the dependents cannot, such as attend college or work in the United States. Thus Congress created new subcategories of nonimmigrants to accommodate the spouses and children of foreign students and exchange visitors. The Mutual Educational and Cultural Exchange Act created the J-2 category for exchange program participants’ spouses and children, and the F-2 category for the spouses and children of foreign students.¹¹¹ Similarly, the H-4 nonimmigrant category was created by Public Law 91-225 in 1970 for the spouses and children of temporary workers.¹¹²

Intracompany Transferees and Fiancé(e)s of U.S. Citizens

The immigrant and nonimmigrant classification systems also did not accommodate groups of noncitizens that were growing in numbers as a result of increased international mobility. First, due to greater international travel, foreign study, and the presence of U.S. armed forces throughout the world, a growing number of noncitizens were marrying U.S. citizens. After World War II, for example, Congress had enacted special laws designed to permit the entry of noncitizen spouses and fiancé(e)s of U.S. citizens to the United States.¹¹³ However, these laws had been specifically for fiancé(e)s of members of the armed forces and had since expired, leaving no provisions for the entry of fiancé(e)s in immigration law. The need for a mechanism for the entry of fiancé(e)s became apparent as members of the armed forces found it difficult to obtain permission to marry during their tours of duty abroad. As a result, they had to either travel abroad to marry at a later date in order for their fiancé(e) to qualify for immediate relative status as their new spouse, or they had to wait for a nonpreference immigrant visa number to become available for the fiancé(e)s, which for some countries could take many years. Thus, the Act of April 7, 1970¹¹⁴ added the K-1 and K-2 nonimmigrant categories for fiancé(e)s of U.S. citizens and their children, respectively. Unlike the previous laws, this law applied to the fiancé(e) of any U.S. citizen, not just members of the armed forces.¹¹⁵

Second, the growth in multinational companies brought about the need to accommodate the movement of managers of these companies among branches and subsidiaries throughout the

world, including the United States. The 1965 amendments to the Immigration and Nationality Act abolished the national origins quota system and replaced it with a system of uniform numerical limits. Under the pre-1965 system, it is generally believed that migrants from countries with large, unused immigration quotas and from Western Hemisphere countries with few quantitative limits on entry used the permanent immigration system to enter the United States for temporary purposes. After 1965, it became more difficult for international businesses (which also had been growing in number) to use immigrant visas to transfer employees to offices and subsidiaries in the United States. In particular, the imposition of a numerical ceiling on the immigration of persons born in the Western Hemisphere, when previously there had been no limit, made the transfer of employees from Canadian branches of international firms problematic. To resolve this difficulty, the L-1 nonimmigrant category was created for intracompany transferees.¹¹⁶

Nonacademic and Vocational Students

In the 1970s and 1980s, concerns about the ability of the Immigration and Naturalization Service (INS) to track the growing number of foreign students, as well as concerns over incidents of terrorism, led to further changes in the nonimmigrant categories. In the wake of the 1979 American hostage crisis in Iran, it was discovered that the INS did not know the number or whereabouts of Iranian students in the United States. The INS was instructed to identify any Iranian students who were not in compliance with the terms of their nonimmigrant entry visas, and Iranian students were required to report their location and status to the INS.¹¹⁷ Of the more than 64,000 Iranian students estimated to be in the United States, slightly more than 7,500 were found to have violated their status.¹¹⁸

At the same time, hearings on foreign student policies were held by both Congress and the Select Commission on Immigration and Refugee Policy. During these hearings, concern was voiced that there was a high percentage of foreign students enrolled in vocational programs in fields that had little or no applicability to their own country.¹¹⁹ As a result of these efforts, Congress determined that there was a need to better track the immigration status of students. The Immigration and Nationality Act Amendments of 1981¹²⁰ created a new nonimmigrant category for foreign students. The M-1 classification was established for aliens pursuing full time studies in vocational or other nonacademic institutions, with the exception of language training programs. The Act also limited the F-1 category to academic institutions and language training programs. Because foreign language training programs were often a prerequisite for entry into institutions of higher education, it was determined that students in such programs would continue to be classified as F-1 nonimmigrants.¹²¹

Immigration Reform and Control: 1986

The Immigration Reform and Control Act (IRCA) of 1986¹²² significantly reformed U.S. immigration law. The Act was intended to control illegal immigration through stronger enforcement actions, including increased border control and sanctions for employers who hire illegal workers, as well as a legalization program for specific groups of illegal immigrants already in the United States as of January 1, 1982.¹²³ The 1986 Act also made changes to the nonimmigrant provisions of the law. First, IRCA revised the nonimmigrant class of temporary

workers performing services when U.S. workers were unavailable by dividing it into two categories: agricultural workers (H-2A) and other temporary workers (H-2B).¹²⁴

Second, the Act created new nonimmigrant categories for the parents (N-8) and children (N-9) of some special immigrants. The Act created a special immigrant category to allow certain retired employees of international organizations, their unmarried sons and daughters, and their surviving spouses (all formerly G-4 nonimmigrants) to adjust to permanent resident status. The provision was designed to alleviate the hardship imposed upon such individuals, who often have spent a substantial amount of time in the United States, during which they became integrated into U.S. society.¹²⁵ The nonimmigrant classifications for their family members, authorized by IRCA, also were intended to minimize family separations caused by the fact that some family members were not accorded special immigrant status.¹²⁶ Thus, the parents and minor children of individuals given the special immigrant status under this Act were made eligible for the new nonimmigrant status.¹²⁷

Finally, IRCA authorized the Visa Waiver Pilot Program, which allowed certain tourists and business travelers to visit the United States without applying for a nonimmigrant visa on a small-scale basis. This program was revised and extended through Fiscal Year 1994 by the Immigration Act of 1990,¹²⁸ and made permanent by the Visa Waiver Permanent Program Act of 2000.¹²⁹ (The Visa Waiver Program is discussed in greater detail in Section VII).

Addressing Legal Immigration and Temporary Entrants: 1990s

The debate over immigration reform continued after the passage of IRCA. In their 1981 report, the Select Commission on Immigration and Refugee Policy had called for comprehensive immigration reform encompassing both illegal and legal immigration. Legislation was introduced to discuss both of these issue areas but was subsequently divided on the theory that it was critical to gain control of illegal immigration before reforming legal immigration. Thus, after the passage of IRCA in 1986, which primarily addressed illegal immigration, Congress turned their attention to reforming the legal immigration system.¹³⁰ These efforts culminated in the Immigration Act of 1990.¹³¹

The 1990 Act substantially revised U.S. immigration law. It provided for an overall but pierceable cap of 675,000 immigrants, beginning in Fiscal Year 1995, in three major categories: family-based, employment-based, and diversity immigrants. In addition, naturalization requirements were revised and the Attorney General was given the authority to grant temporary protected status to aliens from designated countries subject to armed conflict or natural disasters. With regard to nonimmigrants, the 1990 Act revised some categories, created four additional categories, and extended the Visa Waiver Pilot Program.¹³² The modifications to the nonimmigrant categories made by the Immigration Act of 1990 are summarized in Table 2.1.

Table 2.1. Changes in Nonimmigrant Categories, 1990

Nonimmigrant Category	Changes Made
A - Foreign government officials	No changes
B - Temporary visitors	Extended the Visa Waiver Pilot Program until September 30, 1994; permitted entry under the visa waiver program at land ports of entry.
C- Aliens in transit	No changes
D - Alien crewmembers	Denied crewmember status in certain labor disputes; prohibited nonimmigrant crewmembers from performing longshore work (with some exceptions, including the filing of a labor attestation).
E - Treaty traders and investors	Designated two countries (Australia and Sweden) whose nationals can receive E status without a specific bilateral treaty in place; added trade in services and technology as eligible areas of trade; defined "substantial" for the purposes of E visa classification as "such an amount of trade or capital as established by the Secretary of State" in consultation with other agencies.
F - Academic students	Created a 3-year pilot program to allow foreign students to work part-time off campus. A labor attestation was required for participating businesses.
G - Representatives to international organizations	No changes
H - Temporary workers	<u>H-1A (nurses)</u> : placed responsibility for filing attestations on both the registry and the hospital, as long as they were independent of one another; DOL given authority to waive attestation in certain circumstances <u>H-1B (skilled workers)</u> : redefined specialty occupations as requiring highly specialized knowledge and a bachelor's degree (or equivalent); required employers to file labor attestation; created annual cap of 65,000. <u>H-2A (agricultural workers)</u> : no changes <u>H-2B (skilled/unskilled)</u> : created annual cap of 66,000. <u>H-3 (trainees)</u> : codified existing INS regulations by adding the requirement that training programs not be designed to provide "productive employment."
I - Representatives of foreign media	No changes
J - Exchange visitors	No changes
K - Fiancé(e)s of U.S. citizens and their children	No changes
L - Intracompany transferees	Broadened definitions of specialized knowledge and managerial and executive capacity; relaxed prior experience requirement; lengthened period of admission; required 30-day processing of petitions.
M - Vocational students	No changes
NATO - NATO officials and families	No changes
N - Parents or children of special immigrants (who were formerly G-4 nonimmigrants)	No changes
O - Aliens of extraordinary ability	Created by the Immigration Act of 1990
P - Athletes and entertainers	Created by the Immigration Act of 1990
Q - Cultural exchange visitors	Created by the Immigration Act of 1990
R - Religious workers	Created by the Immigration Act of 1990

Source: "The Immigration Act of 1990 Analyzed: Part 4 – Nonimmigrant Visas B to H-1A," *Interpreter Releases*, vol. 68, no. 1 (January 7, 1991), p. 1; "The Immigration Act of 1990 Analyzed: Part 6 – The Remaining Nonimmigrant Visa Provisions," *Interpreter Releases*, vol. 68, no. 3 (January 7, 1991), p. 69.

Crewmembers

Many of the changes to nonimmigrant requirements were enacted in response to concerns from both labor unions and business interests over how the entry of all foreign workers should be controlled.¹³³ For example, changes in the rules for crewmember nonimmigrant visas (D visas) stemmed from a labor dispute between Trans World Airlines and the flight attendants' union. The union alleged that during a strike the airline employed nonresident aliens on trans-Atlantic flights. Although IRCA had passed a 1-year ban on alien crewmembers working during strikes, the provision had expired and Congress had not reauthorized the provision.¹³⁴ This issue was addressed in section 202 of the 1990 Act, which denied alien crew member status during certain labor disputes, thus closing "a gap in immigration law which unfairly harms American workers who exercise their right to strike."¹³⁵

Temporary Workers, Treaty Traders and Investors, and Intracompany Transferees

In drafting the 1990 Act, Congress focused considerable attention on the temporary worker nonimmigrant categories. The legislative history of the Act notes that between 1981 and 1988, the annual number of H-1 admissions had increased by over 30,000. There also was concern that because there was no labor certification requirement (to demonstrate that no U.S. worker would be displaced), the H-1 category was open to abuse.¹³⁶

Citing the rise in the number of visa issuances and "the problem of H-1 visa abuse," Congress redefined and split-out certain categories of workers, as well as placing numerical limits on all categories that were formerly H visas.¹³⁷ Certain entertainers, athletes, artists, and persons of "extraordinary ability" were given the new nonimmigrant categories of O and P. Persons in "specialty occupations" remained in the H-1B category, and were redefined as occupations requiring highly specialized knowledge and a bachelor's degree or equivalent. These changes were made in response to concerns that the requirement of "distinguished" was not appropriately applied to the H-1 category.¹³⁸

Noting that the supply of temporary workers had "not kept up with the demands of American business in the international marketplace," Congress also modified the E nonimmigrant category to take advantage of technological advances by allowing the transfer of technology and services under the definition of the E category.¹³⁹ In addition, the Act made several changes to the L-1 category, including: broadening the definitions of managerial and executive capacity and specialized knowledge, relaxing the prior experience requirement (permitting the applicant to gain qualifying experience anytime within the 3 years preceding admission, rather than 1 year preceding admission), lengthening the maximum period of admission, and giving the INS a 30-day deadline in which to process L-1 petitions.¹⁴⁰

Exchange Visitors

In response to charges that the J-1 exchange visitor programs were "inappropriately utilized for employment purposes,"¹⁴¹ the Immigration Act of 1990 established the Q nonimmigrant category for certain participants in cultural exchange programs. Prior to the passage of the Act, the General Accounting Office (GAO) had issued a report on the use of J-1 exchange visitor

visas, noting that “the J-visa program has expanded to include activities that do not meet the qualifying language of the J-visa statute.”¹⁴² Of particular concern were au pair programs and other programs in which work was a substantial part of the participants’ activities. GAO recommended that other visa categories, such as H, L, and M, may be more appropriate for such activities.¹⁴³ Concerned that the J-I visa program could be eliminated or substantially modified, several major companies, including the Walt Disney Company, urged Congress to create a program that would legitimately permit them to bring in workers for cultural programs.¹⁴⁴ Thus, the Q nonimmigrant category, sometimes called “the Disney Visa,” was developed.

According to the 1990 Act, an alien may qualify for a Q nonimmigrant visa if he or she is a participant in an international cultural exchange program the purpose of which is to provide “practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality... .”¹⁴⁵ This exchange program is administered by USCIS, and participating employers must be designated by the Department of Homeland Security as operating qualifying exchange programs.

Religious Workers

The 1990 Act also created a separate nonimmigrant category for religious workers. Prior to that time, temporary religious workers had to qualify for one of the other nonimmigrant categories, such as B-1, H-1B, H-3, J-1, or L-1. Often, however, these categories were not appropriate for the type of work religious workers did. For example, prior to 1990, the H-1B category required an alien to be “prominent” in his or her field or to have a professional degree, which some religious workers did not possess. Because of these difficulties, as well as a shortage of domestic religious workers, religious groups lobbied Congress to include provisions specifically for religious workers in the 1990 Act.¹⁴⁶

The R nonimmigrant category was created for members of religious denominations “having a bona fide nonprofit, religious organization in the United States” seeking to enter for a period not to exceed 5 years to work for that religious organization.¹⁴⁷ In creating this category, Congress instituted safeguards to guard against abuse, requiring all prospective R nonimmigrants to have been members of their religious organization for the 2 years immediately preceding their application for a visa.¹⁴⁸

Miscellaneous and Technical Amendments of 1991

As the effective date of the Immigration Act of 1990 neared, Congress received numerous letters concerning the implementation of the new O and P nonimmigrant categories. Organizations within the entertainment and athletics industries had expressed concerns over the labor union consultation requirements, the annual caps, the length of time entertainment group members were required to be with the group, and the requirement that visa applications be made no more than 90 days prior to the anticipated date of entry.¹⁴⁹ As originally written, the provisions of the Act relating to the O and P categories were to be implemented on October 1, 1991; however, a clause was added to the Armed Forces Immigration Adjustment

Act (which was signed into law on October 1, 1991) to delay implementation of the O and P provisions until April 1, 1992.¹⁵⁰

After consideration of the concerns expressed by the various groups, Congress drafted the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991.¹⁵¹ The bill, signed into law on December 12, 1991, provides a variety of modifications to the 1990 Act. With regard to nonimmigrants, the 1991 amendments clarified the standards and requirements for the O and P categories, modified the consultation requirement, and defined “extraordinary ability” for O nonimmigrants. In addition, the INA section concerning H-1B nonimmigrants was amended to include fashion models.¹⁵² According to a House Report accompanying the bill, “Fashion models are specifically mentioned in the legislation because an oversight in the 1990 law effectively precludes all but the most famous such persons from coming to the United States.”¹⁵³

Efforts to Prevent Crime and Protect Victims: 1994 to 2000

Crime in the United States was a key issue of the 1980s and 1990s. The violent crime rate had been increasing since the 1970s and peaked between 1986 and 1993.¹⁵⁴ At the same time, there was a growing awareness and concern over the issues of violence against women, trafficking in persons, and terrorism.¹⁵⁵ As a result, several laws were passed that addressed these issues, including the immigration-related aspects of such crimes.

In 1994, sweeping changes were made to the nation’s law enforcement efforts with the passage of the Violent Crime Control and Law Enforcement Act.¹⁵⁶ Referred to as the “largest crime bill in the history of the country,”¹⁵⁷ the Act provided for 100,000 new police officers, funding for prisons and crime prevention programs, and additional funding for Federal law enforcement agencies, including the INS and the FBI. In addition, the law addressed several issues, including firearms sales and licensing, telemarketing fraud, gangs, alien smuggling, and violence against women.¹⁵⁸

Among the immigration provisions of the law was the designation of the S nonimmigrant category for witnesses and informants possessing information concerning criminal organizations or terrorist information. According to the new law, aliens who possessed “critical reliable information” concerning a criminal or terrorist enterprise, who were willing to share that information with U.S. officials, and whose presence in the United States was required for the successful investigation or prosecution of the criminals or terrorists, would be eligible for nonimmigrant status, and most grounds for exclusion could be waived for such aliens.¹⁵⁹

Additional anti-crime efforts were enacted into law in 2000 with the Victims of Trafficking and Violence Protection Act.¹⁶⁰ The purpose of this law is to “prevent trafficking in persons, to ensure punishment of traffickers, and to protect their victims.”¹⁶¹ Among the provisions of the Act was the creation of T and U nonimmigrant visas.

The T nonimmigrant visa is for alien victims of severe forms of trafficking in persons. The individual must demonstrate that he or she is a victim of a severe form of trafficking, is willing

to cooperate with law enforcement, and is unable to return home for fear of retribution. The need for this status is described in the House Report accompanying the bill,

When trafficked persons are brought to the United States, they are often deportable for having entered illegally. Many are smuggled into the country. Others obtain visas under false pretenses, use fraudulent passports, or overstay their visas. Once placed in the sex trade or forced labor, the victims' traffickers control them through threats. The victims are told that if they escape or go to law enforcement authorities, they will be deported. Of those victims who do give information to authorities, some claim that they cannot return to their home country for fear of retribution at the hands of their traffickers.¹⁶²

Also created by the Victims of Trafficking and Violence Protection Act of 2000, the U visa is for victims of certain other crimes. Individuals who have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity, including, rape, torture, domestic violence, prostitution, involuntary servitude, blackmail, false imprisonment, and other crimes identified in the law, may be eligible for a U nonimmigrant visa. The individual must possess information concerning the criminal activity and must be willing to help authorities investigating or prosecuting the criminal activity. In addition, the criminal activity must have occurred in the United States (or its territories and possessions).¹⁶³

Family Equity: 2000

The final, currently existing nonimmigrant category, V, was established in 2000 with the Legal Immigration Family Equity (LIFE) Act. That law also created additional subcategories within the K nonimmigrant category. The purpose of these categories is to alleviate family separations caused by the wait for immigrant visas.

Prior to the creation of the V visa, spouses and children of legal permanent residents faced a wait of at least 4 years to receive a green card; the wait was longer for certain groups, such as Mexican nationals, depending on the availability of immigrant visas. Family members waiting for immigrant visas, usually in unlawful status, were not permitted to remain in the United States with the petitioning family member or to adjust status. Further, because they were considered intending immigrants, they were unable to obtain nonimmigrant visitor visas. As a result families entered illegally or were separated for many years.¹⁶⁴ The V nonimmigrant visa, however, is only available to those individuals who have had an application for immigrant status pending for at least 3 years, or that have been approved and 3 years have passed since the filing date.¹⁶⁵

The LIFE Act also created the K-3 and K-4 nonimmigrant categories for the spouses and minor children, respectively, of U.S. citizens who are waiting for the adjudication of their immigrant visa applications. Although they are immediate relatives of U.S. citizens and not subject to an annual cap on immigration, such individuals often wait many months to receive a visa due to administrative processing delays. Further, as was the case with individuals now eligible for V visas, because they would be intending immigrants they were ineligible for nonimmigrant visitor visas. The creation of the K-3 and K-4 visas, like their cousins K-1 and K-2, permit the visa holders to enter the United States and adjust status in the United States, thus permitting the families to be in the United States together.¹⁶⁶

Creating Subcategories of Nonimmigrants

As noted above, the nonimmigrant categories have evolved over time. From categories A through E, prior to the passages of the Immigration and Nationality Act of 1952, to the creation of categories T, U, and V in 2000, almost the entire alphabet has been used over the last half-century to describe the various reasons foreign nationals have for requesting temporary entry to the United States. However, throughout this period additions have been made to the existing categories as well (see Figure 2.1). For example, as discussed above, the LIFE Act added K-3 and K-4 to the existing K nonimmigrant category.

As noted in the preceding section, the H-1 category has undergone many revisions and subcategories have been added to this category from time to time. The Nursing Relief Act of 1989¹⁶⁷ and the Nursing Relief for Disadvantaged Areas Act of 1999¹⁶⁸ created separate subcategories for foreign nurses. In response to the shortage of nursing professionals in the United States, Congress created the H-1A nonimmigrant category in 1989.¹⁶⁹ Foreign nurses were admitted to the United States in this category under a 5-year pilot program that expired in 1995, but was later extended through September 30, 1997.¹⁷⁰ After the original program expired, Congress created the H-1C nonimmigrant category, established by the Nursing Relief for Disadvantaged Areas Act of 1999. This law specified that the program would expire 4 years after the date the regulations implementing the law were published by the Department of Labor.¹⁷¹ Thus, after September 20, 2004, the Department of Labor was no longer accepting labor attestations under the H-1C program.¹⁷²

The H-1 category was appended again in 2003 with the passage of free trade agreements with Chile and Singapore.¹⁷³ These agreements resulted in the creation of the H-1B1 nonimmigrant category, with numerical limits of 1,400 for Chileans and 5,400 for Singaporean treaty workers. The category is for the entry of persons in specialty occupations requiring “(A) theoretical and practical application of a body of specialized knowledge; and (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent)...”¹⁷⁴ Unlike the other H-1B classifications, the new subcategory does not require a petition, and while the initial entry period is for 1 year, the alien may receive unlimited extensions in 1-year increments.¹⁷⁵

The cultural exchange nonimmigrant category Q was expanded in 1998 to accommodate the Irish Peace Process Cultural and Training Program, also referred to as the Walsh Visa Program after Congressman James Walsh who sponsored the bill. The nonimmigrant categories Q-2 (program participants) and Q-3 (spouses and dependents) were authorized by the Irish Peace Process Cultural and Training Program Act of 1998.¹⁷⁶ The original legislation has been extended twice, with the final program participants expected to depart the United States in 2008.¹⁷⁷

The Irish Peace Process Cultural and Training Program provides employment and vocational training opportunities in selected cities in the United States. It also offers conflict resolution training and other activities designed to involve participants in U.S. society. The goal is to help the participants develop and enhance personal and professional skills which can then be applied in their home countries. Participants come from disadvantaged areas of Northern Ireland and the six border counties of the Republic of Ireland.¹⁷⁸

The student categories were expanded by the Border Commuter Student Act of 2002.¹⁷⁹ This law created the F-3 and M-3 nonimmigrant categories for commuter students from Canada and Mexico who continue to reside in their home country while commuting to the United States to attend an approved school.¹⁸⁰ As one of its post-September 11, 2001 border security initiatives, the INS reviewed several policies and practices and issued a memorandum to regional offices advising them to discontinue, by July 1, 2002, any local practices permitting the entry of part-time commuter students with visitor visas or border crossing cards, as such documents were inappropriate for the intended purpose of attending school. The memorandum also reminded the offices that part-time students were ineligible for student visas, because nonimmigrant student visas required the student to pursue a full course of study.¹⁸¹

However, because strict adherence to these requirements would effectively bar Mexican and Canadian nationals from attending U.S. institutions of higher education on a part-time basis, many individuals expressed concern with the efforts of the INS to enforce the rule. Congressional intervention extended the deadline for discontinuing the admittance of part-time students through December 31, 2002.¹⁸² Later, the INS published an interim rule to expand the F and M visa categories to “recognize the special relationship between the United States and its neighbors and to legitimize such study by border commuter students, while placing it within a regulated, controlled, process.”¹⁸³ At the same time, some members of Congress, recognizing the positive impact commuter students can have on their home communities, drafted legislation to address the issue.¹⁸⁴ The bill, the Border Commuter Student Act,¹⁸⁵ was signed into law on November 2, 2002, thereby creating new nonimmigrant categories for commuter students.

