

THE MOST COMMON VISA OPTIONS AFTER GRADUATION

by Robin L.H. Vermette, 2004

Nonimmigrant Visas:

B-1/B-2 Business or Visitor
E-1/E-2 Treaty Trader or Investor
TN Trade NAFTA (citizens of Canada or Mexico)
H-1B Temporary Worker
Applying for a Visa at a Border Post
Visa Overstays and Unlawful Presence

Immigrant Visas:

EB-1 Outstanding Professors or Researchers
EB-2 Advanced Degree Professional (master's or doctorate level)
EB-3 Professional w/ Bachelor's Degree
DV Diversity Visa Lottery Program
Immediate Petition filed by U.S. citizen spouse, child or parent