Finally, two additional free trade agreement nonimmigrant categories were added in 2003 and 2005. In 2003, the United States signed free trade agreements with Chile and Singapore, resulting in the creation of the H-1B1 nonimmigrant category for workers in specialty occupations.¹⁸⁶ In 2005, the E-3 nonimmigrant visa category was added by the Real ID Act.¹⁸⁷ This category is reserved for Australian nationals also working in specialty occupations.¹⁸⁸

Conclusion

The nonimmigrant system has evolved in a logical fashion over time as the needs of the United States and the world have changed. Through its laws and regulations, the United States has developed requirements for the entry of visitors from other countries. The requirements vary somewhat by the nationality of the visitors, the purposes for which they visit, the relationship the United States has with certain countries, and considerations for the safety and security of U.S. citizens, permanent residents, and visitors. However, the system also has become more complicated with the addition of categories, changing requirements, and security considerations. Nonetheless, the need for foreign nationals to enter the United States on a temporary basis will continue to exist, and the nonimmigrant system will continue to evolve to reflect the needs of the United States.

SECTION III

HOW DO U.S. NONIMMIGRANT POLICIES COMPARE TO OTHER COUNTRIES?

In many ways, the U.S. nonimmigrant visa policy is similar to that of other countries. Many countries have a variety of rules and procedures that are applied to different reasons for visiting the country. In general, different requirements must be met for individuals requesting admission for personal visits, to study, or to work. This section compares the nonimmigrant policies of Australia, Canada, Japan, the Philippines, and the European Union to that of the United States.

Australia

All persons traveling to Australia, except citizens of New Zealand, are required to have a visa or Electronic Travel Authority (ETA) as proof of authorization to travel to Australia. The Australian government introduced ETAs in 1996. An ETA is equivalent to a visa, but rather than being a stamp in a passport, is an electronic record accessible by airlines and travel agents, as well as by officials at Australian ports of entry. This record includes all of the traveler's passport information, as well as the authorization for travel to Australia.¹⁸⁹

Applications for ETAs are submitted through travel agents, airlines, or online via the Internet, rather than at an embassy or consulate, and checked against government databases. If no adverse information is found, the ETA is granted.¹⁹⁰ There are two types of ETAs, which are similar to the U.S. temporary visitor visas (B-1 and B-2): the visitor ETA and the short validity business ETA. Each permits stays up to 3 months. Similar to the U.S. visa waiver program, only nationals of certain countries are eligible for ETAs. The 34 countries and/or jurisdictions able to participate in the ETA issuing system include Andorra, Austria, Germany, Greece, Hong Kong, South Korea, Switzerland, Taiwan, the United States, and Vatican City.¹⁹¹

For those ineligible for an ETA, there are several classes (and subclasses) of Australian nonimmigrant visas, each carrying different conditions, such as restrictions on employment or studies. Visa classes include visitors, workers, students, and temporary entrants for other reasons. For example, there is a specific type of visa for temporary retirement. This visa class permits persons who are 55 years or older with sufficient income or capital, to enter Australia for an extended temporary stay. Holders of temporary retirement visas must: meet specific income or asset requirements, have no dependent children, have adequate health insurance, and be of good health and character. In addition, they must have no intention of working full-time in Australia, though they are permitted to work up to 20 hours per week.¹⁹²

Australia also has a separate visa category for "working holiday makers," who participate in a special program that "enhances the cultural and social development of young people, promotes mutual understanding between Australia and other nations and is an important part of the tourist industry."¹⁹³ This type of visa is available to individuals seeking to enter Australia for extended visits, the primary purpose of which is tourism. However, the working holiday maker visa permits visitors to supplement their travel funds through incidental employment "of a

temporary or casual nature.” Work for longer than 3 months with any one employer is not permitted. To qualify for this type of visa, the applicant must be between the ages of 18 and 30, must not have dependent children, and should have sufficient funds to return to their home country as well as for the first part of their stay. The working holiday maker visa is valid for stays of up to 12 months.¹⁹⁴

The student visa categories also are different from those in the United States. Whereas there are two main U.S. student visa categories (academic and vocational students), the Australian student visa program has seven subclasses, as show in Table 3.1. The visa subclass is determined by the type of courses taken.¹⁹⁵

Table 3.1. Australian Student Visas

Student Visa Subclass	Main Course of Study
570 - Independent ELICOS	English Language Intensive Courses for Overseas Students (ELICOS), undertaken as a stand-alone course (not leading to an Australian diploma or degree), or undertaken as a stand-alone course, leading to a certificate.
571 - Schools	Primary or secondary school courses, or courses in an approved secondary exchange program
572 - Vocational Education and Training	Certificate I, II, III, and IV (except ELICOS), diploma, or advanced diploma
573 - Higher Education	Bachelor degree, associate degree, graduate certificate, graduate diploma, or masters coursework
574 – Postgraduate Research	Masters research or doctoral degree
575 - Non-award	Non-degree foundation studies, or other full-time course or components of courses not leading to an Australian diploma or degree
576 - AusAID and Defense	Full-time courses of any type undertaken by an AusAID or Defense student sponsored by the Australian Government

Source: Government of Australia, Department of Immigration and Multicultural and Indigenous Affairs, “Student Visa Subclasses and Assessment Levels” accessed at <http://www.immi.gov.au/study/visas/subclasses_assessment.htm>

There are several conditions attached to student visas. Initially, student visa holders may not work. Students (and their family members) may apply for work after their studies have commenced; the educational institution must electronically notify the Department of Immigration and Multicultural and Indigenous Affairs that the student has commenced his or her coursework. If approved, students may work up to 20 hours per week, and full-time during school breaks. Family members may work no more than 20 hours per week during the entire time the student visa holder is in status. Other conditions address topics such as changing schools or courses of study, having adequate health insurance, and having adequate financial support.¹⁹⁶

Canada

Before traveling to Canada as a visitor, student, or worker, foreign nationals are required to obtain a temporary resident visa, unless they qualify for an exemption from this requirement (U.S. citizens and permanent residents are not required to obtain a visa).¹⁹⁷ A temporary resident visa is an official document that is obtained from a Canadian visa office abroad and is placed in a person's passport as proof that the individual has met the requirements for admission to Canada as a temporary resident. There are three types of temporary resident visas: single entry, multiple entry, and transit visas.¹⁹⁸

Temporary Residents

To qualify for a temporary resident visa, individuals must: satisfy an immigration officer that they will leave Canada, demonstrate that they have enough money to maintain themselves and their family members while in Canada and to return home, not intend to work or study in Canada unless authorized to do so, be law abiding and have no record of criminal activity, not be a risk to the security of Canada, and be in good health. Additional documents may be requested to establish admissibility.¹⁹⁹

Temporary Workers

Canada allows the entry of foreign workers for temporary work in areas where there are skill shortages. In most instances, temporary workers are required to have a valid work permit. Before applying for a permit, the worker must have a job offer, and Human Resources Development Canada (HRDC) must provide a labor market opinion confirming that the worker may accept the job. In addition, temporary workers must meet the entry requirements specified above for temporary residents.²⁰⁰

Not all types of work are required to have a labor market opinion, and some workers may not be required to obtain a work permit. For example, certain entrepreneurs, intracompany transferees, and treaty traders are not required to obtain an HRDC confirmation. In addition, individuals such as news reporters, athletes, coaches, performing artists, foreign government officers, and military personnel are not required to obtain a work permit. Skilled workers who meet certain work experience requirements may be permitted to become permanent residents.²⁰¹ Similar to the United States, the many requirements and exceptions are specified in law and regulation.²⁰²

Students

In some cases, persons wishing to enter Canada to attend an educational institution must apply for a study permit.²⁰³ To obtain a study permit, individuals must meet the same qualifications as those for a temporary resident permit, and must show that they have been accepted by an educational institution. Individuals also must demonstrate that they have enough money to pay for tuition, transportation, and living expenses for themselves and any accompanying family members while in Canada. Several conditions may be imposed on a student's admission,

including the type of studies permitted, the location and educational institution where the student may study, the time period of study, and permission to work.²⁰⁴

Japan

In Japan, nonimmigrant entry is addressed in the Immigration Control and Refugee Recognition Act. In general, an individual wishing to enter Japan for a temporary period of time must have a visa and a passport. A visa may only be obtained at an overseas Japanese embassy or consulate. The visa does not guarantee entry (landing) in Japan; it is an indication that a person is eligible to apply to enter the country.²⁰⁵

When the visitor arrives at an airport or seaport in Japan, he must apply to an immigration officer for landing permission. The immigration officer will check the validity of the person's passport and visa and will inquire about the person's reason for visiting Japan and length of stay. If the individual meets all of the requirements of the Immigration Control Act, he or she may be permitted entry to Japan. If admission is granted, the immigration officer will provide the visitor with a stamp of landing permission which states the date and port of entry and the immigration status of the visitor. The stamp of landing permission serves as the legal basis for the foreign national's stay in Japan.²⁰⁶

Table 3.2. Selected Japanese Visa Categories

Working	General	Specified
<ul style="list-style-type: none"> ▪ Professors ▪ Artists ▪ Religious activities ▪ Journalists ▪ Investors/business managers ▪ Legal/accounting services ▪ Medical services ▪ Researchers ▪ Instructors ▪ Engineers ▪ Specialists in the humanities/ international services ▪ Intracompany transferees ▪ Entertainers ▪ Skilled laborers 	<ul style="list-style-type: none"> ▪ Cultural activities ▪ College students ▪ Pre-college students ▪ Trainees ▪ Dependents 	<p>Activities that are specifically designated by the Minister of Justice for certain activities, such as:</p> <ul style="list-style-type: none"> ▪ Personal employees of diplomats ▪ Athletes in amateur sports ▪ Foreign lawyers engaging in international arbitration affairs ▪ University students engaged in internship activities

Source: Ministry of Foreign Affairs of Japan, Consular and Migration Affairs Department, Foreign Nationals' Affairs Division, "A Guide to Japanese Visas, Section IV. Types and Categories of Visas," <http://www.mofa.go.jp/j_info/visit/visa/04.html>

Japanese nonimmigrant visas fall into seven broad categories based on the purpose of the visit (see Table 3.2): diplomatic visas, official visas, working visas, temporary visitor visas, transit visas, general visas, and specified visas. As in the United States, many of these visa categories require

that documentation pertinent to the reason for the visit be provided at the time of visa application.²⁰⁷

Like the United States, Japan also has visa exemption arrangements with other countries. Citizens of the United States and 58 other countries are not required to obtain a visa if they will be visiting Japan for short-term stays for such purposes as sightseeing and business trips, with the exception of paid activities. Visitors from the United States are not required to obtain a visa if they are planning to be in Japan for 90 days or less.²⁰⁸

The Philippines

The Philippines specifies seven categories for nonimmigrant admissions: temporary visitor, transient, seaman, treaty trader/investor, foreign government official, student, and prearranged employment. Only nationals of countries that have reciprocity agreements with the Philippine government are eligible for nonimmigrant visas.²⁰⁹ A “foreign tourist” (or temporary visitor) is defined as “a person without distinction as to race, gender, language or religion, who is proceeding to the Philippines for a legitimate, nonimmigrant purpose such as sightseeing, sports, health, family reasons, training or study (excluding enrollment in schools for the purpose of obtaining a title or degree), religious pilgrimage, business, cultural and scientific purposes.”²¹⁰ Similar to U.S. nonimmigrant visas, a Philippine visa shows that a visa application has been properly examined and that the bearer may request permission to enter the Philippines at a port of entry.

Nationals of certain countries who are traveling to the Philippines for business and tourism are permitted to enter the Philippines without visas for up to 21 days, provided that they have valid tickets for their return journey or to their next destination and that their passports are valid for at least 6 months beyond their intended visit. The Philippines have specified 145 countries (including the United States) whose nationals are allowed to enter the Philippines without a visa for stays of 21 days or less. Holders of Brazilian and Israeli passports are permitted to enter the Philippines without a visa for up to 59 days. Holders of Hong Kong Special Administrative passports, British National Overseas passports, Portuguese Passports issued in Macao, and Macao Special Administrative Region passports may enter the Philippines without a visa for stays up to 7 days.²¹¹

The European Union

The European Union (EU) currently is composed of 25 member nations (see Table 3.3). The origins of the EU date to the 1950s with the need for cooperation after World War II. The Treaty of Paris, signed in 1951, created the European Coal and Steel Community, comprised of France, Germany, Belgium, Italy, Luxembourg, and the Netherlands. This alliance was later transformed into the European Economic Community (EEC) by the Treaty of Rome in 1957. The purpose of the EEC was to develop a common market of goods and services.²¹² Over the years, the EEC experienced subsequent stages of “enlargement,” through which new member states were added.

Table 3.3 European Union Members and Year of Entry

EU Member	Year of Entry	EU Member	Year of Entry
France	1957	Finland	1995
Germany	1957	Sweden	1995
Belgium	1957	Cyprus	2004
Italy	1957	Czech Republic	2004
Luxembourg	1957	Estonia	2004
The Netherlands	1957	Hungary	2004
Denmark	1973	Latvia	2004
Ireland	1973	Lithuania	2004
United Kingdom	1973	Malta	2004
Greece	1981	Poland	2004
Portugal	1986	Slovakia	2004
Spain	1986	Slovenia	2004
Austria	1995		

The framework for free movement within the union was set in place in 1985 with the signing of the Schengen agreement. Signed in the village of Schengen, Luxembourg, by France, Germany, Belgium, Luxembourg, and the Netherlands, this agreement called for the gradual abolition of checks at internal borders.²¹³ In June 1990, the Schengen Convention was signed, implementing the 1985 agreement. The Schengen Convention abolished the checks at internal borders of the signatory states and created a single external frontier, where checks for all the Schengen signatories were to be carried out in accordance with a common set of rules. This convention went into effect in 1995. By that time, Italy, Spain, Portugal, and Greece had joined the initial signatories to the Schengen agreement.²¹⁴

A new Treaty of European Union, also known as the Maastricht Treaty, was signed in 1992 and went into effect in 1993. This treaty changed the name of the EEC to the European Union and set out several objectives for “the process of creating an ever closer union among the peoples of Europe.”²¹⁵ The treaty also established the concept of EU citizenship and provided that “every citizen of the Union shall have the right to move and reside freely within the territory of the Member States...”²¹⁶

These measures were incorporated into the Amsterdam Treaty on the European Union, which became effective on May 1, 1999. This treaty incorporated the Schengen agreements and other treaty provisions into the EU legal and institutional framework.²¹⁷ With the Treaty of Amsterdam, the Schengen requirements were fully accepted by 13 of the EU Member States. Ireland and the United Kingdom never signed the Schengen Convention and, through a protocol annexed to the Treaty of Amsterdam, have not ended border controls with other EU Member States. However, in the future they will participate in those aspects of Schengen relating to cooperation between police forces and the judiciary.²¹⁸ In addition, Iceland and Norway, though not members of the European Union, apply the Schengen provisions to their entry requirements.²¹⁹

The key rules adopted by nations participating in the Schengen agreements are:

- Removal of checks on persons at common EU internal borders;
- Common rules applying to people crossing external EU borders;
- Separation at air terminals and, where possible, seaports of people traveling within the Schengen area from those arriving from countries outside the Schengen area;
- Harmonization of the rules regarding conditions of entry and visas for short stays;
- Coordination between governments on surveillance of borders;
- Definition of the role of carriers in preventing and deterring illegal immigration;
- Enhanced police cooperation;
- Strengthening of judicial cooperation through a faster extradition system and transfer of the enforcement of criminal judgments; and
- Creation of the Schengen Information System, which is a data system accessible by police forces and consular agents from the Schengen countries.²²⁰

Nationals of third countries may enter and travel within the European Union provided they fulfill the entry conditions, which include: the possession of a valid travel document, and of a visa if required; and being able to demonstrate the purpose of the journey and sufficient means of subsistence for the period of stay and for the return.²²¹ The EU has identified 45 countries and/or jurisdictions that are exempt from the visa requirement, including the United States, Australia, Guatemala, the Holy See, Mexico, and Japan.²²²

A visa, known as the Schengen visa, is issued to temporary visitors for tourism or business from countries that are not exempt from the visa requirement. The visa permits the holder to travel freely within the 13 participating countries of the EU (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, and Sweden), as well as Iceland and Norway.²²³ Holders of Schengen visas are subject to immigration control upon first entry into a Schengen country and are therefore not guaranteed automatic entry.²²⁴ In addition, participating countries may provide exceptions to the visa requirements for certain individuals, such as holders of diplomatic or official-duty passports, civilian air and sea crew, and persons providing assistance in the event of a disaster or accident.²²⁵

On May 1, 2004, the EU experienced its fifth enlargement with the incorporation of 10 new countries into the union: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, and Slovenia. However, a transition agreement was established to phase in the entry of eight of these countries. Therefore, freedom of movement within the EU does not apply to all new members. According to the agreement, the EU cannot impose rules more restrictive than those applied before May 1, 2004 to nationals from new member states. Therefore, the transition agreement does not apply to Cyprus or Malta because of their size and relative economic strength.²²⁶

Conclusion

All countries have developed rules and procedures concerning the entry and terms of admission of foreign nationals. Like the United States, other nations require visitors to obtain

visas and have specified different nonimmigrant categories of admission to accommodate the various reasons individuals have for visiting other countries. The categories of admission ascribe different privileges, such as work authorization or permission to bring dependents.

As global ties and the ease of international travel bring more visitors and temporary entrants to our ports of entry, the United States, as well as other nations, must continue to balance the interests of national security and hospitality. The nonimmigrant classification system is one way of ensuring the orderly admission of temporary visitors.

SECTION IV

WHO ARE NONIMMIGRANTS?

Introduction

Each year millions of nonimmigrants are admitted to the United States. In 2004, there were an estimated 179 million nonimmigrant admissions to the United States. Of these, about 31 million entered with nonimmigrant visas or through the Visa Waiver Program. An additional 148 million Canadian and Mexican citizens not required to obtain nonimmigrant visas visited the United States in 2004.²²⁷

DHS records information on nonimmigrant entries as the number of legal admissions. Because many nonimmigrants enter and leave the United States more than once each year (such as students, diplomats, and frequent border crossers), the count of admissions exceeds the number of actual individuals arriving in the United States. Further, information concerning the nationality of nonimmigrants and the number of nonimmigrant admissions is obtained from the I-94 forms issued at U.S. ports of entry.²²⁸ Therefore, information concerning persons not required to complete an I-94, such as certain Canadians and Mexicans entering with Border Crossing Cards, is not reflected in this section. Thus, the information presented in this section concerns the 31 million nonimmigrants who entered the United States with nonimmigrant visas or through the Visa Waiver Program (VWP) and completed I-94 forms.

As shown in Table 4.1, the number of entries for most types of nonimmigrants has increased in the last 20 years. For example, the number of temporary visitors for business or pleasure (B-1 and B-2 nonimmigrants, as well as VWP participants) has increased from 8.4 million entrants in 1985 to 27.4 million entrants in 2004. Some of this increase is attributable to the introduction of the VWP as a pilot program in 1986.

Similarly, the number of J-1 exchange visitors entering the country almost tripled between 1985 and 2004, while the number of L-1 intracompany transferees increased almost five times. Other categories that have been more recently created, have shown significant increases since they were first introduced. For example, after its introduction in 1990, the O-1 category was used as the means of admission by almost 6,000 nonimmigrants in 1995. By 2004, the number of entrants in that category was over 27,000.

By far, the greatest number of admissions of nonimmigrants is within the temporary visitor category (B-1 and B-2). Academic students in F-1 status represent the next largest group of nonimmigrants, with over 600,000 entries in 2004. The next highest number of nonimmigrant admissions were by H-1B temporary workers. In 2004, 386,821 H-1B nonimmigrants were admitted to the United States.

Table 4.1. Nonimmigrant Entries, 1985-2004

Category	1985	1990	1995	2000	2004
Foreign government officials and families (A-1, A-2, A-3)	90,190	96,689	103,606	138,230	152,649
Temporary visitors (B1, B2, Visa Waiver)	8,405,409	16,079,666	20,886,872	30,511,125	27,396,031
Transit aliens (C-1, C-2, C-3, C-4)	236,537	306,156	320,333	437,671	338,175
Treaty trader, spouse and children (E-1)	65,406	78,658	53,557	51,241	47,083
Treaty investor, spouse and children (E-2)	31,083	68,878	78,220	116,973	135,851
Academic students (F-1)	251,234	319,467	364,220	659,081	613,221
Vocational students (M-1)	5,835	6,797	7,635	10,288	6,989
Spouses and children of F1 and M1 (F-2, M-2)	28,427	28,943	31,260	40,872	36,163
Representatives (and families) to international organizations (G-1 through G-5)	57,203	61,449	71,982	97,555	109,355
Specialty occupations, DOD workers, fashion models (H-1B)	47,322	100,446	117,574	355,605	386,821
Nurses (H-1A, H-1C)	N/A	N/A	6,512	565	7,865
Temporary agricultural worker (H-2A)	N/A	18,219	11,394	33,292	22,141
Temporary worker: skilled and unskilled (H-2B)	N/A	17,754	14,193	51,462	86,958
Trainee (H-3)	3,003	3,168	2,787	3,208	2,226
Spouse or child of H-1, H-2, H-3 (H-4)	12,632	28,687	43,247	120,212	130,847
Representatives of foreign media (and families) (I-1)	16,753	20,252	24,220	33,918	37,108
Exchange visitors (J-1)	110,942	174,247	201,095	304,225	321,975
Spouses and children of J-1 (J-2)	30,271	40,397	39,269	47,518	38,802
Fiancées of U.S. citizens (K-1)	6,975	6,545	7,793	20,558	28,546
Children of fiancées of U.S. citizens (K-2)	832	673	768	3,113	4,515
Intracompany transferee (L-1)	65,349	63,180	112,124	294,658	314,484
Spouses and children of intracompany transferees (L-2)	41,533	39,375	61,621	132,105	142,099
NATO officials and families (N-1 through N-7)	8,323	8,333	8,579	14,133	14,813
Parents or children of international organization special immigrants (N-8 and N-9)	N/A	N/A	8	47	54
Extraordinary ability in Sciences, Arts, Education, Business, or Athletics (O-1)	N/A	N/A	5,974	21,746	27,127
Aliens accompanying O-1 (O-2)	N/A	N/A	1,813	3,627	6,332
Spouse or child of O-1 or O-2 (O-3)	N/A	N/A	751	3,546	3,719
Individual or team athletes, or entertainment groups (and support personnel) (P-1)	N/A	N/A	22,397	40,920	40,466
Artists and entertainers in reciprocal exchange programs (P-2)	N/A	N/A	660	4,227	3,810
Artists and entertainers in culturally unique programs (and their support personnel) (P-3)	N/A	N/A	5,315	11,230	10,038
International cultural exchange visitors (Q-1)	N/A	N/A	1,399	2,447	2,113
Irish Peace Process Cultural and Training Program (Q-2)	N/A	N/A	N/A	279	368
Religious workers (R-1)	N/A	N/A	6,742	15,342	21,571
Spouse or child of R-1 (R-2)	N/A	N/A	1,790	3,930	6,443
Professionals, NAFTA (TN)	N/A	N/A	23,904	91,279	66,207
Spouses and children of TN (TD)	N/A	N/A	7,202	22,181	12,595

Source: DHS, Office of Immigration Statistics, *2002 Yearbook of Immigration Statistics*, October 2003, table 26; DHS, Office of Immigration Statistics, "Temporary Admissions (Nonimmigrants)," accessed at <<http://uscis.gov/graphics/shared/statistics/yearbook/YrBk04TA.htm>>

Nationality of Nonimmigrants by Category of Admission

Over one-third of all nonimmigrants arrive from European countries (see Table 4.2). In 2004, Europeans represented almost 12.5 million nonimmigrant entries. Nonimmigrants from Asia numbered 7.8 million.

Table 4.2. Nonimmigrant Entries by Region, 2004

Region	All Nonimmigrants	Visitors for Pleasure
All Countries	30,781,330	22,802,907
Europe	12,487,585	9,582,957
Asia	7,828,316	5,512,730
Canada/Mexico	4,692,958	3,784,476
South America	2,167,668	1,378,692
Caribbean	1,210,672	915,304
Oceania	936,471	668,952
Central America	833,058	577,257
Africa	384,477	204,179

Source: U.S. Department of Homeland Security, Office of Immigration Statistics, "Temporary Admissions (Nonimmigrants)," accessed at <<http://uscis.gov/graphics/shared/statistics/yearbook/YrBk04TA.htm>>

The United Kingdom, Mexico, Japan, Germany, and France were the countries of origin for over half of the nonimmigrants visiting the United States in 2004. Almost 5 million nonimmigrants (16 percent of all nonimmigrants) were citizens of the United Kingdom. Both Mexico and Germany were home to approximately 14 percent of all nonimmigrants in 2004. Other top sending countries for nonimmigrants included Japan and France.²²⁹

Another way of understanding where nonimmigrants come from is to compare their countries of citizenship with the types of nonimmigrant visas they used to enter the United States, as shown in Table 4.3. In 2004, the majority of H-1B visa entrants were from Europe and Asia: 29 percent were from Europe, while more than 39 percent were from Asia. Europe and Asia together also provided almost two-fifths of all J-1 exchange visitors.

Eighty percent of temporary agricultural workers (H-2A) entered the United States from Mexico and Canada, with Mexico providing 17,704 such workers. Similarly, 68 percent of H-2B temporary workers also came from our neighboring countries. Mexico again provided the majority of these workers – 59,252 H-1B workers were Mexican citizens, compared to 9,638 Canadian citizens.

Table 4.3. Nonimmigrant Entries by Country of Citizenship and Selected Class of Admission, 2004: Temporary Workers, and Exchange Visitors

Region	H-1A/H-1C Nurses	H-1B Specialty Occupations	H-2A Temporary Agricultural Workers	H-2B Non-agric. Temporary Workers	J-1 Exchange Visitors
All countries	7,865	386,821	22,141	86,958	321,975
Europe	0.6%	29.1%	0.9%	5.0%	58.5%
Asia	1.3%	39.5%	1.1%	2.1%	19.6%
Africa	1.7%	2.0%	3.1%	2.4%	3.0%
Oceania	0.6%	2.5%	0.7%	2.0%	2.9%
Canada/Mexico	91.3%	10.8%	80.0%	68.1%	4.4%
Caribbean	1.2%	1.4%	11.9%	11.1%	1.0%
Central America	0.5%	1.0%	0.4%	5.4%	0.7%
South America	2.5%	13.3%	1.5%	3.2%	8.9%

Source: U.S. Department of Homeland Security, Office of Immigration Statistics, "Temporary Admissions (Nonimmigrants)," accessed at <<http://uscis.gov/graphics/shared/statistics/yearbook/YrBk04TA.htm>>
Columns do not add to 100 percent because "unknown" country of citizenship is not included in the table.

As these summary statistics show, nonimmigrants come to the United States from all over the world and have many legitimate reasons for being here. Because of the complexity of our immigration system, the many nonimmigrant categories have different requirements and responsibilities concerning entry, length of stay, ability to adjust status, and other important activities. Section VII provides an overview of many of these procedures, and Section VIII describes some of the issues that can affect nonimmigrants while they are in the United States.

Border Crossers

As noted above, each year, millions of Canadian and Mexican nationals enter the United States for brief periods of time and are not counted as nonimmigrants. This is because most citizens of Canada and certain Mexican citizens do not need to obtain a nonimmigrant visa nor an I-94 to enter the United States. Therefore, although they are inspected at the border, their admission is not included in nonimmigrant counts. However, DHS estimates that 148 million such visitors entered the United States in 2004.²³⁰

Mexican nationals must obtain a Border Crossing Card to facilitate entry and exit to and from the United States on a frequent basis in the immediate border zone. Mexican citizens may apply for BCCs if they provide the required information concerning residence, employment in their home country, and reason for frequent border crossing. (More information concerning entry requirements for Canadian and Mexican nationals is found in Section VII.)

Length of Stay

In a 2005 study, the DHS Office of Immigration Statistics estimated the length of time nonimmigrants remained in the United States during each visit. Because of data limitations, the study was restricted to nonimmigrants who departed the United States in 2003. Thus, length of each visit was determined by subtracting the date of departure in 2003 from the date of arrival using the arrival and departure information provided on the nonimmigrants' I-94 forms. The estimates of length of stay are based on 22.1 million nonimmigrant departures that were matched to arrival data.²³¹ Note, however, that these estimates are based on individual visits to the United States, and, therefore, do not capture the extent to which nonimmigrants make multiple entries. Thus, these estimates may significantly underestimate the actual time spent in the United States for many nonimmigrants, particularly those with visas providing for long-term stays.²³²

The study found that the average stay for all nonimmigrants who departed the United States in 2004 was 34 days. Only 1.4 percent of the nonimmigrants departing had been in the United States for more than a year. Of course, the length of visit varied greatly by the purpose of the visit and the type of nonimmigrant visa used for entry. Temporary visitors for business (B-1 nonimmigrants) stayed in the United States for an average of 15 days. Comparatively, temporary visitors for pleasure (B-2 nonimmigrants) spent 48 days in the United States.²³³

Academic students (F-1) remain in the United States for longer periods than persons in other nonimmigrant categories. Their average length of stay was 314 days – or approximately 10 months. The average time their spouses and children (F-2) spent in the United States was 260 days. Vocational students (M-1), however, spent only an average of 147 days in the United States (approximately 5 months). Their spouses and children (M-2) stayed, on average, for 85 days.²³⁴

Temporary workers exhibit a different pattern. Their stays tend to be shorter in duration. For example, workers in specialty occupations (H-1B) stayed in the United States for an average of 173 days. Temporary agricultural workers (H-2A) were here for 154 days. Comparatively, representatives of foreign media (I nonimmigrants) were in the United States for an average of 49 days. Similarly, international recognized athletes and entertainers (P-1) visited for 41 days.²³⁵ However, as mentioned above, these data do not take into account multiple visits by the same nonimmigrant.

SECTION V

SPECIAL FOCUS: PERMISSION TO WORK

Introduction

An increasingly global workplace and international business ties have fueled the need for foreign workers in the United States. Because many of these individuals do not intend to remain here permanently, several nonimmigrant categories are designed to accommodate specific types of temporary work. In addition, to protect the jobs and wages of U.S. workers, there are varying requirements and restrictions for the different types of nonimmigrant worker categories.

Companies seek to bring employees to the United States for a variety of reasons. For example, businesses with U.S. branches or affiliates may want their managers and professional staff to gain experience in the United States, sports franchises seek top athletes from around the world, and U.S. farmers may need additional workers during peak harvest times. In other industries, there may be a lack of U.S. workers willing to fill positions, or U.S. workers with the needed skills may not be available. In other instances, multinational companies, foreign governments, and international organizations send nationals of their countries to fill positions in the United States.

For those workers who do not intend to reside in the United States permanently, there are several nonimmigrant categories that permit them to enter the country with authorization to work. This section briefly discusses the immigration laws relevant to foreign workers and students and describes the differences among the nonimmigrant categories with regard to permission to work and/or study while in the United States.

Immigration Law and Foreign Workers

While the United States has always welcomed newcomers and visitors, it also seeks to protect its residents. These safeguards have included the passage of legislation concerning foreign workers to protect U.S. job holders. From the 1880s to the present, the requirements and regulations concerning temporary workers have adapted to the economic needs of the nation.

Alien Contract Labor

One of the earliest laws regulating the flow of foreign workers was the Act of February 26, 1885,²³⁶ known as the Contract Labor Law. At the time this law was passed, employers had been recruiting foreign workers through advertisements asserting that hundreds of workers were needed in certain industries, such as in the coal fields, when no such vacancies actually existed. This practice was intended to create an oversupply of labor so that U.S. workers would be forced to work at reduced wages.²³⁷ Passed in response to the concerns of labor unions about this practice, the Contract Labor Law made it unlawful to import aliens into the United States under contract for the performance of labor. The law provided exceptions for the temporary entry of artists, lecturers, servants, and skilled aliens working in industries not

yet established in the United States.²³⁸ The Contract Labor Law remained in effect until the INA of 1952 created the H nonimmigrant category for temporary workers.²³⁹

War Time Labor Shortages

During World War II, however, the United States faced labor shortages as U.S. workers were needed in the armed forces. To facilitate the admission of temporary workers from other nations, in 1943 Congress issued a joint resolution that exempted alien workers from the contract labor laws.²⁴⁰ The law authorized the entry of agricultural workers only for the duration of the war, and only for as long as they were needed by U.S. employers. The law specified that the workers must be “native-born residents” of a Western Hemisphere country and exempted them from certain entry requirements: they did not need to pay a head tax, they were not required to pass a literacy test, and they were not required to be fingerprinted and registered like other visitors under the Alien Registration Act of 1940. Agricultural workers also had to possess an alien laborer’s identification card, issued by the War Food Administrator.²⁴¹

The recruitment of foreign workers continued in other industries as authorized under Title II of Public Law No. 229 (February 14, 1944), which permitted the employment of foreign workers in “industries and services essential to the preservation, marketing or distribution of agricultural products, including the timber and lumber industries,” and under Title VII of Public Law No. 373 (June 29, 1944), which permitted foreign nationals to work in “industries and services essential to the war effort.”²⁴² Workers from Mexico, British Honduras, Barbados, Jamaica, and other Western Hemisphere Countries continued to be welcomed in the United States during this period of worker shortages due to World War II.

In addition, the Attorney General authorized the temporary admission of agricultural workers under the Ninth Proviso of Section 3 of the Immigration Act of 1917, and later legislation provided for the temporary admission of seasonal farm labor in what would become known as the Bracero Program.²⁴³ Between 1942 and 1964, the United States welcomed more than 4.5 million nonimmigrant workers from Mexico known as braceros (Spanish for the strong-armed). The Bracero Program was developed in response to the labor shortages during World War II. The program was governed and modified by several agreements between the United States and Mexico, beginning with the Mexican Farm Labor Program Agreement signed in 1942. The agreement guaranteed a minimum wage of 30 cents an hour and humane treatment (including food and shelter) for Mexican workers in the United States.²⁴⁴ The agreement also required that the workers be employed by the U.S. Government, not by the individual farm owners.²⁴⁵

The original program was terminated on December 31, 1947. Agricultural employers, however, requested that the program continue. Thus, in February 1948, a new agreement was reached between the Department of State and the Mexican government. The new agreement did not require a minimum wage, nor did it require the farm workers to be employed directly by the Federal Government. Instead, the farm owners entered into contracts with the workers themselves and also were responsible for the recruitment and transportation of the Mexican workers.²⁴⁶

During the Korean War, the United States again faced a labor shortage. In 1951, Public Law 78²⁴⁷ was passed granting authorization for the Federal Government to enter into another bilateral agreement with Mexico on migrant labor.²⁴⁸ A 1951 agreement between Mexico and the United States once again required the U.S. Government to act as employer to the migrant workers. Originally set to expire in 1954, the program was extended several times through its termination at the end of 1963.²⁴⁹

The Temporary Worker Nonimmigrant Category

Following the termination of the Bracero Program, the only mechanism for the temporary employment of foreign agricultural workers was the H-2 nonimmigrant visa. The Immigration and Nationality Act of 1952 created the H nonimmigrant category for temporary workers and prescribed a petition procedure for businesses to obtain temporary workers from other countries. Section 214(c) of the law stated:

The question of importing any alien as a nonimmigrant under section 101(a)(15)(H) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.²⁵⁰

The law also specified that aliens coming temporarily to the United States as H-2 nonimmigrants to perform temporary services or labor would be admitted only if “unemployed persons capable of performing such service or labor cannot be found in this country.”²⁵¹

The Immigration Reform and Control Act of 1986 amended the H-2 program, creating two separate categories: agricultural workers (H-2A) and other temporary workers (H-2B).²⁵² The law also required a labor certification process for these temporary workers.²⁵³ (See below for more information on the labor certification process.)

Nursing Shortages in the 1980s

The Immigration Nursing Relief Act (INRA) of 1989²⁵⁴ required a labor attestation program for nonimmigrant nurses, in addition to labor certification. This law was passed in response to a national shortage of registered nurses. It provided for certain H-1 nonimmigrant nurses to adjust to permanent resident status and created a 5-year pilot program for the admission of nurses as temporary workers. Thus, the new nonimmigrant category, H-1C, was established for foreign registered nurses. To hire foreign nurses, hospitals and health care facilities were required to file an attestation with DOL to ensure that they met certain obligations to retain and recruit nurses who are U.S. citizens or permanent residents.²⁵⁵ According to the legislative history of the Act, the attestation was to address several criteria:

First, the facility must attest that substantial disruption would occur without the services of a foreign nurse, or nurses ... Second, the employment of a foreign nurse cannot adversely affect wages and working conditions of nurses similarly employed. Third, the facility must

pay the prevailing wage at the facility. ... Fourth, the facility must demonstrate it is...taking significant steps to recruit and retain U.S. or immigrant nurses ... Fifth, the facility must attest that there is not a strike or lockout in the course of a labor dispute, and the employment is not intended to influence an election for a bargaining representative. Sixth, the facility is required to provide notice of the filing of an attestation to various labor representatives or to post a notice in a conspicuous location. ...”²⁵⁶

The law also established an advisory committee which was charged with measuring the impact of the INRA on the nursing shortage and to advise on whether the H-IA pilot program should be extended.²⁵⁷ The Committee report, issued in 1995, found that nurses admitted under the pilot program were few in number and therefore had no significant impact on the wages and working conditions of U.S. workers.²⁵⁸ Several organizations, including the American Nurses Association, submitted a dissenting opinion to the report. After several hearings were held, new legislation was finally passed in 1999 to create a temporary worker program for specific geographic locations. The Nursing Relief for Disadvantaged Areas Act of 1999 established the H-IC nonimmigrant category, with requirements similar to the H-IA category which was discontinued in 1997.²⁵⁹ The legislation had a sunset date of 4 years after the final regulations were issued, which was September 20, 2004.²⁶⁰

The Immigration Act of 1990

As discussed in Section II of this report, the Immigration Act of 1990 primarily addressed legal immigration, but it also contained several provisions relating to nonimmigrants, including changes to the H temporary worker nonimmigrant category and the creation of the O, P, Q, and R nonimmigrant categories. The 1990 Act also required for the first time a labor attestation for temporary workers other than H-IA nonimmigrant nurses.

In response to concerns from labor unions and other organizations, Congress included labor attestation requirements for temporary workers in the H-IB nonimmigrant category in the Immigration Act of 1990. The law specified that employers must confirm to the Department of Labor that they will pay at least the local prevailing wage and offer prevailing working conditions to the prospective H-IB nonimmigrant and all U.S. workers in the same job.²⁶¹

The 1990 Act also provided a mechanism for workers to challenge the attestation of an employer with respect to recruitment and wages. According to the legislative history of the 1990 Act:

The current labor certification process lacks any meaningful access for an affected person to challenge an employer’s petition with respect to recruitment or wages. Thus, U.S. workers must rely totally on the Department of Labor’s determination that an adequate search of the domestic market has been made. However, Department of Labor acquiescence to state procedures has resulted in little uniformity of administration procedures; recruitment is not standardized as much as it could be due to lack of definitions; prevailing wage determinations many times are made on an ad hoc basis; schedules of categories for which there is no test of the market are established and removed without labor market data or Congressional and public input. All of these have

combined to create a lack of faith in the system and a strain on the relationship between business and labor.²⁶²

The Immigration Act of 1990 also placed an annual cap on the number of temporary workers approved for H-1B and H-2B visas.

American Competitiveness and Workforce Improvement

The economic boom of the 1990s resulted in low unemployment in the United States and a shortage of skilled workers, particularly in the information technology and computer industries.²⁶³ As a result, the high-tech industry lobbied for an increase in the number of foreign workers permitted to come to the United States. However, this was met with concern from labor unions and other parties that an increase in foreign workers could have a negative impact on U.S. workers.²⁶⁴ Eventually, a compromise was made, resulting in the signing of the American Competitiveness and Workforce Improvement Act (ACWIA) on October 21, 1998.²⁶⁵

ACWIA attempted to strike a balance between the interests of the industries and the labor unions. As a result, the law allowed a temporary increase in the number of H-1B visas, while at the same time setting aside additional funds for U. S. worker education and training (paid for by increased filing fees for the H-1B program).²⁶⁶ The cap on the number of H-1B visas was raised to 115,000 for 1999 and 2000, and to 107,500 in 2001, before reverting to the 65,000 cap specified by the Immigration Act of 1990 for fiscal year 2002.

ACWIA increased fines for willful violators of the H-1B program and expanded the investigatory authority of the Department of Labor. The law also requires employers to offer the same benefits to temporary foreign workers as it does to other employees, to eliminate the financial incentive to hire foreign workers to save costs on employee benefits.²⁶⁷ Further, the law requires new attestations by employers that (1) they have not, or will not displace a U.S. worker within the 90-day periods before and after the filing of the H-1B petition; (2) they will not place the H-1B beneficiary with another employer, if the beneficiary works at one or more sites of another employer and there appears to be an employment relationship between the other employer and the H-1B employee; and (3) they have taken the appropriate steps to recruit U.S. workers for the position being filled by the H-1B employee.²⁶⁸

Despite the changes put into place by ACWIA, employers continued to experience worker shortages, as well as agency delays in approvals for H-1B workers. Congress sought to provide relief with the passage of the American Competitiveness in the Twenty-First Century Act of 2000.²⁶⁹ The law again temporarily increased the number of H-1B visas (to 195,000 for 2001 through 2004), and, for H-1B petitions filed before September 1, 2000, exempted nonimmigrants employed by institutions of higher education or certain research organizations from the numerical limit, making more H-1B visas available to businesses.²⁷⁰

The law also addresses the issue of “H-1B portability” – the ability of H-1B nonimmigrants to move from one employer to another. The law permits an H-1B employee to change employers at the same time the new employer files the petition for the H-1B workers, so that the

employee does not have to wait for the application to be approved before he or she starts working. This provision was included to address concerns raised about the potential for exploitation of H-1B visa holders as a result of a specific employer's control over the employee's legal status.²⁷¹

Both ACWIA and the Twenty-First Century Act of 2000 contained provisions relating to the H-1B Technical Skills Training Grant Program, providing funding for the program through September 30, 2003. Grants were awarded to projects that provided training for both employed and unemployed American workers to acquire the technical capabilities required for high skill occupations. Eighty percent of the grants were required to be awarded to projects that trained workers in technology, including information technology and biotechnology.²⁷²

Visa Reform in 2005

The Omnibus Appropriations Act for Fiscal Year 2005²⁷³ contained specific provisions concerning H-1B and L nonimmigrant visas. The sections of the law relating to H-1B visas, referred to as the H-1B Visa Reform Act, became effective March 9, 2005 although USCIS had not published guidance on filing petitions under the new provisions as of that date and requested that employers not file H-1B petitions under the new provisions until regulations were published.²⁷⁴

The law raised the fee imposed by the American Competitiveness and Workforce Improvement Act of 1998 from \$1,000 to \$1,500; employers with no more than 25 employees may submit a reduced fee of \$750. In addition, the Act created a Fraud Prevention and Detection fee of \$500, required of all petitioners for H-1B and L visas.²⁷⁵ The Act also provides new exemptions from the annual H-1B cap of 65,000, including:²⁷⁶

- The first 20,000 H-1B beneficiaries who have earned a master's degree or higher from a U.S. institution of higher education are not subjected to the annual cap.
- Nonimmigrants currently in the United States as J-1 nonimmigrants who receive a waiver of the 2-year residency requirement also are exempt from the H-1B cap.

Also part of the Omnibus Appropriations Act, the L-1 Visa Reform Act of 2004 made changes affecting the L nonimmigrant category. The law requires all L-1 temporary workers to have worked for a period of no less than 1 year outside the United States for the employer through whom the worker is deriving L-1 status. Previously, such workers were required only to have worked 6 months for the employer.²⁷⁷

The L-1 Visa Reform Act also addresses the issue of "outsourcing." The law prohibits L-1 temporary workers (those entering the United States to perform services that involve specialized knowledge) from working at worksites other than those of their petitioning employers if the work will be supervised by a different employer or if the offsite arrangement is essentially to provide labor for hire, rather than service related to the specialized knowledge of the petitioning employer. This provision became effective June 6, 2005.²⁷⁸

Working in the United States

Some nonimmigrants have employment authorization by virtue of their nonimmigrant classification (such as those with temporary worker status, like H-1B visa holders). In other cases, USCIS must make a case-by-case determination of whether an alien can work while in the United States. While some nonimmigrants may apply for employment authorization, others are not permitted to work while in the United States. (See Table 5.1. A detailed listing of who can and cannot work while in the United States on a nonimmigrant visa appears in Appendix B.)

Table 5.1. Work Authorization, by Nonimmigrant Category

<i>Authorized to Work Incident to Status (Must Apply for EAD)</i>	<i>Authorized to Work for a Specific Employer Incident to Status</i>	<i>Must Apply to USCIS for Permission to Work</i>	<i>Not Authorized to Work</i>	
K-1	A-1 H-3	<i>Alien spouse or unmarried dependent child of nonimmigrants in the following categories: A-1, A-2, E-1, E-2, G-1, G-3, G-4, J-1, NATO 1-7</i>	B-1	
K-2	A-2 I		B-2	
K-3	A-3 J-1		BE	
K-4	C-2 L-1		WB	
N-8	C-3 O-1		WT	
N-9	D-1 O-2		GB	
V-1	D-2 P-1		GT	
V-2	E-1 P-2		F-1 and M-1, under certain conditions	F-2
V-3	E-2 P-3			I (dependents)
T-1	E-3 P-4			M-2
U-1	G-1 Q-1	L-2	M-3	
	G-2 Q-2	O-3	Q-3	
	G-3 R-1	S-5, S-6, S-7	R-2	
	G-4 NATO-1	T-2, T-3, T-4	TD	
	G-5 NATO-2	U-2, U-3, U-4		
	H-1B1 NATO-3			
	H-1B NATO-4			
	H-1C NATO-5			
	H-2A NATO-6			
	H-2B NATO-7			

Nonimmigrants Authorized to Work Incident to Status

Some nonimmigrant categories include individuals who, notwithstanding their nonimmigrant classification, are likely to remain permanently in the United States. In particular, nonimmigrant categories that are designed to ease family separations caused by visa wait times are based on the expectation that the individuals will apply for adjustment of status to permanent resident once in the United States. Thus, persons in these categories are permitted to work once they have applied for, and been issued, an Employment Authorization Document (EAD) from USCIS.

Nonimmigrants Authorized to Work for a Specific Employer Incident to Status

There are several nonimmigrant categories for individuals in specific jobs, such as foreign government officials and persons who work for non-U.S. airlines. These categories necessarily permit the individual to work while in the United States for the employer through which they derive their nonimmigrant status. Additional nonimmigrant categories were created specifically

to allow the admission of foreign workers to work for U.S. employers. In general, these nonimmigrants also are not permitted to accept employment for an employer other than the one through which the nonimmigrant status was obtained.

Nonimmigrants Requiring Permission to Work

Individuals in several nonimmigrant categories may not work unless granted permission by USCIS, as follows:

- The alien spouses and unmarried, dependent children of nonimmigrants in the following categories must apply for work authorization: A-1, A-2, E-1, E-2, E-3, G-1, G-3, G-4, L-1, and O-3.²⁷⁹
- Work authorization for NATO-1 through NATO-6 nonimmigrants and dependents is governed by formal bilateral agreements, and other informal arrangements certified by the Office of the Secretary of Defense, Foreign Military Rights Affairs, and must be approved by NATO. If approved for employment by the Secretary of Defense, the alien must submit an application for work authorization to USCIS.²⁸⁰
- F-1 academic students who (1) are seeking employment for the purposes of practical training, (2) have been offered employment under the sponsorship of an international organization, or (3) are seeking employment because of severe economic hardship, when certain conditions are met.²⁸¹
- M-1 students may not accept employment but are permitted to apply for practical training after they complete their studies. If approved, they will be allowed 1 month of practical training for every 4 months of study they completed. M-1 students are limited to 6 months total practical training time.²⁸²
- Dependents of J-1 visa holders may apply for USCIS authorization to accept employment in the United States, if they can demonstrate that they will have sufficient financial resources to cover their expenses while in the United States and that their employment is not required to support the principal J-1 nonimmigrant.²⁸³
- Under the Violent Crime Control and Law Enforcement Act of 1994, certain alien witnesses and informants may be permitted to enter the United States temporarily as S-5 or S-6 nonimmigrants. If it is considered to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien S-5 and S-6 nonimmigrants may be granted derivative S status, S-7, when accompanying or following to join the alien witness or informant. These aliens are permitted to work while in they are in the United States but must first apply to USCIS for employment authorization.²⁸⁴

- An alien granted T-2, T-3, or T-4 nonimmigrant status may apply for employment authorization.²⁸⁵

Nonimmigrants Not Authorized to Work

Other nonimmigrant categories are not eligible for work authorization:

- In general, persons entering the United States with a B nonimmigrant visa may not accept employment while in the United States. Persons entering temporarily for business must be conducting business for a foreign company and must maintain a home in a foreign country to which they intend to return. However, B nonimmigrants are permitted to accept honorarium payments and associated incidental expenses for “usual academic activity.”²⁸⁶
- Temporary visitors in the BE, WB, WT, GB, and GT categories are not permitted to work while in the United States.
- Accompanying spouses and children of F-1 students, classified as F-2 nonimmigrants, may not apply for work authorization.²⁸⁷
- M-1 students, their spouses, and their children may not accept employment; however, M-1 students may apply for practical training after they complete their studies.²⁸⁸
- Spouses and children of I media visa holders are not permitted to work in the United States, though they may study in the United States without a student visa.²⁸⁹
- Spouses and dependents classified as H-4, Q-3, R-2, and TD nonimmigrants may not accept employment.²⁹⁰

Temporary Workers and Intracompany Transferees

The admission of nonimmigrants for temporary work has often been a contentious issue in the United States. Businesses cite the need for more workers, while labor unions and employee groups express concerns that U.S. workers may be adversely affected by the “importation” of foreign labor. The nonimmigrant categories for temporary workers and intracompany transferees, at one point the same category, are described in this section. Further discussion of the issues surrounding temporary workers is in Section VII.

H Nonimmigrants

The H nonimmigrant category was created by the Immigration and Nationality Act of 1952. Prior to that time, the provision of law regarding the admittance of temporary visitors for

business was interpreted to exclude person seeking to enter the United States temporarily to engage in employment. The Act of 1952 sought to remedy this by establishing a separate nonimmigrant class for temporary workers. The Act authorized two types of workers: aliens “of distinguished merit and ability ... coming to the United States to perform temporary services of an exceptional nature requiring such merit and ability” (H-1), and workers coming to fill temporary jobs (H-2), provided that there are no U.S. workers available to fill the positions.²⁹¹ In 1970, category H-4 was added to permit the entry of the spouses and children of H-1, H-2, or H-3 nonimmigrants accompanying or coming to join the principal nonimmigrant.²⁹²

Requirements and provisions concerning H-1B nonimmigrants have changed over the years.²⁹³ Today the H-1B category applies to persons coming to the United States temporarily to perform services in a specialty occupation or as a fashion model of distinguished merit and ability.²⁹⁴ The Immigration Act of 1990 imposed a numerical limitation for H-1B (and H-2B) nonimmigrants and provided for cooperative research, development and co-production projects for H-1B aliens. In 1998, the American Workforce Competitiveness Act temporarily increased the numerical limitation on H-1B nonimmigrants and attempted to protect U.S. specialty occupation workers from unfair foreign competition by placing restrictions on “H-1B dependent employers” – those employers with an unusually high ratio of H-1B employees. The American Workforce Competitiveness in the Twenty-first Century Act of 2000 further amended the temporary worker provisions to raise the annual limit on H-1B nonimmigrants and granted permission to H-1B workers to change jobs while in the United States in certain instances.²⁹⁵

Currently there are three categories under H-1B:²⁹⁶

- Specialty Occupations Applies to aliens coming temporarily to perform services in a specialty occupation which requires the theoretical and practical application of highly specialized knowledge requiring completion of a specific course of higher education. Examples are architecture, engineering, mathematics, physical sciences, social sciences, medicine, and theology.
- Research and Development Projects Applies to aliens coming temporarily to perform services of an exceptional nature relating to a cooperative research and development project administered by the Department of Defense.
- Fashion Models Applies to fashion models who are nationally or internationally recognized for achievements to work in a position requiring someone of distinguished merit and ability. Examples of such recognition include recognition in major newspapers, trade journals, and magazines; work for employers with a distinguished reputation; receipt of recognition for significant achievements from organizations, critics, fashion houses, modeling agencies, or other recognized experts in the field; and receipt of a high salary or other substantial remuneration for their work.

The H-1C category applies to registered nurses hired under the Nursing Relief for Disadvantaged Areas Act of 1999. This law was enacted as a short-term solution for nursing shortages in a limited number of medically underserved areas. The program allows for the temporary admission of 500 nurses annually. Petitioning hospitals must be in shortage areas

defined by the Department of Health and Human Services and must have at least 190 acute care beds and specified percentages of Medicare and Medicaid patients. The total stay for these nonimmigrant nurses is 3 years. This program replaced a pilot program enacted under the Nursing Relief Act of 1989, which classified registered nurses in that program as H-1A nonimmigrants.²⁹⁷

Agricultural Workers

Temporary or seasonal agricultural workers are classified as H-2A nonimmigrants. The INA of 1952 authorized a program for the admission of workers for temporary jobs, provided U.S. workers could not be found to fill those jobs. The Immigration Reform and Control Act of 1986 amended the H-2 program by separating it into two parts – temporary agricultural workers and temporary workers, skilled and unskilled. H-2A nonimmigrant agricultural workers are permitted entry for up to 1 year, as specified on their labor certification. Extensions are permitted in increments of up to 1 year, with the total stay limited to 3 years.²⁹⁸ (Labor certification is discussed in detail below.)

Under the H-2A program, employers are required to provide housing and transportation to nonimmigrant agricultural workers, and must meet minimum occupational safety and health requirements. Work must be guaranteed for at least three-fourths of the contract period. Employers also must provide insurance in those states where farm workers are not covered by workers compensation insurance.²⁹⁹

H-2B applies to temporary or seasonal nonagricultural workers. This classification requires a temporary labor certification issued by the Secretary of Labor and is limited to 66,000 workers. H-2B workers may be authorized for an initial stay of up to 1 year, as specified on their labor certification. Extensions are permitted in increments of up to 1 year, with the total stay limited to 3 years.³⁰⁰

Trainees

The INA of 1952 described a trainee as an alien with an unabandoned residence in a foreign country who is coming temporarily as an industrial trainee. The modifier, industrial, was removed in 1970. The Health Professions Educational Assistant Act of 1976 added the restriction that an H-3 nonimmigrant could not receive graduate medical education or training in the United States. The Immigration Act of 1990 added language stating that a training program should not be designed “primarily to provide productive employment” and added special education exchange visitor programs to the H-3 category. Most H-3 trainees may be admitted for a total stay of up to 2 years. Aliens entering for practical training in the education of disabled children are limited to a total stay of 18 months. The 1990 Act provided for special education exchange visitor programs for H-3 aliens; and, among other things, specified that training programs for H-3 immigrants not be designed primarily to provide productive employment.³⁰¹

L Nonimmigrants

The L nonimmigrant category was created by Public Law 91-225, enacted on April 7, 1970. This classification was created to permit international companies to temporarily transfer qualified employees to the United States for the purpose of improving management effectiveness, expanding U.S. exports, and enhancing competitiveness in markets abroad.³⁰²

This category is for aliens who work for a company that has a parent, subsidiary, branch, or affiliate in the United States:³⁰³

- L-1A applies to intracompany transferees who come to the United States to perform services in a managerial or executive capacity.
- L-1B applies to intracompany transferees who come to the United States to perform services which entail specialized knowledge.
- L-2 is for dependents of L-1 workers.

Previously, these employees entered the United States on immigrant visas. However, the 1965 amendments to the INA concerning visa allocation made this impractical. Thus, the 1970 statute created the L nonimmigrant status stating that an L-1 is an alien who has been employed continuously for 1 year by a firm and who “seeks to enter the United States temporarily in order to continue to render his services to the same employer ... in a capacity that is manager, executive, or involves specialized knowledge.” The Immigration Act of 1990 changed the 1-year period of continuous employment with the firm from being required to have occurred in the year immediately preceding the transfer to within the preceding 3 years of the transfer.³⁰⁴

Intracompany transferees with L-1A visas who are coming to an existing office in the United States may be admitted for up to 3 years, with extensions of up to 2 years. Their total stay is limited to 7 years. Transferees coming to a new office are permitted an initial stay of 1 year, with the same extension-of-stay limits. The same requirements apply to L-1B nonimmigrants, with the exception that their total stay is limited to 5 years.³⁰⁵

The Foreign Labor Certification Process

Hiring foreign workers for temporary employment in the United States normally requires approval from several government agencies. First, employers must seek approval through the Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL). An approval by DOL does not guarantee a visa issuance. Once the application is approved, the employer must petition USCIS for a visa. If USCIS approves the petition, the Department of State will issue a nonimmigrant visa to the foreign worker for U.S. entry. Applicants must also establish that they are admissible to enter the United States under the provisions of the Immigration and Nationality Act (see discussion of admissibility in Section VII).

The foreign labor certification process is the responsibility of the employer, not the employee. In general, the employer will be required to complete these basic steps to obtain approval for hiring a nonimmigrant worker:³⁰⁶

1. The employer must ensure that the position meets the qualifying criteria for the requested program.
2. The employer must complete the ETA form designated for the requested program. This may include the form and any supporting documentation (e.g., job description, resume of the applicant, etc.).
3. The employer must ensure that the wage offered equals or exceeds the prevailing wage for the occupation in the area of intended employment.
4. The employer must ensure that the compliance issues effected upon receipt of a foreign labor certification are completely understood.
5. The completed ETA form is submitted to the designated DOL office for the requested program (e.g., the State Workforce Agency (SWA), regional office or the national office).

The actual procedures, however, depend on the nature of the visa being requested: H-1B, H-2A, H-2B, or D-1 (see Table 5.2). For H-1B nonimmigrants, the employer must file a Labor Condition Application (LCA) with DOL. The LCA includes several attestations regarding the employer's responsibilities, including the wages, working conditions, and benefits to be provided to the H-1B nonimmigrant.³⁰⁷

The H-2A program provides for a variety of worker protections and employer requirements that do not apply to nonagricultural programs. Employers are required to file the Application for Alien Employment Certification, Form ETA 750, at least 45 days before the workers are needed. DOL will issue a labor certification upon a finding that there are not sufficient U.S. workers who are able, willing, qualified, and available for the employment offered to the alien and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected. If the application is approved, DOL will inform the employer and the local SWA of the specific recruitment efforts required of them.³⁰⁸

In the case of H-2B nonimmigrant workers, the DOL decision serves only as an advisory to USCIS. DOL will grant certification if it finds that qualified persons in the United States are not available and that the terms of employment will not adversely affect the wages and working conditions of workers in the United States similarly employed. The certification is used by the employer to support its visa petition to USCIS.³⁰⁹

DOL also accepts attestations for two situations in which D-1 nonimmigrant crewmembers are permitted to perform longshore work at U.S. ports of entry. Such work is permitted only when it is the prevailing practice for a specific port, there is no strike or lockout at the place of employment, and notice has been given to U.S. workers or their representatives. In addition, D-1 crewmembers are permitted to perform longshore work in the State of Alaska if the employer makes a bona fide request for and employs U.S. longshore workers who are qualified and available in sufficient numbers from contract stevedoring companies, labor organizations

recognized as exclusive bargaining representatives of U.S. longshore workers, and private dock operators.³¹⁰

Depending on the employment program, the length of the process for requesting certification can vary between months and years. Generally, H-1B processing takes only a few working days, while labor certification under H-2A and H-2B may take several months. USCIS also provides a Premium Processing Service, which provides 15-day processing of petitions for certain foreign workers.³¹¹ In addition to the regular filing fees, employers must pay a separate fee of \$1,000 for premium processing. Currently, USCIS offers premium processing for the following nonimmigrant categories: E-1, E-2, H-1B, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, Q-1, R, and TN.³¹²

Table 5.2 Filing Requirements for Foreign Labor Certification

	H-1B	H-2A	H-2B	D-1
Submit to DOL	Labor Condition Application (LCA) Form ETA 9035 or ETA 9035E	Application for Alien Employment Certification Form ETA 750 (submit to local SWA)	Application for Alien Employment Certification Form ETA 750 (submit to local SWA)	Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports OR Attestation by Employers Using Alien Crewmembers for Longshore Activities at Locations in the State of Alaska Form ETA 9033 or Form ETA 9033-A
Submit to USCIS	Copy of approved LCA and USCIS Form I-129	Form 1-29, with Labor Certification Determination received from DOL	Form I-129, with Labor Certification Determination received from DOL	

SECTION VI

SPECIAL FOCUS: PERMISSION TO STUDY

Introduction

Under the Immigration Act of 1924, students were classified as nonquota immigrants but were admitted for a limited stay. However, since students were admitted for a temporary stay, the immigrant classification of students was inaccurate. Thus, the Immigration Act of 1952 corrected this inconsistency by reclassifying students as nonimmigrants. A 1961 amendment added the alien spouse and minor children to the student category, if they were accompanying or following to join the principal alien student. In order to provide stricter control over the foreign student population, a separate nonimmigrant category, M, was created in 1981 for students at vocational or other nonacademic schools, with the F category reserved for academic students.³¹³

Currently, the INA provides two nonimmigrant visa categories for persons wishing to study in the United States in either academic or language training programs (F-1) or nonacademic or vocational studies (M-1). Their spouses and children are eligible for F-2 and M-2 visas, respectively. Part-time commuter students may qualify for F-3 or M-3 status (discussed below).

Foreign students seeking to study in the United States may enter in the F-1 or M-1 category if they meet the following criteria:³¹⁴

- Enrollment in an academic educational program, a language training program, or a vocational program;
- Enrollment in a school that is approved by USCIS;
- Full-time enrollment at the educational institution;
- Proficiency in English, or enrollment in courses leading to English proficiency;
- Sufficient funds for self-support during the entire proposed course of study; and
- Maintenance of a residence abroad which the student has no intention of giving up.

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 imposed limits on nonimmigrant students' attendance in publicly funded institutions. As of November 30, 1996, F-1 visas cannot be issued to persons seeking to attend a public primary school or a publicly funded adult education program. F-1 students attending public secondary schools may not be enrolled for more than 12 months and must repay the school system the full, unsubsidized per capita cost of providing the education. These provisions do not apply to dependents of other lawfully admitted nonimmigrants attending public educational institutions.³¹⁵

Academic Students

Duration of status is defined as the time during which the student is pursuing a full course of study at a USCIS-approved educational institution, or engaging in authorized practical training following completion of studies. An F-1 student who is admitted to attend a public high school is restricted to an aggregate of 12 months of study at any public high school. An F-1 student may be admitted for a period up to 30 days before the indicated report date or program start date listed on Form I-20. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of study.³¹⁶

Upon arriving in the United States, a nonimmigrant student is issued a Form I-94, Arrival/Departure Record, that includes the individual's admission number to the United States. An immigration inspector records this number on the student's USCIS Form I-20A-B/ID and sends pages 1 and 2 of this form, known as I-20 A-B, to the school the student is attending as a record of the student's legal admission to the United States. The student is expected to keep pages 3 and 4, known as the I-20 ID, which is proof that the student is allowed to study in the United States as an F-1 student.³¹⁷

Students in F-1 status may leave the United States and be readmitted after absences of 5 months or less. Under IIRIRA, a violation of student status can affect the individual's plans to travel or visit the United States in the future.³¹⁸

Vocational Students

A student in M nonimmigrant status is admitted for a fixed time period, which is the period consistent with the time necessary to complete the course of study indicated on the Form I-20, plus practical training following completion of the course of study, plus an additional 30 days to depart the United States, but not to exceed a total period of 1 year. An M-1 student may be admitted for a period up to 30 days before the report date or start date of the course of study listed on the Form I-20. An M-1 student who fails to maintain a full course of study or otherwise fails to maintain status is not eligible for the additional 30-day period of stay.³¹⁹

When an M-1 student arrives in the United States, he or she is issued a Form I-94, Arrival/Departure Record, that includes the student's admission number to the United States. An immigration inspector will write this number on the Form I-20 M-N/ID and take pages 1 and 2 of the form, known as I-20 M-N. USCIS will receive the first page (I-20M) and the student's school will receive the second page (I-20 N) as a record of the student's legal admission to the United States. The student is expected to keep pages 3 and 4, known as the I-20 ID. This document is proof that the student is allowed to study at the indicated institution in the United States.³²⁰

Part-time Students

Generally, the immigration law prohibits the admission of aliens seeking to attend school part-time as commuters. However, it had become commonplace for Mexican and Canadian students to enter as visitors on a daily basis to attend school. Tighter enforcement of

immigration laws after September 11, 2001, threatened the ability of these students to pursue their studies in the United States.³²¹

In response to concern over changes to the informal policy of allowing commuter students to enter the United States as temporary visitors, the Immigration and Naturalization Service issued an interim rule to allow Mexican and Canadian commuter students to study on a part-time basis at schools located within 75 miles of the U.S. border. The new rule clarified that Mexican and Canadian nationals who reside outside the United States and regularly commute across a land border to study could do so on a part-time basis within the F-1 or M-1 nonimmigrant visa category.³²²

Soon thereafter, Congress, recognizing the impact commuter students can have on their home communities, introduced legislation to address the issue.³²³ The resulting law, the Border Commuter Student Act of 2002,³²⁴ created the F-3 and M-3 nonimmigrant categories for commuter students from Canada and Mexico who continue to reside in their home country while commuting to the United States to attend an approved school.³²⁵

In its final rule on reporting requirements for F, J, and M nonimmigrants, the INS noted that F-3 and M-3 students would be subject to the same reporting requirements and processes as F-1 and M-1 students. The rule notes, however, that F-3 and M-3 border commuter students are not eligible to obtain F-2 or M-2 status for their dependents.³²⁶

Exchange Students

As previously discussed, the J exchange visitor program is designed to promote the interchange of persons, knowledge, and skills in the fields of education, arts, and sciences. Students participating in academic exchange programs may be classified as J-1 nonimmigrants.

High School Students

IIRIRA bars the use of F-1 visas for a student attending public secondary schools whose aggregate period of attendance exceeds 12 months, if they do not reimburse the school for the full cost of the education. However, a foreign student who wishes to study at a secondary school for more than 12 months may request another type of visa, such as the J-1 exchange visitor visa.³²⁷

Student and Exchange Visitor Information System (SEVIS)

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 requires the Federal government to collect information on an ongoing basis from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during the course of their stay in the United States. In 2001, the USA PATRIOT Act required full implementation of the computerized system designed to collect this information, known as the Student and

Exchange Visitor Information System (SEVIS), by January 1, 2003. The Enhanced Border Security and Visa Entry Reform Act of 2002 further clarified these requirements and also specified that an educational institution must report the failure of an alien to enroll at that school no later than 30 days after the registration deadline.³²⁸

SEVIS is a web-based system for maintaining information on international students and exchange visitors in the United States. Information concerning all new and continuing students and exchange visitors was required to be entered into SEVIS by August 1, 2003. After a student is admitted to the United States, SEVIS sends a notification to the designated school official that the student has entered the country. The school is required to notify U.S. Immigration and Customs Enforcement (ICE) within 30 days of the school's registration date whether or not the student has registered for classes. Schools also are required to update on a regular basis. Thus, ICE will receive timely information as to whether students are fulfilling school requirements in their courses of study. The information contained in SEVIS will be used by ICE to monitor compliance and identify trends.

SECTION VII

HOW DOES ONE APPLY FOR NONIMMIGRANT STATUS?

Overview

Generally, foreign nationals intending to come to the United States on a temporary basis must first obtain a nonimmigrant visa at a U.S. Department of State consulate overseas. A visa demonstrates the individual's eligibility to apply for admission to the United States; it does not guarantee entry into the United States. Only a U.S. Customs and Border Protection officer at a U.S. port of entry has the authority to admit a person to the United States.

Currently, not all visitors to the United States are required to possess a visa. Canadian citizens may enter the United States without a passport or visa. Mexican citizens may be issued a Border Crossing Card in lieu of a nonimmigrant visa. Similarly, nationals of other countries where there are few violations of immigration status may be exempted from the nonimmigrant visa requirement if they are coming for business or pleasure for periods of 90 days or less. However, entry requirements are expected to change by 2008 (see discussion below).

The general requirements for foreign nationals seeking temporary admission include, but are not limited to, the following:



- The purpose of the visit must be temporary.
- The foreign national must agree to depart at the end of his or her authorized stay or extension.
- The foreign national must be in possession of a valid passport.
- A foreign residence must be maintained by the foreign national, in most instances.
- The foreign national may be required to show proof of financial support.
- The foreign national must not be inadmissible under the grounds of inadmissibility, or must have obtained a waiver for any ground of inadmissibility.
- The foreign national must abide by the terms and conditions of admission, usually related to permission to work.

When the intending nonimmigrant arrives at a U.S. port of entry, he or she must present the required documentation to a U.S. immigration officer. The officer will inspect the individual's documents, make a determination of whether or not the individual may be admitted to the United States, and specify the conditions of entry. Although most persons with valid nonimmigrant visas, or other appropriate documents, are admitted, some persons may be denied entry if the inspecting officer determines that they are coming for other purposes than those stated on their nonimmigrant visa or that they are otherwise inadmissible.

Admissibility

Although the United States welcomes most visitors, there are some persons who may pose threats to the Nation and are therefore not permitted to enter the country. The admissibility of an alien is determined first by the consular officer reviewing the visa application, and again by the inspector at the U.S. port of entry. Under the Immigration and Nationality Act, there are several grounds of inadmissibility:³³⁶

1. Health-related grounds (such as persons who have certain communicable diseases of public health significance);
2. Criminal grounds (including crimes of moral turpitude, violations of laws concerning controlled substances, prostitution or any other unlawful commercialized vice, severe violations of religious freedom, human trafficking, money laundering, espionage, or sabotage);
3. Security grounds (including persons involved with terrorist organizations and persons whose entry or proposed activities would have potentially serious adverse foreign policy consequences for the United States);
4. Public charge (i.e., persons who are likely to become public charges);
5. Labor certification and qualifications (i.e., persons seeking to enter the United States to work without authorization);
6. Illegal entrants (including persons who entered without inspection and persons who falsely represented themselves to be U.S. citizens);
7. Persons without valid documents (such as visas, reentry permits, passports);
8. Persons ineligible for citizenship;
9. Aliens previously removed (including aliens unlawfully present); and
10. Miscellaneous grounds (such as persons intending to practice polygamy and persons involved in international child abduction).

Prior to the passage of the Immigration Act of 1990, there were 33 separate grounds of “exclusion.” The list of these reasons for denying admission to the United States had been expanded over the years. The 1990 Act reorganized the grounds of exclusion under nine major categories, and rewrote some of the grounds, such as those that applied to paupers, beggars, and vagrants.³³⁷ (The tenth ineligibility category, “Aliens previously removed,” was added in 1996.³³⁸)

In 1996, entry and exclusion were redefined under the Illegal Immigration Reform and Immigrant Responsibility Act. The law reframed the grounds of exclusion and deportation as the grounds of inadmissibility and removal to clearly distinguish between an individual who *has been admitted* to the United States and an individual *seeking admission* to the United States. Prior to admission, the grounds of inadmissibility are applicable; once an individual has been admitted, the grounds of removal are applicable.³³⁹

The INA also states that any nonimmigrant whose passport is not valid for at least 6 months from the date of expiration of the initial period of admission to the United States, or who does not have a valid nonimmigrant visa or border crossing card, is inadmissible. This requirement is waived for Canadians and foreign nationals entering under the Visa Waiver Program, and for other circumstances, such as on the basis of an unforeseen emergency.³⁴⁰

The INA notes that certain aliens may be eligible for a waiver of other grounds of inadmissibility. For example, a nonimmigrant seeking entry with a K visa (for fiancé(e)s and spouses of U.S. citizens and their children) may be granted a waiver of inadmissibility for certain health-related conditions. The applicant must file Form I-601, along with proper medical documentation, at the consular office where the visa application is filed.³⁴¹

Further, DHS has the discretion to grant waivers of inadmissibility in certain cases. In a 2004 policy memorandum, USCIS noted that it will consider individual waivers of inadmissibility due to HIV infection for nonimmigrants who seek to enter the United States for stays of 30 days or less for specific purposes that are considered humanitarian or public interest reasons. Blanket waivers will be considered for nonimmigrants attending certain designated international events taking place in the United States.³⁴²

Entry to the United States

In general, a nonimmigrant entering the United States must present a passport with a valid nonimmigrant visa at the time of inspection at a U.S. port of entry. If the U.S. immigration officer finds the individual to be admissible, the officer issues a DHS Form I-94, Arrival/Departure Record (see Exhibit 7.1) as evidence of the alien's terms of admission, including the class of admission and the date admitted.

Nationals of certain countries may be permitted entry to the United States without a nonimmigrant visa, or with other documentation. Requirements for Canadian and Mexican nationals, and nationals of countries participating in the Visa Waiver Program are discussed below. However, entry requirements are expected to change by January 1, 2008. The Intelligence Reform and Terrorism Prevention Act requires that DHS develop a plan to require U.S. citizens and foreign nationals to present a passport or other secure document when entering the United States. Pending final regulations, citizens of the United States, Canada, Mexico, and the British Overseas Territory of Bermuda will be required to present a passport (or other secure document) at U.S. ports of entry.³⁴³

Canadian Citizens

Citizens of Canada traveling to the United States for business or pleasure intending to stay 6 months or less do not need a passport or a visa, unless arriving from outside the Western Hemisphere, and are not required to obtain an I-94. To enter the United States, a Canadian citizen needs only to establish identity and citizenship. Although an immigration officer may accept an oral declaration of citizenship, Canadian citizens may be asked to show documents establishing their citizenship, such as a birth certificate, citizenship certificate, or passport, as well as identification containing a photograph.³⁴⁴

Effective March 17, 2003, nationals of British Commonwealth countries resident in Canada or Bermuda are required to present a valid non-immigrant visa for entry to the United States, unless they are a national of a country designated eligible to enter under the Visa Waiver Program.³⁴⁵

Exhibit 7.1. Form I-94, front and back

<p>U.S. Department of Justice Immigration and Naturalization Service</p> <p style="text-align: right;">OMB 1115-0077</p> <hr/> <p>Admission Number</p> <p style="text-align: center; font-size: 24px; color: red;">09</p> <p style="text-align: center; color: red; font-weight: bold;">Welcome to the United States</p> <hr/> <p style="text-align: center;">I-94 Arrival/Departure Record - Instructions</p> <p>This form must be completed by all persons except U.S. Citizens, returning resident aliens, aliens with immigrant visas, and Canadian Citizens visiting or in transit.</p> <p>Type or print legibly with pen in ALL CAPITAL LETTERS. Use English. Do not write on the back of this form.</p> <p>This form is in two parts. Please complete both the Arrival Record (Items 1 through 13) and the Departure Record (Items 14 through 17).</p> <p>When all items are completed, present this form to the U.S. Immigration and Naturalization Service Inspector.</p> <p>Item 7- If you are entering the United States by land, enter LAND in this space. If you are entering the United States by ship, enter SEA in this space.</p> <p>Form I-94 (04-15-80)Y</p> <p>Admission Number</p> <p style="text-align: center; font-size: 24px; color: red;">09</p> <p>Immigration and Naturalization Service I-94 Arrival Record</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">1. Family Name</td> </tr> <tr> <td>2. First (Given) name</td> <td>3. Birth Date (Day/Mo/Yr)</td> </tr> <tr> <td>4. Country of Citizenship</td> <td>5. Sex (Male or Female)</td> </tr> <tr> <td>6. Passport Number</td> <td>7. Airline and Flight Number</td> </tr> <tr> <td>8. Country Where You Live</td> <td>9. City Where You Boarded</td> </tr> <tr> <td>10. City Where Visa Was Issued</td> <td>11. Date Issued (Day/Mo/Yr)</td> </tr> <tr> <td colspan="2">12. Address While in the United States (Number and Street)</td> </tr> <tr> <td colspan="2">13. City and State</td> </tr> </table> <p>Departure Number</p> <p style="text-align: center; font-size: 24px; color: red;">09</p> <p>Immigration and Naturalization Service I-94 Departure Record</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">14. Family Name</td> </tr> <tr> <td>15. First (Given) Name</td> <td>16. Birth Date (Day/Mo/Yr)</td> </tr> <tr> <td colspan="2">17. Country of Citizenship</td> </tr> </table> <p style="text-align: center;">See Other Side ENGLISH STAPLE HERE</p>	1. Family Name		2. First (Given) name	3. Birth Date (Day/Mo/Yr)	4. Country of Citizenship	5. Sex (Male or Female)	6. Passport Number	7. Airline and Flight Number	8. Country Where You Live	9. City Where You Boarded	10. City Where Visa Was Issued	11. Date Issued (Day/Mo/Yr)	12. Address While in the United States (Number and Street)		13. City and State		14. Family Name		15. First (Given) Name	16. Birth Date (Day/Mo/Yr)	17. Country of Citizenship		<p style="text-align: center; color: red; font-weight: bold;">This Side For Government Use Only</p> <p style="text-align: center;">Primary Inspection</p> <p>Applicant's Name _____</p> <p>Date Referred _____ Time _____ Insp. # _____</p> <p style="text-align: center;">Reason Referred</p> <p><input type="checkbox"/> 212A <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> PP <input type="checkbox"/> Visa <input type="checkbox"/> Parole <input type="checkbox"/> SLB <input type="checkbox"/> TWOV</p> <p><input type="checkbox"/> Other _____</p> <hr/> <p style="text-align: center;">Secondary Inspection</p> <p>End Secondary Time _____ Insp. # _____</p> <p>Disposition _____</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">18. Occupation</td> <td style="width: 50%;">19. Waivers</td> </tr> <tr> <td>20. INS File A -</td> <td>21. INS FCO</td> </tr> <tr> <td>22. Petition Number</td> <td>23. Program Number</td> </tr> <tr> <td>24. <input type="checkbox"/> Bond</td> <td>25. <input type="checkbox"/> Prospective Student</td> </tr> </table> <p>26. Itinerary/Comments</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>27. TWOV Ticket Number</p> <p>_____</p> <p>_____</p> <p>Warning - A nonimmigrant who accepts unauthorized employment is subject to deportation.</p> <p>Important - Retain this permit in your possession; <i>you must surrender it when you leave the U.S.</i> Failure to do so may delay your entry into the U.S. in the future.</p> <p>You are authorized to stay in the U.S. only until the date written on this form. To remain past this date, without permission from immigration authorities, is a violation of the law.</p> <p>Surrender this permit when you leave the U.S.:</p> <ul style="list-style-type: none"> - By sea or air, to the transportation line; - Across the Canadian border, to a Canadian Official; - Across the Mexican border, to a U.S. Official. <p>Students planning to reenter the U.S. within 30 days to return to the same school, see "Arrival-Departure" on page 2 of Form I-20 prior to surrendering this permit.</p> <p style="text-align: center;">Record of Changes</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Port: _____ Departure Record</p> <p>Date: _____</p> <p>Carrier: _____</p> <p>Flight #/Ship Name: _____</p> <p style="text-align: center; font-size: 8px;">For sale by the Superintendent of Documents, U.S. Government Printing Office Washington, D.C. 20402</p>	18. Occupation	19. Waivers	20. INS File A -	21. INS FCO	22. Petition Number	23. 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Mexican Citizens

In general, a citizen of Mexico wishing to visit the United States must present a passport and visa or a Border Crossing Card (BCC).³⁴⁶ Mexican visitors possessing BCCs are admitted for up to 72 hours for travel within 25 of the United States-Mexico border.³⁴⁷ This border crossing area is extended to 75 miles for much of Arizona.³⁴⁸ If BCC holders wish to travel beyond the border area or for longer than 72 hours, they must apply for an I-94 at the port of entry.

Border Crossing Cards, Form DSP-150, also called Laser Visas, are issued by the Department of State at consulates in Mexico. They are biometric, machine readable documents. The eligibility requirements for the BCC are the same as for a B-1 or B-2 visa.



To obtain a BCC, Mexican nationals must demonstrate that they have ties to Mexico that would compel them to return after a temporary stay in the United States. In issuing BCCs, U.S. consular officers look for evidence of strong family, business, or social ties to Mexico.

Visa Waiver Program

The Visa Waiver Program (VWP) allows foreign nationals from certain countries to be admitted to the United States under limited conditions and time constraints, without obtaining a nonimmigrant visa. The Enhanced Border Security and Visa Entry Reform Act of 2002³⁴⁹ required all persons entering under the VWP to have a machine-readable passport by October 26, 2004. Visitors without such passports are required to have a nonimmigrant visa.³⁵⁰

The VWP was first authorized by the Immigration Reform and Control Act of 1986³⁵¹ as a pilot program; the program was made permanent by the Visa Waiver Permanent Program Act of 2000.³⁵² The House Report accompanying the 1986 immigration reform bill discussed the need for a nonimmigrant visa waiver pilot program “for countries whose nationals have traditionally abided by U.S. immigration law.”³⁵³ The House Report stated:

The Committee believes that a pilot visa waiver program will promote better relations with some of our closest allies and other friendly nations. It would eliminate an unnecessary barrier to travel and stimulate the tourism industry in the United States. Also, it would alleviate vast amounts of paperwork allowing U.S. consular offices to better meet high priority responsibilities such as visa screening in high fraud areas.³⁵⁴

For foreign nationals to enter the United States under the VWP, the Secretary of Homeland Security, in consultation with the Secretary of State, may designate a country as a participant in the program if the following requirements are met:

- The country offers reciprocal travel privileges to United States citizens;

- Nationals of the country have a low refusal rate for United States visas;
- The country has certified that it has a machine-readable passport program, or will begin issuing machine-readable passport to its citizens not later than October 26, 2005;³⁵⁵
- The Secretary of Homeland Security, in consultation with the Secretary of State, prepares a report evaluating the effect the country's designation would have on the United States' law enforcement and security interests; and
- The Secretary of Homeland Security, in consultation with the Secretary of State, determines that the country's designation for the program would not compromise United States law enforcement or national security interests, including interests in enforcing immigration laws.

In addition, to qualify for the VWP, an individual must intend to enter the United States for 90 days or less, and possess a passport lawfully issued by a VWP country (of which the individual is a national) that is valid for 6 months beyond the intended visit. In addition, the intending nonimmigrant must have a return trip ticket to any foreign destination (other than a territory bordering on the United States or an adjacent island unless a resident of an adjacent island) and must present a completed and signed Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form, to the U.S. Customs and Border Protection (CBP) officer at the port of entry.

The officer will check an electronic database to ensure that the alien is not inadmissible and does not pose a safety threat to the United States. By submitting the I-94W, the nonimmigrant waives any right to review or appeal a CBP officer's decision as to admissibility, and any right to challenge removal, other than on the basis of an application for asylum or an application for withholding of removal under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Currently, there are 27 countries participating in the Visa Waiver Program (see Table 7.1). The Secretary of Homeland Security, in consultation with the Secretary of State, may add countries to the program or remove them from the program at any time. The participation of a country may be terminated under certain conditions, including the overthrow of a democratically elected government, war, severe economic collapse, and other conditions that threaten the law enforcement or security interests of the United States. Since its inception, only two countries have lost designation as VWP countries. Argentina was removed from the program in 2002 because of severely declining economic conditions in the country.³⁵⁶ Uruguay was removed from the program in 2003, after a review of the program found high visa overstay rates for nationals of that country.³⁵⁷

Table 7.1 Visa Waiver Countries, 2005

<i>Andorra</i>	<i>Iceland</i>	<i>Norway</i>
<i>Austria</i>	<i>Ireland</i>	<i>Portugal</i>
<i>Australia</i>	<i>Italy</i>	<i>San Marino</i>
<i>Belgium</i>	<i>Japan</i>	<i>Singapore</i>
<i>Brunei</i>	<i>Liechtenstein</i>	<i>Slovenia</i>
<i>Denmark</i>	<i>Luxembourg</i>	<i>Spain</i>
<i>Finland</i>	<i>Monaco</i>	<i>Sweden</i>
<i>France</i>	<i>Netherlands</i>	<i>Switzerland</i>
<i>Germany</i>	<i>New Zealand</i>	<i>United Kingdom</i>

Denial of Admission

In certain circumstances, individuals can request a hearing before the immigration court if their applications for admission have been denied. An immigration judge will hear the case and make a determination. The judge's decision can be appealed to the Board of Immigration Appeals. However, persons applying for admission under the Visa Waiver Program cannot appeal the decision. In cases involving fraud, willful misrepresentation, false claim to U.S. citizenship, or lack of a valid immigrant visa for an intending immigrant, the officer's decision is final.³⁵⁸

Authorized Stay

As noted above, when a nonimmigrant arrives at a U.S. port of entry, a U.S. immigration officer inspects the alien's documents and, if admission to the United States is granted, the immigration officer will staple the departure portion of Form I-94 in the alien's passport (see Exhibit 7.1). This form shows either a date or the designation "duration of status" (D/S). In most cases, a specific date will be indicated on the Form I-94 in the lower right-hand corner which is the date by which the alien must leave the United States. Some students, exchange program participants, and individuals such as foreign diplomats may be admitted for duration of status, meaning that they may remain in the United States as long as they stay in status, such as by continuing to make progress toward their course of studies or remaining in the exchange program or job for which they obtained their nonimmigrant visa.³⁵⁹

Failure to maintain status or overstaying the period of authorized admission carries severe penalties. Under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996,³⁶⁰ persons who remain beyond their period of admittance can have their visas voided. In such instances, the individual will be required to obtain a new visa prior to returning to the United States. Nonimmigrants unlawfully present in the United States for a consecutive period of more than 180 days who voluntarily depart the United States are barred from returning to the United States for a period of 3 years; those unlawfully present for a period of 1 year or more are barred from returning for 10 years.³⁶¹

Extension of Stay

Nonimmigrants may apply for and be granted an extension of their temporary stay in certain circumstances if they have not committed any act which would make them ineligible for extension. Additionally, a nonimmigrant must submit an application for the extension of stay before the current authorization expires,³⁶² preferably at least 45 days before the authorized stay expires, but no later than the day on which the authorized stay expires.

The type of nonimmigrant visa determines which application for extension of stay must be filed, as shown in Table 7.2. Nonimmigrants in temporary worker categories E, H, L, O, P, Q, R, and TN may have an extension of stay application submitted on their behalf by their employer, using Form I-129, Petition for Nonimmigrant Worker. These principal nonimmigrants may apply for extension of stay for their dependents using Form I-539, Application to Extend/Change Nonimmigrant Status. Nonimmigrants in categories A, B, F, G, I, J, M, and N apply for extensions of stay for themselves and their dependents using Form I-539, Application to Extend/Change Nonimmigrant Status.

Table 7.2. Nonimmigrant Extension of Stay

May not apply for	Employer must apply for	Individual may apply for extension
C - Aliens in transit D - Crewmembers K - Fiancé(e) of a U.S. citizen and dependent of a fiancé S - Informant on terrorism or organized crime, and family VWP - Aliens entering under the Visa Waiver Program T - may not be extended except if nonimmigrant timely applies for adjustment of status	E - International Traders and Investors H - Temporary Workers L - Intracompany Transferees O - Aliens of Extraordinary Ability P - Entertainers and Athletes Q - Participants in International Exchange Programs R - Religious Workers TN - Canadians and Mexicans Under NAFTA	A - Diplomatic and other government officials, their families and employees. B - Temporary visitors for business or pleasure F - Academic students and their families G - Representatives to international organizations, their families and employees I - Representatives of foreign media and their families J - Exchange visitors and their families M - Vocational students and their families N - Parents and children of the persons granted special immigrant status because <i>their</i> parents were employed by an international organization in the United States

Changing from One Nonimmigrant Status to Another³⁶³

In general, nonimmigrants may apply to change their nonimmigrant status if their nonimmigrant status remains valid and they have not committed any crimes that would make them ineligible. Nonimmigrants admitted in the D, C, K, or S categories may not change their nonimmigrant status, nor can entrants under the Visa Waiver Program. (Some nonimmigrants are permitted to apply for permanent resident status, and others are permitted to have dual intent – i.e., entering the United States as a nonimmigrant with the intention of adjusting status to that of permanent resident. These issues are discussed in Section VIII.)

Some special circumstances are worth noting about the change of nonimmigrant status for certain groups. For example, vocational students (M visa category) may not apply to become academic students (F visa category). They also may not apply to change from the vocational

student visa category to a temporary worker visa category (H) if they are qualifying as a temporary worker based on the training they received as a vocational student.

Nonimmigrants who entered as international exchange visitors (J visa category) may not change their nonimmigrant status if they were admitted to the United States to receive graduate medical training, unless they receive a special waiver. In addition, some exchange visitors must meet a foreign residency requirement before they are allowed to change status. This means that some international exchange visitors must leave the United States and go back to their home country for a minimum of 2 years before applying to come to the United States as a temporary worker or an immigrant. Exchange visitors who are required to meet the foreign residency requirement must receive a waiver if they wish to change their nonimmigrant status without returning home. Without such a waiver, they may only apply to change to the A (diplomatic and other government officials) or G (representatives to international organizations) nonimmigrant categories.

However, spouses and children of certain nonimmigrants do not need to apply to change status to attend school in the United States as long as the principal nonimmigrant maintains their original nonimmigrant status. This includes:

- Diplomatic and other government officials, their families and employees (A)
- International traders and investors (E)
- Representatives to international organizations, their families and employees (G)
- Temporary workers (H)
- Representatives of foreign media and their families (I)
- Exchange visitors and their families (J)
- Intracompany transferees (L)

Spouses and children of F or M nonimmigrants do not need to apply to change status to attend elementary, middle, or high school in the United States; however they must apply for change of status to attend a post-secondary institution as full-time students.

SECTION VIII

POLICY ISSUES RELATED TO THE NONIMMIGRANT SYSTEM

Over the years, Federal policy makers have revised immigration laws to reflect changing world conditions and national priorities. The nonimmigrant classification system is an example of a continually evolving policy. As categories became too narrow, or other reasons were approved for the entry of aliens, the nonimmigrant categories were adapted to permit eligible aliens to enter the United States. Thus, over time, different requirements for different groups of aliens have been created. Because of the complexity of immigration law, and nonimmigrant policies in general, it is imperative to periodically evaluate the effectiveness of such policies. In this section, many of the issues related to nonimmigrants are discussed to provide an overview for any future debates on nonimmigrant policy.

Dual Intent

If a nonimmigrant plans to immigrate to the United States at some point, he or she is said to have “dual intent” – i.e., the nonimmigrant, though in the United States on a temporary basis, intends to remain permanently. Only some nonimmigrant categories are permitted to have dual intent, and only under certain conditions.

Under section 214(b) of the Immigration and Nationality Act, an individual is presumed to be an immigrant until he or she establishes that he or she is entitled to a nonimmigrant status (see the discussion of “Presumption of Status” in Section VII). Nonimmigrant intent is often shown by the nonimmigrant maintaining an unabandoned foreign residence abroad and demonstrating the reason for entering the United States and the length of the proposed stay. Consular officers and USCIS adjudicators are trained to take a variety of factors into account when determining intent.

The Immigration Act of 1990 officially sanctioned dual intent for certain categories of nonimmigrants. The legislative history of the Act states:

The difficulties encountered by those seeking temporary admission who have also expressed a desire to immigrate at some time in the future have caused severe personal hardship as well as inhibited frequent travel to the United States for business purposes. This has been particularly onerous for the beneficiaries of H and L visas. The Committee [on the Judiciary] sees no useful purpose in denying temporary entry to the United States for business purposes because of an inability to show that a residence abroad will not be abandoned. Such presumption of immigrant intent in particular circumstances creates purposeless, but often insurmountable, barriers for the prospective employee and the employer. For all categories of nonimmigrant visas (including the H and L), the bill provides that the filing of an immigrant petition cannot be a factor in determining whether an alien intends to abandon a foreign residence. The Committee notes, however, that the consular

officers may rely on other evidence indicating the possibility of overstaying a visa, such as records of past visits to the United States.³⁶⁴

In particular, the 1990 Act removed the foreign residence requirement for H-1 nonimmigrants.³⁶⁵ (Maintenance of a foreign residence had not been required of L nonimmigrants.) Thus, the law permits H-1 and L nonimmigrants to maintain nonimmigrant status while seeking permanent residence in the United States. Section 214(h) of the Immigration and Nationality Act, as amended, states:

The fact that an alien is the beneficiary of an application for a preference status filed under section 204 or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph (H)(i)(b) or (c), (L), or (V) of section 101(a)(15) or otherwise obtaining or maintaining the status of a nonimmigrant described in such paragraph, if the alien had obtained a change of status under section 248 to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

Dual intent was subsequently recognized in USCIS regulations, which state that an H-1B or H-1C nonimmigrant “may legitimately come to the United States for a temporary period ... and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.”³⁶⁶ Similar regulatory language permits dual intent for L nonimmigrants as well.³⁶⁷

USCIS also has applied the doctrine of dual intent to E nonimmigrants. Because the INA does not require E nonimmigrants to maintain a foreign residence that they have no intention of abandoning, and because E nonimmigrants are able to extend their stay indefinitely in the United States, regulations were promulgated stating that “an application for initial admission, change of status, or extension of stay in E classification may not be denied solely on the basis of an approved request for permanent labor certification or a filed or approved immigrant visa preference petition.”³⁶⁸

Similarly, USCIS regulations allow dual intent for O-1 and P nonimmigrants, with the exception of essential support personnel.³⁶⁹

Adjustment of Status

One concern with permitting nonimmigrants to have dual intent or to adjust their status is that the nonimmigrant visa system becomes a “back door” to immigration for persons who are not willing to wait outside the United States until an immigrant visa becomes available. However, U.S. immigration law permits most nonimmigrants to adjust to permanent resident status, with certain exceptions.

Prior to the passage of the Immigration and Nationality Act of 1952, there was no statutory authority for allowing an alien already in the United States to adjust their status to that of immigrant (i.e., permanent resident). Generally, if an alien wished to become a permanent resident, he or she would have to leave the United States and apply for a visa at an American

consular office abroad. Over the years, however, provisions have been added to U.S. immigration law that permit adjustment of status.³⁷⁰

Section 245 of the Immigration and Nationality Act, which was added in 1952, permits certain aliens to apply for permanent resident status while they are in the United States. Under this section, an alien must qualify for an immigrant visa, and an immigrant visa must be immediately available – the same requirements for persons applying for permanent residence outside the United States.

Some nonimmigrants, such as those with H-1 or L-1 visas, can apply for adjustment of status without leaving the United States to await the availability of an immigrant visa number. Such individuals can be the beneficiary of an immigrant visa petition, apply for adjustment of status, or take other steps toward Lawful Permanent Resident (LPR) status without affecting their nonimmigrant status. This is known as "dual intent" and has been recognized in the immigration law since passage of the Immigration Act of 1990. During the time that the application for LPR status is pending, aliens in these nonimmigrant status may travel on their nonimmigrant visas rather than obtaining advance parole or requesting other advance permission from USCIS to return to the United States.

The statistics in Table 8.1, below, provide a glimpse at the volume of adjustment of status cases.³⁷¹ In 2002, a total of 679,305 nonimmigrants adjusted status, representing 64 percent of all "new" immigrants admitted that year. Persons who had entered the United States originally as visitors for pleasure and temporary workers accounted for one-quarter of all adjustment cases. Comparatively, students accounted for less than 3 percent of the 2002 adjustments.

Table 8.1. Adjustment of Status by Selected Status at Entry, 2002

Region	Visitors for Business	Visitors for Pleasure	Students	Temporary Workers	Fiancé(es)	Intra-company Transferees
All Countries	6,181	91,845	18,720	87,168	18,621	15,148
Europe	706	12,971	2,744	11,397	4,739	5,054
Asia	2,743	26,646	11,153	63,668	9,358	4,545
Canada/Mexico	391	14,661	518	4,312	1,653	2,847
South America	822	15,348	1,316	2,573	966	1,488
Caribbean	421	10,356	597	765	594	84
Central America	274	3,666	163	233	231	83
Oceania	51	920	131	589	226	363
Africa	733	6,747	1,981	3,171	754	645

Source: DHS, *2002 Yearbook of Immigration Statistics*, October 2003, table 10.

U.S. immigration law and its critics have not always taken into account that some individuals have legitimate reasons for wishing to move from a temporary to a permanent status. Others cite concern with rapid population growth, misuse of nonimmigrant visa programs, and a variety of other such impacts on society and on agencies at all levels of government that provide services to foreign visitors and other newcomers to society.

Visa Overstays

In 2000, about 33 percent (2.3 million) of the total undocumented population were estimated to be nonimmigrant overstays; that is, persons who entered the United States legally on a temporary basis but failed to depart at the time specified on their visa. The proportion of the undocumented population who are overstays varies considerably by country of origin. Estimates for 1996 suggest that about 16 percent of the Mexican undocumented population are nonimmigrant overstays, compared to 26 percent of those from Central America and 91 percent from all other countries.³⁷²

As the U.S. General Accountability Office and other organizations have noted, the tracking of overstays has become an important part of securing the Nation. While it appears that most long-term overstays are economically motivated, some overstays may pose a threat to national security.³⁷³ Nonetheless, the volume of nonimmigrant entries and the wide assortment of entry requirements applicable to nationals of different countries historically has made the tracking of the comings and goings of nonimmigrants difficult.

Overstays may be the result of malicious intent, or they may be the result of misinformation, misunderstandings, or unforeseen events. Further study is needed concerning the extent of and reasons for visa overstays. More careful collection of data concerning entry and exit, such as through the US-VISIT program, can help in tracking overstays.

Tracking Arrivals and Departures of Visitors to the United States

The U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT) facilitates the entry of visitors to the United States, as well as providing a means of verifying the identity of such visitors and determining if they have complied with the terms of their visas by departing the United States when required. The goals of the program are to enhance the security of U.S. citizens and visitors, to facilitate legitimate travel and trade, ensure the integrity of the immigration system, and safeguard the personal privacy of visitors.³⁷⁴ US-VISIT became operable in December 2004, although efforts to verify the identity and addresses of aliens have been included in U.S. immigration laws since the 1940s.

Legislative Requirements

Immigrants and nonimmigrants were first required to register with the U.S. Government after the passage of the Alien Registration Act of 1940.³⁷⁵ This law specified that all aliens over 14 years of age were to be fingerprinted when they registered, and immigrants were to notify the

Attorney General of each change of address. The purpose of this requirement was to enable the INS to identify, track, and locate aliens while they were in the United States. Persons visiting for less than 30 days, foreign government officials and their family members, and representatives of international organizations and their family members were exempt from the registration requirement.³⁷⁶

The registration requirement was modified over time. Legislation enacted in the 1950s, required all aliens to annually report their addresses to the INS and to report any change of address within 10 days of the change.³⁷⁷ Finally, in 1981, the annual reporting requirements were eliminated by Congress,³⁷⁸ however, both immigrants and nonimmigrants still must report a change of address within 10 days.³⁷⁹

Current entry and exit tracking procedures stem from the requirement in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 that the departure of every foreign national from the United States be recorded and matched against entry records to enable DHS to identify “lawfully admitted nonimmigrants who remain in the United States beyond the period authorized...”³⁸⁰ That requirement was amended by the Immigration and Naturalization Service Data Management Improvement Act (DMIA) of 2000.³⁸¹ These and other laws enacted between 2000 and 2002 have resulted in an entry-exit tracking program known as US-VISIT.

The DMIA mandated the creation of an automated entry-exit system that integrates all electronic alien arrival and departure information maintained by DHS and the Department of State.³⁸² The law specified that the system was to be implemented at the 50 busiest land border ports of entry by December 31, 2004, and at all ports of entry by December 31, 2005. Information contained in the system is to be used to determine visa overstays and other information on entry and exit.³⁸³

Also enacted in 2000, the Visa Waiver Permanent Program Act of 2000³⁸⁴ required the creation of a system that contains a record of the arrival and departure of every alien admitted under the Visa Waiver Program who arrives or departs by air or sea. This information also was incorporated into the US-VISIT program.³⁸⁵

In response to the events of September 11, 2001, two key pieces of legislation were passed that affected the requirements for US-VISIT. Section 403(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act)³⁸⁶ required the development and certification of appropriate biometric standards to be used in verifying the identity of visa applicants and persons seeking to enter the United States, and in conducting background checks on such individuals.

These biometric requirements were reinforced by the Enhanced Border Security and Visa Entry Reform Act of 2002 (“Border Security Act”)³⁸⁷ which required that:

- the entry-exit system use the technology and biometric standards identified pursuant to the USA PATRIOT Act;

- DHS and DOS issue only machine-readable, tamper-resistant visas and other travel and entry documents no later than October 26, 2004;
- no later than October 26, 2004, all ports of entry must have equipment and software installed to allow biometric comparison and authentication of all United States visas and other travel and entry documents issued to aliens and passports;
- persons entering under the Visa Waiver Program have tamper-resistant, machine-readable passports with biometric identifiers by October 26, 2004; and
- countries in the Visa Waiver Program issue tamper-resistant, machine-readable, biometric passports by October 26, 2005 (as amended).³⁸⁸

The Border Security Act also required that the entry-exit system share information with other systems required by the Act. Section 202 of the Act specifies requirements for an “interoperable” law enforcement and intelligence data system and requires the integration of all databases and data systems that process or contain information on aliens.³⁸⁹

Operational Procedures

US-VISIT is the entry-exit system that was developed to meet the requirements under the DMIA and related legislation. In many instances, the process begins overseas at U.S. consular offices where intending visitors’ biometrics (digital fingerprints and photographs) are collected and checked against a database of records on criminal and/or terrorist activities. When visitors arrive at a port of entry, digital fingerprints and photographs are taken again and matched against the existing record to verify that persons requesting entry are the same individuals who received the visas. In addition, the standard entry procedures apply, during which a U.S. Customs and Border Protection officer reviews visitors’ travel documents and asks questions about their stay the United States.³⁹⁰

Procedures for exit are being tested at Baltimore-Washington International Airport, Miami Seaport cruise line terminals, and Chicago O’Hare International Airport. Nonimmigrants departing from those ports are required to confirm their departure using US-VISIT. The checkout includes scanning the visa or passport and repeating the digital fingerprint process. An exit confirmation will be added to aliens’ travel documents. On September 30, 2004, US-VISIT was expanded to all visitors traveling under the Visa Waiver Program departing from airports and seaports.³⁹¹

Temporary Workers

The debate over whether and under what conditions foreign workers should be permitted to work in the United States on a temporary basis has persisted for decades. The treatment of migratory workers, protecting jobs for U.S. workers, wages, and other fairness issues are a large part of the debate. Fluctuations in the U.S. economy have also influenced how temporary workers are viewed and accepted.

During World War II and the Korean War, foreign workers, including millions of Mexican agricultural workers, were welcomed to the United States with open arms. But in later years, with the economy floundering and jobs hard to find, foreign workers were not so welcome. In periods of high unemployment, foreign workers are often considered to be responsible for Americans' loss of jobs, leading to suspicion and blame on both sides. Other interests express concern for the working conditions and treatment of foreign workers, while still others are concerned with the potential impact on wages. Some argue that foreign workers take only the jobs that Americans refuse to do.

Temporary workers, like exchange visitors, foreign students, and other temporary visitors, can enrich the workforce, contribute to the U.S. economy, and promote development in their home countries through remittances. International economic circumstances as well as the needs of the United States need to be reflected in design of future temporary worker programs.

CONCLUSION

The United States welcomes and encourages visitors from other nations. U.S. policy promotes cultural exchange to create a broader understanding of the United States in other parts of the world and to enhance our knowledge of our friends and neighbors in other nations and cultures. We also recognize the importance of international trade and investment in both business and human capital. Thus, the United States encourages tourism by foreign nationals, cross-border commerce, the flow of goods and services across our borders and around the world, and other cultural exchanges.

Nonimmigrant policies are integral to these national goals. Like other nations, the United States has developed laws, regulations, and policies to facilitate the clearance and admittance of nonimmigrant foreign nationals who come for a variety of reasons. Such policies are largely intended to protect our values concerning freedom, trade, and the welcoming of others, while at the same time protecting the Nation from threats to our security.

The world is always in flux. Social, political, and economic conditions create changes that touch everything from education and housing to law-making and enforcement of those laws. Immigration law is not immune to such forces. Therefore, it is important for lawmakers and policymakers to periodically reexamine issues in light of recent developments.

The nonimmigrant classification system has evolved through the years. More categories have been added since the Immigration and Nationality Act of 1952 organized and codified them. Restrictions for certain groups of nonimmigrants have been tightened, while other categories have been expanded. Considerations for family members, children, and fiancées have been incorporated into the nonimmigrant framework. The result is an even more complex landscape for foreign nationals to make their plans to visit the United States a reality.

Over the years, many commentators have suggested new ways of defining nonimmigrant categories, ranging from restrictionist plans that limit the number of nonimmigrants admitted in temporary categories to proposals that would facilitate the transition from nonimmigrant to immigrant. This report does not support a particular position, nor does it propose a new classification scheme. What it does is present the nonimmigrant categories as currently defined and identify some of the issue areas related to the temporary admission of aliens to the United States. The intent is to provide a legal and historical framework for the current nonimmigrant system as a way to focus any future discussions for aligning immigration law with the realities of the 21st century.

The United States continues to welcome individuals to our nation. The admission of foreign nationals on a temporary basis is central to our economic and social policies. Sharing our culture and values with persons from other nations fosters global understanding and cooperation. In many cases, knowledge of our culture and values leads persons from other lands to desire to join in our nation as immigrants and citizens. In other instances, they return to their homelands richer for having known us, as we are enriched by knowing them.

Appendix A. Nonimmigrant Visa Categories

Foreign Government Officials

- A-1 Ambassador, Public Minister, Career Diplomat, Consular Officer, Head of State, and immediate family members
- A-2 Other foreign government officials or employees coming to the United States and immediate family members. Includes technical and support staff of A-1
- A-3 Attendants, Servants and Personal employees of A-1 and A-2 and immediate family members

Temporary Visitors

- B-1 Temporary visitor for business
- B-2 Temporary visitor for pleasure
- GB Temporary visitor for business, Guam
- GT Temporary visitor for pleasure, Guam
- WB Temporary visitor for business, visa waiver
- WT Temporary visitor for pleasure, visa waiver
- BE Bering Straits agreement entrants

Aliens in Transit

- C-1 Alien in transit (direct and continuous travel through the United States)
- C-1D Combined transit and crewman visa
- C-2 Alien in transit to the U.N. headquarters
- C-3 Foreign government official, members of immediate family, attendants, servants or other personal employee of official in transit through the United States

Crewmen

- D-1 Crewmen departing on same vessel of arrival, crewmen departing on same aircraft or same airline
- D-2 Crewmen departing on vessel other than one of arrival. Airmen departing on different airline than one of arrival

Treaty Traders and Treaty Investors

- E-1 Treaty trader, spouse, and children
- E-2 Treaty investor, spouse, and children coming to develop and direct a bon fide enterprise in which he/she has invested a substantial amount of capital
- E-3 Australian nationals working in specialty occupations

Academic Students

- F-1 Academic student
- F-2 Spouse or child of student
- F-3 Border commuter student

Appendix A, continued

Foreign Government Officials to International Organizations

- G-1 Principal resident representative of recognized foreign member government to international organization, staff, and immediate family members
- G-2 Other temporary representative of recognized foreign member government to international organization and immediate family members
- G-3 Representative of nonrecognized or nonmember foreign government to international organization and immediate family members
- G-4 International organization officer or employee and immediate family members
- G-5 Attendant, servant, or personal employee of G-1 through G-4 and immediate family members

Temporary Workers

- H-1B1 Specialty occupation, entering under free trade agreements with Chile and Singapore
- H-1B Specialty occupation (professionals), DOD workers, fashion models
- H-1C Nurses going to work for up to 3 years in health professional shortage areas
- H-2A Temporary or seasonal agriculture workers
- H-2B Nonagricultural temporary or seasonal workers
- H-3 Trainee or participant in special education exchange visitor program
- H-4 Spouse or child of H-1, H-2, H-3

Foreign Media Representatives

- I Representative of foreign information media, spouse, and children

Exchange Visitors

- J-1 Exchange visitor
- J-2 Spouse or minor child of exchange visitor

Fiancé(e)/Spouse of U.S. Citizen

- K-1 Fiancé or fiancée of U.S. Citizen
- K-2 Minor child of K-1
- K-3 Spouse of U.S. Citizen (under LIFE Act provisions)
- K-4 Child of K-3

Intracompany Transferees

- L-1A Intracompany transferee (executive, managerial and specialized personnel) entering to continue employment with the same employer or a subsidiary or affiliate thereof
- L-1B Executive, manager or has specialized skill of international firm
- L-2 Spouse or child of L-1

Vocational and Language Students

- M-1 Vocational or non-academic student
- M-2 Spouse or child of M-1
- M-3 Border commuter student

Parent/Child of Special Immigrants

- N-8 Parent of alien classified SK-3 "special immigrant"
- N-9 Child of N-8, SK-1, SK-2, or SK-4 "special immigrant"

Appendix A, continued

North Atlantic Treaty Organization

- NATO-1 Principal permanent representative of member state to NATO and resident members of official staff or immediate family
- NATO-2 Other representatives of member state; dependents of member of a force entering in accordance with the provisions of NATO Status-of-Forces agreement; members of such force if issued visas
- NATO-3 Official clerical staff accompanying representative of member state to NATO or immediate family
- NATO-4 Official of NATO other than those qualified under NATO-4, employed on behalf of NATO and immediate family
- NATO-5 Expert other than NATO officials qualified under NATO-4, employed on behalf of NATO and immediate family
- NATO-6 Member of civilian component who is either accompanying a Force entering in accordance with the provision of the NATO Status-of-Forces agreement; attached to an Allied headquarters under the protocol on the Status of International Military headquarters set up pursuant to the North Atlantic Treaty; and their dependents
- NATO-7 Servant or personal employee of NATO-1 through NATO-6, or immediate family

Workers with Extraordinary Abilities

- O-1 Aliens of extraordinary ability
- O-2 Accompanying alien who is coming solely to assist in the artistic or athletic performance by an O-1
- O-3 Spouse and/or child of O-1 and O-2

Athletes and Entertainers

- P-1 Internationally recognized professional artists, athletes, entertainers, and “essential support personnel”
- P-2 Artist or entertainer in reciprocal exchange programs
- P-3 Artists and entertainers coming to perform, teach, or coach a culturally unique program. Relates to initials and members of a group.
- P-4 Spouses and/or children of P-1, P-2, P-3

International Cultural Exchange Visitors

- Q-1 International cultural exchange visitor
- Q-2 Irish Peace Process cultural and training program (Walsh Visas)
- Q-3 Spouse or child of Q-2

Religious Workers

- R-1 Religious workers
- R-2 Spouse or child of R-1

Appendix A, continued

Witness or Informant

- S-5 Alien witness or informant possessing critical, reliable information concerning a criminal organization or enterprise whose presence in the United States is required for the successful investigation or prosecution of the criminal organization
- S-6 Alien witness or informant possessing critical reliable information about terrorist organization, enterprise, or operation, who will be placed in danger as a result of supplying that information; and is eligible to receive a reward under separate U.S. State Department legislation
- S-7 Spouse, unmarried sons and daughters, and parents of witness or informant

Victims of a Severe Form of Trafficking in Persons

- T-1 Victim of a severe form of trafficking in persons
- T-2 Spouse of a victim of a severe form of trafficking in persons
- T-3 Child of victim of a severe form of trafficking in persons
- T-4 Parent of a victim of a severe form of trafficking in persons (if T-1 victim is under 21)

North American Free Trade Agreement

- TN Trade NAFTA principal – Canadian/Mexican citizen seeking temporary entry to engage in activities as a professional level pursuant to the North American Free Trade Agreement
- TD Spouse or child of TN

Victims of Certain Crimes

- U-1 Victim of certain criminal activity
- U-2 Spouse of U-1
- U-3 Child of U-1
- U-4 Parent of U-1, if U-1 is under 21

Certain Second Preference Beneficiaries

- V-1 Spouse of an LPR who is the principal beneficiary of a family-based petition which was filed prior to December 21, 2000, and has been pending for at least 3 years
- V-2 Child of an LPR who is the principal beneficiary of a family-based visa petition that was filed prior to December 21, 2000, and has been pending for at least 3 years
- V-3 The derivative child of a V-1 or V-2

Appendix B. Summary of Selected Nonimmigrant Benefits

Category	Work Authorization	Initial Length of Stay	Extension of Stay	Annual Cap	Adjustment of Status
A-1, A-2	Status is for temporary entry as foreign government official; may not seek other employment	D/S	N/A	None	N/S
A-1 and A-2 dependents	Yes, if formal bilateral agreements or informal defacto reciprocal arrangements are in place, and with Department of State (DOS) recommendation. Must apply to USCIS for work authorization if approved by DOS. Work authorization may be granted in increments of NMT 3 years.	D/S	N/A	None	N/S
A-3	Status is for temporary entry as employee of A-1 or A-2; may not seek other employment.	NMT 3 years	Increments of NMT 2 years	None	N/S
B-1	Status is for temporary entry for business; may not seek gainful employment in the United States.	NMT 1 year	Increments of NMT 6 months	None	N/S
B-2	No	NMT 1 year; minimum approval of 6 months	Increments of NMT 6 months	None	N/S
C-2	Status is for temporary entry in transit to the United Nations, other employment is not permitted	Maximum of 29 days	No	None	Not permitted
C-3	Status is for temporary entry in transit as crewmember, other employment is not permitted	Maximum of 29 days	No	None	Not permitted
D-1, D-2	May be employed only in a crewmember capacity on the vessel or aircraft of arrival, or of the same transportation company. May not be employed in connection with domestic craft. May perform crewmember duties through stopovers on international flights for any U.S. carrier where such flight uses a single aircraft and has an origination or destination point outside the United States.	N/S	N/S	N/S	Not permitted
E-1, E-2	May be employed only by the treaty-qualifying company through which the alien attained the status.	NMT 2 years	Increments of NMT 2 years	None	Permitted
E-1, E-2 dependents	Not work authorized, except for alien spouse or unmarried son or daughter of an alien employee of the Coordination Council of North American Affairs (E-1) who may apply to USCIS apply for work authorization	Same as for principal alien	Same as for principal	None	Permitted
F-1	With permission of USCIS	D/S	N/A	None	Permitted
F-2	Not work authorized	D/S of F-1	N/A	None	Permitted
F-3					
G-1, G-2, G-3, G-4	May only be employed by the foreign government entity or the international organization through which the alien attained the status	D/S	N/A	None	N/S

Sources: 8 CFR §§ 214.2, 214.6, 214.11, 214.15; 245.1, 274a.12. D/S=Duration of Status; NTE = not to exceed, NMT = not more than, N/A= not applicable, N/S = not specified in CFR

Appendix B. Summary of Selected Nonimmigrant Benefits (continued)

Category	Work Authorization	Initial Length of Stay	Extension of Stay	Annual Cap	Adjustment of Status
G-1, G-2, G-3, G-4 Dependent	Yes, if formal bilateral agreements or informal defacto reciprocal arrangements are in place, and with DOS recommendation. Must apply to USCIS.	D/S	N/A	None	N/S
G-5	Status is for temporary entry in the employ of G-1, G-2, G-3, or G-4 principal; may not seek other employment in the United States	NMT 3 years	Increments of NMT 2 years	None	N/S
H-1B1 Professionals from Chile and Singapore	Status for professionals entering under trade agreements; may not seek other employment in the United States	Maximum of 1 year	Increments of 1 year; not limit on number of extensions	Included in H-1B cap	Dual intent not permitted
H-1B Specialty occupations	May be employed only by the petitioner through whom the status was obtained.	Period of approved petition. Maximum stay is 6 years	Up to 3 years. See note 1	65,000 for all H-1B	Permitted See notes 1, 6
H-1B Research and development	May be employed only by the petitioner through whom the status was obtained.	Period of approved petition. Maximum stay is 10 years	Up to 5 years. See note 1	65,000 for all H-1B	Permitted See notes 1, 6
H-1C	May be employed only by the petitioner through whom the status was obtained.	Maximum stay is 3 years	None beyond 3 years	500	Permitted See notes 1, 6
H-2A	May be employed only by the petitioner through whom the status was obtained.	Period of approved petition; may hold this status for a total of 3 years	See note 2	None	See note 2
H-2B	May be employed only by the petitioner through whom the status was obtained.	Period of approved petition	See note 3	66,000	See note 3
H-3	May be employed only by the petitioner through whom the status was obtained.	Period of approved petition. Total stay as H-3 trainee is 2 years; 18 months for special education program	See note 3	50 for special educ. programs	See note 3
H-4	Not work authorized	Same as for principal alien	Same as for principal	None	N/S
I	Status is for temporary entry as representative of foreign media; may not change medium or employer w/o USCIS permission	Duration of employment	N/A	None	N/S
I dependents	Not work authorized	Same as for principal alien	Same as for principal	None	N/S
J-1	May be employed only by the exchange visitor program sponsor or appropriate designee and within the guidelines of the program approved by DOS as set forth in the Form DS-2019	Period specified on SEVIS Form DS-2019 (plus 30 days for travel)	Must submit new Form DS-2019	None	Permitted
J-2	Yes, with permission from USCIS. Employment will not be authorized if such income is needed to support the J-1 principal alien.	Period specified on J-1's SEVIS Form DS-2019	Period specified on J-1's Form DS-2019	None	N/S

Appendix B. Summary of Selected Nonimmigrant Benefits (continued)

Category	Work Authorization	Initial Length of Stay	Extension of Stay	Annual Cap	Adjustment of Status
K-1	Yes. Must apply to USCIS for work authorization.	Visa is valid for 1 entry. Marriage must take place within 90 days of entry	No	None	Required
K-2	Yes. Must apply to USCIS for work authorization.	Same as for principal K-1	No	None	Required
K-3	Yes. Must apply to USCIS for a document evidencing employment authorization.	Admitted for a period of 2 years	Up to 2-year intervals See note 4	None	Permitted
K-4	Yes. Must apply to USCIS for a document evidencing employment authorization.	Admitted for a period of 2 years, or until age 21	Up to 2-year intervals See note 4	None	Permitted
L-1	May be employed only by the petitioner through whom the status was obtained.	Total stay: specialized knowledge, 5 years; managerial, 7 years	Increments of up to 2 years, no extension beyond max. stay	None	Permitted
L-2	Not unless he or she has been granted employment authorization.	Same as principal L-1 nonimmigrant	Same as principal	None	Permitted
M-1	Employment other than for practical training is not authorized. Practical training may be authorized only after completion of the course of study and if approved by USCIS. Proposed employment must be for practical training related to the student's course of study, and designated school official must determine that comparable employment is not available in student's country of residence. One month of practical training may be authorized for every 4 months of full-time study completed, with a maximum of 6 months total for practical training. M-1 border commuter students are not authorized to accept any employment for practical training.	Specified period necessary to complete course of study indicated on Form I-20, plus practical training following completion of course of study, plus an additional 30 days to depart the United States, but NTE a total period of 1 year An M-1 border commuter student is not entitled to the additional 30-day period of stay.	Cumulative extensions limited to 3 years from start date, plus 30 days	None	N/S
M-2	Not work authorized	Same as M-1 principal alien	Same as principal	None	See note 5
M-3					
N-8 and N-9	Yes, with no restrictions as to location or type of employment	NTE 3 years Status terminates on the date the child no longer qualifies as a child	Increments of up to but NTE 3 years	None	Permitted
O-1	May be employed only by the petitioner through whom the status was obtained.	Period specified on petition, NTE 3 years	Increments up to 1 year	None	Permitted See note 6
O-2	Status is for temporary entry to assist O-1 nonimmigrant; may not accept other employment.	Period of time necessary to assist O-1 alien, NTE 3 years	Increments up to 1 year	None	N/S
O-3	Not unless granted employment authorization by USCIS	Same as O-1 beneficiary	Same as O-1	None	N/S
P-1 individual athlete	May be employed only by the petitioner through whom the status was obtained.	Petition valid for a period up to 5 years	Up to 5 years for a total stay of 10 years	None	Permitted See note 6

Appendix B. Summary of Selected Nonimmigrant Benefits (continued)

Category	Work Authorization	Initial Length of Stay	Extension of Stay	Annual Cap	Adjustment of Status
P-1 athletic team	May be employed only by the petitioner through whom the status was obtained.	Petition valid for time to complete competition or event, NTE 1 year	Up to 1 year to complete same event or activity for which admitted	None	Permitted See note 6
P-1 entertainment group	May be employed only by the petitioner through whom the status was obtained.			None	Permitted See note 6
P-1 support alien	Status is for temporary entry to assist P-1 nonimmigrant alien; may not accept other employment.	Petition valid for time necessary to complete the event, activity, or performance of P-1 alien, NTE 1 year	Same as P-1 alien support alien is assisting	None	Not permitted
P-2 reciprocal exchange program	May be employed only by the petitioner through whom the status was obtained.	Petition valid for time necessary to complete the event, activity, or performance of P-2 alien, NTE 1 year	Up to 1 year to complete same event or activity for which admitted	None	Permitted See note 6
P-2 support alien	Status is for temporary entry to assist P-2 nonimmigrant alien; may not accept other employment.			None	Not permitted
P-3 culturally unique program	May be employed only by the petitioner through whom the status was obtained.	Petition valid for period of time necessary to complete the event, activity, or performance of P-3 alien, NTE 1 year	Up to 1 year to complete same event or activity for which they were admitted.	None	Permitted See note 6
P-3 support alien	Status is for temporary entry to assist P-3 nonimmigrant alien; may not accept other employment.			None	Not permitted
P-4	Not unless granted employment authorization	Same as for P-1, P-2, or P-3 alien beneficiary	Same as for alien beneficiary	None	Permitted See note 6
Q-1	May be employed only by the petitioner through whom the status was obtained.	Duration of program, NTE 15 months, plus 30 days for travel	NTE total stay of 15 months	None	N/S
Q-2	May be employed only by the petitioner through whom the status was obtained.	Duration of program, or 36 months, whichever is shorter	NTE total stay of 36 months	4,000 admitted annually, including spouses and children	N/S
Q-3	Not unless also designated as a Q-2 nonimmigrant	Same as for Q-2 principal alien	Same as for principal		N/S
R-1	May be employed only by the religious organization through whom the status was obtained.	Initial stay shall not exceed 3 years, with a total stay of 5 years	Up to 2 years See note 7	None	N/S
R-2	Not work authorized	Same as for principal alien	Same as principal	None	N/S
NATO 1-5	May be employed only by NATO	N/A – Normally exempt from inspection	None	N/S	
NATO 1-5 dependent	Yes; may accept, or continue in, unrestricted employment based on bilateral agreement with favorable recommendation by the NATO Supreme Allied Commander, Atlantic (SACLANT). Must apply for employment authorization.	N/A – Normally exempt from inspection	None	N/S	
NATO-6	May be employed only by NATO	D/S	N/A	None	N/S
NATO-7	Status is for temporary entry as employee of NATO 1-6 nonimmigrant	NMT 3 years	Increments of NMT 2 years	None	N/S

Appendix B. Summary of Selected Nonimmigrant Benefits (continued)

Category	Work Authorization	Initial Length of Stay	Extension of Stay	Annual Cap	Adjustment of Status
S-5	May apply for employment authorization with USCIS	Time specified by requesting law enforcement agency – NTE 3 years	May not be extended	200	May not change to other non-immigrant category
S-6	May apply for employment authorization with USCIS	Time specified by requesting law enforcement agency – NTE 3 years	May not be extended	50	May not change to other non-immigrant category
S-7	May apply for employment authorization with USCIS	Same as for principal alien	Same as for principal	N/A	May not change to other non-immigrant category
T-1	Yes, if authorized by USCIS. Employment authorization expires when status as T nonimmigrant expires.	3 years maximum stay	May not be extended, except for those who timely apply for adjustment of status	5,000	Permitted – after 3 years
T-2, T-3, and T-4	May apply for employment authorization with USCIS. Employment authorization expires when status as T nonimmigrant expires.	3 years maximum stay	May not be extended, except for those who timely apply for adjustment of status	N/A	Permitted – after 3 years
TN	Must be engaged in business activities at a professional level in accordance with NAFTA	<i>Changes made in 2004 – need to check</i>	<i>2004 changes</i>	None	N/S
TD	Status is for temporary entry as spouse or children of business professional under NAFTA; may not seek other employment in the United States	N/S	N/S	None	N/S
U-1	Yes, if authorized by USCIS See note 8	N/S	N/S	10,000	Permitted – after 3 years
U-2 – U-4	Yes, if authorized by USCIS	<i>Regulations pending.</i>			After 3 yrs.
V-1	May apply to USCIS; employment authorization may be granted to aliens in V nonimmigrant status valid for a period equal to the alien's authorized admission as a V nonimmigrant NTE 2 years	NTE 2 years	NTE 2 years	None	Permitted
V-2, V-3		NTE 2 years, or the day before the alien's 21 st birthday	NTE 2 years, or the day before alien turns 21	None	Permitted
BE	Not authorized.	90 days	No	None	
WB	Not authorized.	90 days	No	None	
WT	Not authorized.	90 days	No	None	
GB	Not authorized.	15 days	No	None	
GT	Not authorized.	15 days	No	None	

Notes for Appendix B:

1. H-1B1 and H-1B3 aliens who have spent 6 years in the United States, and H-1B2 aliens who have spent 10 years in the United States, may not seek extension, change of status, or seek to be readmitted to the United States unless he or she has resided and been physically

present outside the United States, except for brief trips for business or pleasure, for the immediate prior year. 8 CFR § 214.2(h)(13)(iii)

2. An individual who has held H-2A status for a total of 3 years may not again be granted H-2A status, or other nonimmigrant status based on agricultural activities until he or she remains outside the United States for an uninterrupted period of 6 months.
8 CFR § 214.2(h)(5)(viii)(C)
3. An H-2B alien who has spent 3 years in the United States, an H-3 alien participant in a special education program who has spent 18 months in the United States, and an H-3 alien trainee who has spent 24 months in the United States may not seek extension, change status, or be readmitted to the United States unless the alien has resided and been physically present outside the United States for the immediate prior 6 months.
8 CFR § 214.2(h)(13)(iv)
4. K-3 and K-4 aliens may apply for extensions of stay if they can show that one of the following has been filed with USCIS: (a) Form I-130, Petition for Alien Relative; (b) application for an immigrant visa; or (c) Form I-485, application for adjustment to that of Permanent Residence.
8 CFR § 214.2(k)(10)
5. The M-2 spouse may not engage in full time study, and the M-2 child may only engage in full time study if in an elementary or secondary school. The M-2 spouse and child may engage in study that is avocational or recreational in nature. If M-2 alien desires to engage in other full-time study he or she must apply for a change of nonimmigrant classification to F-1, J-1, or M-1. 8 CFR § 214.2(m)(17)
6. Nonimmigrant aliens in H-1B, H-1C, O-1, P-1, P-2, and P-3 status (with the exception of P nonimmigrant support aliens) may legitimately come to the United States for a temporary period as a nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States. 8 CFR § 214.2(h)(16), 8 CFR § 214.2 (o) (13), 8 CFR § 214.2 (p)(15)
7. An alien who has spent 5 years in the United States as an R nonimmigrant, may not be readmitted to the United States under the R visa classification unless the alien has resided and been physically present outside the United States for the immediate prior year, except for brief visits for business or pleasure. 8 CFR § 214.2 (r)(7)
8. Regulations for the U nonimmigrant category have not yet been published. Interim guidance was issued by USCIS in October 2003.

ENDNOTES

Notes to Section I

¹ U.S. Citizenship and Immigration Services (USCIS), Office of Business Liaison, Employer Information Bulletin 2, December 2004. Immigrant intent and dual intent will be described below in Section V.

² Information in this section comes primarily from the USCIS Web page on “Temporary Visitors,” accessed at <<http://uscis.gov/graphics/services/tempbenefits/index.htm>>. The nonimmigrant categories are listed in section 101(a) (15) of the Immigration and Nationality Act (INA) and codified at 8 C.F.R. § 214.2.

³ Agreement Concerning Mutual Visits by Inhabitants of the Bering Straits Region, Sept. 23, 1989, U.S.-U.S.S.R., T.I.A.S. No. 11,455.

⁴ Pub. L. No. 99-396 (Aug. 27, 1986).

⁵ 8 C.F.R. § 212.1(e).

⁶ 8 C.F.R. § 212.1(e); 52 Fed. Reg. 48,082 (Dec. 18, 1987).

⁷ U.S. Customs and Border Protection, “Documentary Requirements for Canadian and Mexican Residents,” accessed at <http://www.cbp.gov/xp/cgov/travel/id Visa/req_canada_mexico.xml>.

⁸ 8 C.F.R. § 212.1(c). This border crossing area is extended to 75 miles for much of Arizona.

⁹ Immigration and Nationality Act (INA), § 101(a)(15)(H)(i); 8 C.F.R. § 214.2(h)(1)(ii)(B). A specialty occupation is an occupation that requires the theoretical and practical application of a body of highly specialized knowledge, in fields including but not limited to architecture, engineering, social sciences, medicine and health, education, law, theology, and the arts, and which requires the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent. 8 C.F.R. § 214.2 (h)(4)(ii).

¹⁰ INA, § 101(a)(15)(H)(i); 8 C.F.R. 214.2(h)(1)(ii)(A). This program was legislatively authorized for 4 years, with a sunset date of September 20, 2004.

¹¹ INA, § 101(a)(15)(H)(ii)(a); 8 C.F.R. 214.2(h)(1)(ii)(C).

¹² INA, § 101(a)(15)(H)(ii)(b); 8 C.F.R. 214.2(h)(1)(ii)(D).

¹³ 8 C.F.R. 214.2(h)(1)(ii)(E). Also included are special education exchange visitor programs which provide practical training and experience in the education of children with physical, mental, or emotional disabilities. This category does not apply to graduate medical training.

¹⁴ 8 C.F.R. 214.2(h)(7)(ii)(A).

¹⁵ INA, § 101(a)(15)(J).

¹⁶ Pub. L. No. 87-256, 75 Stat. 257.

¹⁷ U.S. Department of State, “The Exchange Visitor Program: Alternatives to the Exchange Visitor Program,” <<http://exchanges.state.gov/education/jexchanges/participation/alternatives.htm>>.

¹⁸ U.S. Department of State, “Exchange Visitor (J) Visas,” accessed at <http://travel.state.gov/visa/temp/types_1267.html>.

¹⁹ 8 C.F.R. 214.2(j); U.S. Department of State, “Exchange Visitor (J) Visas,” accessed at <http://travel.state.gov/visa/temp/types_1267.html>. See Patsy Yung, “Exchange Categories (J&Q),” pp. 519-531 in American Immigration Lawyers Association (AILA), *Immigration & Nationality Law Handbook, 2005-06 Edition* (Washington, DC: AILA, 2005), p. 520.

²⁰ INA, § 101(a)(15)(Q)(i); 8 C.F.R. 214.2(q)(1)(i).

²¹ See 8 C.F.R. § 214.2(q).

²² INA, § 101(a)(15)(Q)(ii). See also 8 C.F.R. 214.2(q)(1)(ii).

²³ The program was amended in 2004 by Public Law 108-449 which, among other things, reduced the period of stay for Q-2 visa holders from 36 to 24 months and increased the minimum age to 21. Walsh Visa Program, “Program Legislation,” accessed at <<http://www.walshvisa.net/Public/legislation>>.

²⁴ INA, § 101(a)(15)(L); 8 C.F.R. 214.2(l).

²⁵ INA, § 101(a)(15)(O); 8 C.F.R. 214.2(o).

²⁶ 8 C.F.R. § 214.2(p)(1)(ii)(A).

²⁷ 8 C.F.R. § 214.2(p)(3).

²⁸ 8 C.F.R. § 214.2(8)(iii)(A)-(B).

²⁹ 8 C.F.R. § 214.2(p).

³⁰ 8 C.F.R. § 214.2(p).

³¹ The *Code of Federal Regulations* defines a “religious denomination” as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination. 8 C.F.R. § 214.2(r)(2).

³² INA, § 101(a)(15)(R); 8 C.F.R. § 214.2(r).

³³ The Immigration and Nationality Act of 1924 specified that treaty merchants could stay without any time constraints as long as they maintained their nonimmigrant status and intended to depart when such status ended. A 1932 amendment clarified that the trade involved must be between the United States and the treaty country. Irving Appleman, “Treaty Trader Status Under the Immigration Laws,” *INS Monthly Review*, vol. VI, no. 1 (July 1948), pp. 3-7. The 1952 INA created the treaty investor status in which aliens were entitled by treaty to enter the United States solely to develop and direct the operation of enterprises in which they have invested or are in the process of investing a substantial amount of capital. U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, p. 129.

³⁴ See 8 C.F.R. § 214.2(e).

³⁵ 8 C.F.R. § 214.2(e)(19)(ii).

³⁶ Pub. L. No. 109-13, Division B, § 501 (May 11, 2005).

³⁷ *Id.* See “Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act, 2005 – Conference Report,” 151 Cong. Rec. S4816-02 at S4839

(May 10, 2005); "REAL ID Now the Law," *Interpreter Releases*, vol. 82, no. 20 (May 16, 2005), p. 813, at 816.

³⁸ Act of December 8, 1993, 107 Stat. 2057.

³⁹ Prior to the implementation of NAFTA, the U.S.-Canada Free Trade Agreement (CFTA) permitted the entry of professionals from Canada in the TC nonimmigrant category. The CFTA was suspended when NAFTA entered into force and authorized the issuance of visas to Mexicans and Canadians as TN nonimmigrants. U.S. Department of Homeland Security (DHS), Office of Immigration Statistics, *2002 Yearbook of Immigration Statistics*, October 2003, table 26, note 10, p. 120.

⁴⁰ 8 C.F.R. § 214.6 (d), (j).

⁴¹ Immigration and Naturalization Service (INS), *Inspectors Field Manual*, ch. 15.5(a), referenced in INS, *NAFTA Handbook*, November 1999, p. 42.

⁴² See generally 8 C.F.R. § 214.6.

⁴³ NAFTA originally imposed additional controls on Mexican citizens requesting TN status. These controls expired on January 1, 2004. Prior to that date, Mexican TNs were required to apply for a visa at a U.S. consulate and to have a labor certification. A numerical cap of 5,500 on Mexican TNs also was removed. DHS, "Eliminating the Numerical Cap on Mexican TN Nonimmigrants," 69 Fed. Reg. 11,287 (March 10, 2004); USCIS, Memorandum for Regional Directors, Service Center Directors, and District Directors, from William R. Yates, Associate Director of Operations, re: Lifting of Numerical Cap on Mexican NAFTA Nonimmigrant Professionals ("TN") and Free Trade Agreements with Chile and Singapore, January 8, 2004.

⁴⁴ See INS, *Inspectors Field Manual*, ch. 15.5(f)(4), referenced in INS, *NAFTA Handbook*, November 1999, p. 51.

⁴⁵ United States-Chile Free Trade Agreement Implementation Act, Pub. L. No. 108-77, 117 Stat. 909 (Sept. 3, 2003); United States-Singapore Free Trade Agreement Implementation Act, Pub. L. No. 108-78, 117 Stat. 948 (Sept. 3, 2003).

⁴⁶ Pub. L. No. 108-77, Title IV, § 402; Pub. L. No. 108-78, Title IV, § 402. See "President Signs Fast Track Trade Acts with Expanded Nonimmigrant Provisions," *Interpreter Releases*, vol. 80, no. 35 (Sept. 15, 2003), p. 1295.

⁴⁷ U.S. Department of State, "H-1B Temporary Entry of Nonimmigrant Professionals," accessed at <http://travel.state.gov/visa/laws/telegrams/telegrams_1391.html#>

⁴⁸ INA, § 101(a)(15)(F); INA, § 101(a)(15)(M).

⁴⁹ INA, § 101(a)(15)(A); 8 C.F.R. § 214.2(a).

⁵⁰ INA, § 101(a)(15)(G)(i); 8 C.F.R. § 214.2(g).

⁵¹ INA, § 101(a)(15)(G)(ii)-(iii); 8 C.F.R. § 214.2(g).

⁵² INA, § 101(a)(15)(G)(iv)-(v); 8 C.F.R. § 214.2(g).

⁵³ INA, § 101(a)(15)(I).

⁵⁴ Charles Gordon and Harry N. Rosenfield, *Immigration Law and Procedure* (New York: Matthew Bender, 1980), p. 2-121.

⁵⁵ U.S. Department of State, Bureau of Consular Affairs, Visa Services, "Foreign Media, Press, Radio," accessed at <<http://travel.state.gov/visa/media.htm>>

⁵⁶ Ibid.

⁵⁷ “Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces,” (NATO Status of Forces Agreement), June 1951 (London). NATO is composed of nations signatory to the North Atlantic Treaty.

⁵⁸ 8 C.F.R. § 214.2(s).

⁵⁹ 8 C.F.R. § 214.2(s).

⁶⁰ 8 C.F.R. § 214.2(c).

⁶¹ U.S. Embassy – Buenos Aires, Consular Section, “Transit & Crew Visas,” accessed at <<http://usembassy.state.gov/posts/ar/1/wwwhc1d.html>>

⁶² 68 Fed. Reg. 46,926 (Aug. 7, 2003). See also, U.S. Customs and Border Protection, Transit without Visa (TWOV) and International-to-International (ITI) Transit Programs and Progressive Clearance Program, <http://www.cbp.gov/xp/cgov/travel/leavingarrivinginUS/iti_transit.xml>; U.S. Department of Homeland Security, “Homeland Security and Department of State Take Immediate Steps to Make Air Travel Even Safer,” press release, Aug. 2, 2003, accessed at <http://travel.state.gov/visa/visa_1248.html>

⁶³ 8 C.F.R. § 214.2(d).

⁶⁴ U.S. Embassy – Buenos Aires, Consular Section, “Transit & Crew Visas,” accessed at <<http://usembassy.state.gov/posts/ar/1/wwwhc1d.html>>; Embassy of the United States, Athens, Greece, Consular Services, “Information for Seamen,” accessed at <http://www.usembassy.gr/consular/nonimm_seamen.htm>

⁶⁵ U.S. Embassy, Italy, “CI/D Visas,” last updated Oct. 5, 2004, accessed at <<http://usembassy.it/cons/visa/VIS-3-en.htm>>

⁶⁶ INA, § 101(a)(15)(K)(i); 8 C.F.R. 214.2(k)(1).

⁶⁷ USCIS, “How Do I Bring My Fiancé(e) to the United States?” accessed at <<http://uscis.gov/graphics/howdoi/fiance.htm>>

⁶⁸ INA, § 101(a)(15)(K)(ii); 8 C.F.R. 214.2(k)(7).

⁶⁹ To receive a K-3 visa a person must have entered into a valid marriage with a citizen of the United States and must be seeking to enter the United States to await the approval of a relative petition for permanent resident status (a Form I-130 that was filed on his or her behalf by the U.S. citizen spouse). In addition, the K-3 nonimmigrant must have an approved Form I-129F, Petition for Alien Fiancé. The K-3 and K-4 nonimmigrant classifications do not confer immigrant status. To obtain such status, once the person is in the United States he or she must file a Form I-485, Application for Adjustment to Permanent Residence. A K-4 nonimmigrant must have a Form I-130 filed on his or her behalf by his or her U.S. citizen parent (or stepparent) and must file a Form I-485. K-3 and K-4 nonimmigrants receive lawful permanent resident status when both the Form I-130 petition and their Form I-485 application have been approved. See USCIS, “How Do I Become a K-Nonimmigrant as the Spouse or Child of a U.S. Citizen? (K-3 and K-4 Visa Classifications),” accessed at <<http://uscis.gov/graphics/howdoi/hdiknonimm.htm>>

⁷⁰ Ibid.

⁷¹ 8 C.F.R. § 214.15(a).

⁷² 8 C.F.R. § 214.15(c). See “INS Implements LIFE Act’s ‘V’ Nonimmigrant Classification for Certain Spouses and Children of LPRs; State Dept. Issues Cable,” *Interpreter Releases*, vol. 78, no. 35 (Sept. 10, 2001), p. 1440.

⁷³ Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986).

⁷⁴ U.S. House of Representatives, Judiciary Committee, report on the Immigration Reform and Control Act of 1986, H.R. REP. NO. 99-682, Part I (July 16, 1986), *reprinted in* 1986 U.S.C.C.A.N. 5649 at 5681.

⁷⁵ INS, *1990 Statistical Yearbook*, p. A.1-19; U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, p. 174. See also, Alan C. Nelson, “A Balanced Approach to Immigration Reform,” *INS Reporter*, Spring 1983, p. 4.

⁷⁶ Memorandum for Regional Directors, Service Center Directors, and District Directors from Michael A. Pearson, Executive Associate Commission for Field Operations, re: Special Immigrant Status for certain North Atlantic Treaty Organization (NATO) civilian employees, Feb. 8, 1999.

⁷⁷ 8 C.F.R. § 214.2(t).

⁷⁸ 8 C.F.R. § 214.11. The total number of principal aliens issued T-1 nonimmigrant status may not exceed 5,000 in any fiscal year. Once the cap is reached during a year, USCIS will continue to review and consider applications in the order they are received. USCIS will determine if the applicants are eligible for T-1 nonimmigrant status, but will not issue T-1 nonimmigrant status at that time. All eligible applicants who, due solely to the cap, are not granted T-1 nonimmigrant status shall be placed on a waiting list and will receive notice of such placement. While on the waiting list, the applicant shall maintain his or her current means to prevent removal (e.g., deferred action, parole, or stay of removal) and any employment authorization, subject to any limits imposed on that authorization. 8 C.F.R. § 214.11(m).

⁷⁹ See Memorandum for Director, Vermont Service Center, from William R. Yates, Associate Director of Operations, re: Centralization of Interim Relief for U Nonimmigrant Status Applicants, Oct. 8, 2003.

⁸⁰ Memorandum for Director, Vermont Service Center, from William R. Yates, Associate Director of Operations, re: Centralization of Interim Relief for U Nonimmigrant Status Applicants, Oct. 8, 2003.

Notes to Section II

⁸¹ U.S. Department of Justice, Immigration and Naturalization Service (INS), *1990 Statistical Yearbook of the Immigration and Naturalization Service* (hereafter referred to as *INS, 1990 Statistical Yearbook*), p. 16.

⁸² 1995 House Committee Report, p. 584; Thomas Alexander Aleinikoff, David A. Martin, and Hiroshi Motomura, *Immigration and Citizenship: Process and Policy*, fifth edition (MN: St. Paul, 2003), p. 153.

⁸³ INS, *1990 Statistical*, p. 23.

⁸⁴ Act of February 5, 1917, 39 Stat. 874.

⁸⁵ Act of February 5, 1917, § 16, 39 Stat. 886.

⁸⁶ Act of February 5, 1917, § 3, 39 Stat. 875-876.

⁸⁷ Act of February 5, 1917, § 3, 39 Stat. 875-876.

⁸⁸ Act of May 26, 1924, section 2(a), 43 Stat. 153.

⁸⁹ Adah S. Griffin, "Admission of Foreign Students to the United States," *INS Monthly Review*, vol. III, no. 5 (November 1945), p. 224.

⁹⁰ Act of May 26, 1924, section 4(e).

⁹¹ Griffin, "Admission of Foreign Students to the United States."

⁹² Griffin, "Admission of Foreign Students to the United States," p. 227.

⁹³ Elizabeth J. Harper, *Immigration Laws of the United States*, 3rd ed. (New York: The Bobbs-Merrill Company, Inc., 1975), pp. 14-21.

⁹⁴ Joint Resolution of April 29, 1943, 57 Stat. 70, see Harper, *Immigration Laws of the United States*, pp. 18-19.

⁹⁵ Immigration Act of 1917, 39 Stat. 874; Title V of the Agricultural Act of October 31, 1949, 63 Stat. 1051). See Harper, *Immigration Laws of the United States*, pp. 18-19; USCIS, "Immigration and Naturalization Legislation from the Statistical Yearbook," <<http://onlineplus.ins/graphics/shared/aboutus/statistics/legishist/>>. The Bracero Program expired on December 31, 1964 after several extensions the last of which was the Act of December 13, 1963, Pub. L. No. 88-203, 77 Stat. 363. Harper, *Immigration Laws of the United States*, p. 36.

⁹⁶ Pub. L. No. 291, 59 Stat. 669 (Dec. 29, 1945).

⁹⁷ Pub. L. No. 291, § 7(c).

⁹⁸ Pub. L. No. 80-402, 62 Stat. 6.

⁹⁹ Pub. L. No. 80-402, § 201 at 62 Stat. 7.

¹⁰⁰ Pub. L. No. 80-402, § 201 at 62 Stat. 7.

¹⁰¹ S. Rep. 80-811 (Jan. 7, 1948), 1948 U.S.C.A.A.N., 1011 at 1024.

¹⁰² INS Yearbook, 1990, p. 26.

¹⁰³ The INA of 1952 set the annual quota for an area at one-sixth of one percent of the number of inhabitants in the continental United States in 1920 whose ancestry or national origin was attributable to that area. All countries were allowed a minimum quota of 100, with a ceiling of 2,000 on most natives of countries in the Asia-Pacific triangle, which broadly encompassed the Asian countries. The law also introduced a system of selected immigration by giving a quota preference to skilled aliens whose services are urgently needed in the United States and to relatives of U.S. citizens and aliens.

¹⁰⁴ Pub. L. No. 87-256 (Sept. 21, 1961); Charles Gordon and Harry N. Rosenfield, *Immigration Law and Procedure* (New York: Matthew Bender, 1980), pp. 2-101 – 2-102.

¹⁰⁵ U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, pp. 140, 152.

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²⁷⁵ USCIS, “USCIS to Implement H-1B Visa Reform Act of 2004: New Law Changes Aspects of the Temporary Work Program,” press release, Dec. 9, 2004.

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²⁷⁷ Ibid.

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²⁷⁹ 8 C.F.R. § 274a.12(c); 8 C.F.R. § 214.2(o)(6)(1)(iv); INS, Memorandum from William R. Yates, Deputy Executive Associate Commissioner, Immigration Services Division, Office of Field Operations, re: Guidance on Employment Authorization for E and L Nonimmigrant Spouses, and for Determinations on the Requisite Employment Abroad for L Blanket Petitions, Feb. 22, 2002.

²⁸⁰ 8 C.F.R. § 274a.12(c)(7); 8 C.F.R. § 214.2(s)(3).

²⁸¹ 8 C.F.R. § 274a.12(c)(3).

²⁸² 8 C.F.R. § 214.2(m)(13)-(14).

²⁸³ 8 C.F.R. § 214.2(j)(1)(v).

²⁸⁴ 8 C.F.R. § 214.3(t)(10).

²⁸⁵ 8 C.F.R. § 214.11(o)(10).

²⁸⁶ Michael A. Pearson, Executive Association Commissioner, Office of Field Operations, Immigration and Naturalization Services, Memorandum re: Academic Honorarium for Visiting B Nonimmigrant Aliens, Nov. 30, 1999.

²⁸⁷ 8 C.F.R. § 214.2(f)(15)(i).

²⁸⁸ 8 C.F.R. § 214.2(m)(13)-(14), (17).

²⁸⁹ U.S. Department of State, Bureau of Consular Affairs, “Foreign Media, Press, Radio,” accessed at <http://travel.state.gov/visa/temp/types/types_1276.html#3>

²⁹⁰ 8 C.F.R. § 214.2(h)(9)(iv); 8 C.F.R. § 214.2(q)(15)(vii)(B); 8 C.F.R. § 214.2(r)(8); 8 C.F.R. § 214.6(j)(3).

²⁹¹ U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, pp. 140, 152.

²⁹² Pub. L. No. 87-256.

²⁹³ For instance, the INA of 1952 stated that an H-1 nonimmigrant was an alien “of distinguished merit and ability who is coming to the United States to perform temporary services of an exceptional nature requiring such merit and ability.” In 1970, Congress removed the word “temporary” from before the word “services.” Legislation in 1976 precluded foreign medical graduates from being employed as H-1 nonimmigrants in positions involving direct patient care, although a 1977 law exempted from that provision aliens who are of national or international renown in the field of medicine. U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, pp. 140-141.

²⁹⁴ 8 U.S.C. 1101 (a)(15)(H).

²⁹⁵ S. REP. NO. 106-260 (April 11, 2000), pp. 22-23.

²⁹⁶ 8 C.F.R. § 214.2(h)(ii)(B).

²⁹⁷ H-1A was used for registered nurses entering under the Nursing Relief Act of 1989. This program expired in 1995, although it was extended in 1996 and 1997, and then replaced by Nursing Relief for Disadvantaged Areas Act of 1999.

²⁹⁸ 8 C.F.R. § 214.2(h)(5); U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, pp. 152-154.

²⁹⁹ U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, p. 153.

³⁰⁰ 8 C.F.R. § 214.2(h)(6).

³⁰¹ 8 C.F.R. § 214.2(h)(7); U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, pp. 159-160.

³⁰² U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, pp. 168-169.

³⁰³ USCIS, "Employment Categories and Required Documentation," accessed at <<http://uscis.gov/graphics/services/tempbenefits/ecrd.htm#anchorLI>>

³⁰⁴ U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, pp. 168-169.

³⁰⁵ USCIS, "Employment Categories and Required Documentation."

³⁰⁶ U.S. Department of Labor (DOL), Employment and Training Administration (ETA), "Foreign Labor Certification Questions and Answers," accessed at <<http://ows.doleta.gov/foreign/about.asp>>

³⁰⁷ DOL, ETA, "H-1B Specialty (Professional) Workers," accessed at <<http://workforcesecurity.doleta.gov/foreign/h-1b.asp>>

³⁰⁸ DOL, ETA, "H-2A Certification," accessed at <<http://workforcesecurity.doleta.gov/foreign/h-2a.asp>>

³⁰⁹ DOL, ETA, "H-2B Certification for Temporary Nonagricultural Work," accessed at <<http://workforcesecurity.doleta.gov/foreign/h-2b.asp>>

³¹⁰ DOL, ETA, "D-1 Crewmembers Certification," accessed at <<http://workforcesecurity.doleta.gov/foreign/d-1.asp>>

³¹¹ DOL, ETA, "Foreign Labor Certification Questions and Answers," <<http://ows.doleta.gov/foreign/qa.asp>>

³¹² USCIS, "How Do I Use the Premium Processing Service?" <http://uscis.gov/graphics/howdoi/prem_process.htm>

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³¹³ U.S. Commission on Immigration Reform, *Legal Admissions: Temporary*, pp. 135-136.

³¹⁴ USCIS, "Students," accessed at <<http://uscis.gov/graphics/services/tempbenefits/StudVisas.htm>>

³¹⁵ U.S. Department of State, 9 FAM 41.62 notes.

³¹⁶ USCIS, "How Do I Become an Academic Student in the United States?" accessed at <<http://uscis.gov/graphics/howdoi/academic.htm>>

³¹⁷ USCIS, "How Do I Become an Academic Student in the United States?"

³¹⁸ Since April 1997, a nonimmigrant who is out of status for 180 days or more, after his or her duration of status has been concluded, is barred from re-entering the United States for 3 years. Any alien (except immediate relatives or special immigrants) who has failed (other than through no fault of his or her own due to technical reasons) to continuously maintain a legal status since entry into the United States is ineligible for permanent resident status. (However, such individual is not prevented from returning to the United States on an immigrant visa.) David Weissbrodt, *Immigration Law and Procedure In a Nutshell* (St. Paul, MN: West Group, 1998), pp. 171-172.

³¹⁹ USCIS, “How Do I Become a Vocational Student in the United States?” accessed at <<http://uscis.gov/graphics/howdoi/vocation.htm>>

³²⁰ USCIS, “How Do I Become a Vocational Student in the United States?”

³²¹ Memorandum for Regional Directors, from Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations, re: Commuter Part-time Students Residing in Contiguous Territory, May, 22, 2002. See 148 Cong. Rec. H7908-01, Oct. 15, 2002; H.R. Rep. 107-753, *reprinted in* 2003 U.S.C.C.A.N. 1194 (Oct. 15, 2002).

³²² INS, “Reduced Course Load for Certain F and M Nonimmigrant Students in Border Communities,” 67 Fed. Reg. 54,941 (Aug. 27, 2002).

³²³ 148 Cong. Rec. H7908-01, Oct. 15, 2002; H.R. REP. NO. 107-753, *reprinted in* 2003 U.S.C.C.A.N. 1194 (Oct. 15, 2002).

³²⁴ Pub. L. No. 107-274, 116 Stat. 1923 (Nov. 2, 2002).

³²⁵ 67 Fed. Reg. 76,256 (Dec. 11, 2002); “President Signs Border Commuter Student Act and DOJ Authorization Act,” *Interpreter Releases*, vol. 79, no. 4 (Nov. 11, 2002), p. 1675.

³²⁶ 67 Fed. Reg. 76,256.

³²⁷ U.S. Department of State, Bureau of Consular Affairs, “Foreign Students – Tips for U.S. Visas,” accessed at <<http://travel.state.gov/visa/foreignstudent.html>>

³²⁸ U.S. Immigration and Customs Enforcement, “Student and Exchange Visitor Information System (SEVIS),” accessed at <http://www.ice.gov/graphics/enforce/imm/imm_sevis.htm>

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³²⁹ U.S. Embassy, Australia, “Applying for a Non-Immigrant Visa,” accessed at <<http://usembassy-australia.state.gov/consular/niv.html>>

³³⁰ U.S. Department of State, “Obtaining a U.S. Visa,” <<http://www.unitedstatesvisas.gov>>

³³¹ U.S. Department of State, “Obtaining a U.S. Visa,” Aleinikoff, et. al, Fifth Edition, pp. 499-501.

³³² INA, § 212(b); U.S. Department of State, “Obtaining a U.S. Visa,” Aleinikoff, et. al, pp. 499-501.

³³³ U.S. Department of State, “Obtaining a U.S. Visa,” Aleinikoff, et. al, pp. 499-501.

³³⁴ INA, § 214(b).

³³⁵ Memorandum from the Secretary of State, re: INA 214(B), Basis of Refusal not Equivalent to Inadmissibility or Immigrant Intent, Dec. 2004.

³³⁶ INA, § 212(a)(1)-(10).

³³⁷ Aleinikoff, et. al, pp. 427-428.

³³⁸ Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996), § 301(c)(1).

³³⁹ Aleinikoff, et. al, pp. 427-428. One reason for this change was to more clearly define the term “entry.” In addition, this change enables DHS to apply the grounds for inadmissibility both to persons who enter the United States without inspection (i.e., illegal entrants), as well as persons who present themselves for inspection at a U.S. port of entry. The 1996 Act added a ground of inadmissibility for aliens who entered without being admitted (and, thus, without inspection) or who entered at a place other than a official U.S. port of entry. Prior to this change, the grounds for exclusion did not apply to persons who had not been admitted; thus, such persons could only be deported under a now-repealed deportation ground. The new admissibility ground is now the primary mechanism for removing those who entered without inspection. Ibid.

³⁴⁰ INA, §§ 212(a)(7)(B), 212(d)(4).

³⁴¹ 8 C.F.R. § 212.7.

³⁴² Memorandum from William R. Yates, Associate Director for Operations, USCIS, RE: Exception to Nonimmigrant HIV Waiver Policy for K and V Nonimmigrants, Nov. 2, 2004.

³⁴³ U.S. Department of State, “New Passport Initiative Announced to Better Secure America’s Borders,” media note, April 5, 2005, accessed at <<http://www.state.gov/r/pa/prs/ps/2005/44228.htm>>

³⁴⁴ U.S. Customs and Border Protection, “Documentary Requirements for Canadian and Mexican Residents,” accessed at <http://www.cbp.gov/xp/cgov/travel/id_visa/req_canada_mexico.xml>

³⁴⁵ Ibid.

³⁴⁶ Ibid.

³⁴⁷ 8 C.F.R. § 212.1(c).

³⁴⁸ 8 C.F.R. § 235.1(f)(1)(v). This rule applies to ports of entry in Sasabe, Nogales, Mariposa, Naco, and Douglas.

³⁴⁹ Pub. L. No. 107-173 (May 14, 2002).

³⁵⁰ U.S. Department of State, “Extension of Requirement for Biometric Passport Issuance by Visa Waiver Program Countries,” press release, Aug. 10, 2004.

³⁵¹ Pub. L. No. 99-603 (Nov. 6, 1986).

³⁵² Pub. L. No. 106-396, 114 Stat. 1637, codified as amended at 8 U.S.C. 1187(h).

³⁵³ U.S. House of Representatives, Judiciary Committee, report on the Immigration Reform and Control Act of 1986, H.R. REP. NO. 99-682(1) (July 16, 1986), *reprinted in* 1986 U.S.C.C.A.N. 5649 at 5654.

³⁵⁴ 1986 U.S.C.C.A.N. 5649 at 5654.

³⁵⁵ Although Congress extended the deadline for the inclusion of biometrics in VWP-country passports until Oct. 26, 2005, the extension does not apply to the requirement that an

individual applying for admission under the VWP was required to have a machine-readable passport as of June 26, 2005. U.S. Department of Homeland Security, "Machine-Readable Passport Procedures for Visa Waiver Travelers Announced by the Department of Homeland Security," press release, Oct. 22, 2004, accessed at <http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0545.xml> U.S. Customs and Border Protection, "Questions and Answers – English Version," <http://www.customs.gov/xp/cgov/newsroom/fact_sheets/qa_mach_read.xml> After May 15, 2003, citizens of Andorra, Belgium, Brunei, Liechtenstein and Slovenia must present a machine-readable passport in order to be granted admission under the VWP.

³⁵⁶ U.S. Department of Justice, "Department of Justice Terminates Argentina's Participation in Visa Waiver Program," press release, Feb. 20, 2002; 67 Fed. Reg. 7,943 (Feb. 21, 2002).

³⁵⁷ 68 Fed. Reg. 10,954 (March 7, 2003).

³⁵⁸ U.S. Customs and Border Protection, "Admission into United States," <http://www.cbp.gov/xp/cgov/travel/id_visa/legally_admitted_to_the_u_s.xml>

³⁵⁹ U.S. Department of State, Bureau of Consular Affairs, Visa Services, "Duration & Extension of Stay in the U.S - How the Visa Expiration Date is Different," May 2003, <<http://travel.state.gov/xtension.html>>

³⁶⁰ Pub. L. No. 104-208 (Sept. 30, 1996).

³⁶¹ American Immigration Lawyers Association, *Immigration & Nationality Law Handbook*, 2000-01 Edition, Vol. I: Immigration Basics (Washington, DC: AILA, 2000), p. 103.

³⁶² USCIS, "Temporary Visitors," <<http://uscis.gov/graphics/exec/>>

³⁶³ USCIS, "Eligibility Information: Who May Apply to Change to a New Nonimmigrant Status?" accessed at <<http://uscis.gov/graphics/howdoi/neligibility.htm>> See generally 8 C.F.R. § 248.1.

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³⁶⁴ H. R. 101-723(l) (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6759.

³⁶⁵ Pub. L. No. 101-649, § 205(e).

³⁶⁶ 8 C.F.R. § 214.2(h)(16).

³⁶⁷ 8 C.F.R. § 214.2(l)(16).

³⁶⁸ 8 C.F.R. § 214.2(e)(5). See Henry J. Chang, "Immigrant Intent and the Dual Intent Doctrine," accessed at <<http://www.americanlaw.com/dintent.html>> David L. Neal, "The Changing Dynamics of Adjustment of Status: Part One," *Immigration Briefings*, May 1995.

³⁶⁹ 8 C.F.R. § 214.2(o)(13); 8 C.F.R. § 214.2(p)(15). Chang, "Immigrant Intent and the Dual Intent Doctrine;" Neal, "The Changing Dynamics of Adjustment of Status."

³⁷⁰ Frank L. Auerbach, *Immigration Laws of the United States* (New York: The Bobbs-Merrill Company, Inc., 1961), pp. 376-377; Lisa S. Roney, "Are New Immigrants Really New Additions to the Population? Trends in Adjustment of Status," 1995.

³⁷¹ These numbers represent the total number of adjustments by nonimmigrant status in 2002; year of entry is not included in the table. In other words, while these immigrants adjusted

status in 2002, the data presented here do not indicate how long the individual had been in the United States prior to adjusting status.

³⁷² USCIS, “Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000,” p. 6, <http://uscis.gov/graphics/shared/aboutus/statistics/III_Report_1211.pdf>; USCIS, “Illegal Alien Resident Population,” <<http://onlineplus.ins/graphics/shared/aboutus/statistics/illegalalien/illegal.pdf>>

³⁷³ GAO, *Overstay Tracking: A Key Component of Homeland Security and a Layered Defense*, GAO-04-82, May 2004, p.3.

³⁷⁴ U.S. Department of Homeland Security, “Fact Sheet: US-VISIT,” press release, Feb. 24, 2005, accessed at <http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0629.xml>

³⁷⁵ 54 Stat. 670 (June 28, 1940).

³⁷⁶ GAO, *Homeland Security: INS Cannot Locate Many Aliens Because It Lacks Reliable Address Information*, GAO-03-188, November 2002, p. 8.

³⁷⁷ Internal Security Act of 1950, 64 Stat. 987; Immigration and Nationality Act of 1952, 66 Stat. 163. GAO, *Homeland Security: INS Cannot Locate Many Aliens Because It Lacks Reliable Address Information*, p. 8.

³⁷⁸ Immigration and Nationality Act Amendments of 1981, Pub. L. No. 97-116, 95 Stat 1611.

³⁷⁹ 8 U.S.C. 1301-1306; GAO, *Homeland Security: INS Cannot Locate Many Aliens Because It Lacks Reliable Address Information*, pp. 8-10.

³⁸⁰ Pub. L. No. 104-208, Division C, § 110.

³⁸¹ Pub. L. No. 106-215, 114 Stat. 339, codified as amended at 8 U.S.C. 1365a.

³⁸² DHS, “Implementation of the United States Visitor and Immigrant Status Indicator Technology Program (“US-VISIT”); Biometric Requirements,” 69 Fed. Reg. 468-469 (Jan. 5, 2004).

³⁸³ *Id.*

³⁸⁴ Pub. L. No. 106-396, 114 Stat. 1637, codified as amended at 8 U.S.C. 1187(h).

³⁸⁵ 69 Fed. Reg. 468, 469.

³⁸⁶ Pub. L. No. 107-56, 115 Stat. 353 (2001), codified as amended at 8 U.S.C. 1379.

³⁸⁷ Pub. L. No. 107-173, 116 Stat. 553 (2002), codified in scattered sections of 8 U.S.C.

³⁸⁸ 69 Fed. Reg. 468, 469.

³⁸⁹ *Id.*

³⁹⁰ DHS, “Fact Sheet: US-VISIT.”

³⁹¹ DHS, “US-VISIT: How Does US-VISIT Work?” accessed at <<http://www.dhs.gov/dhspublic>>.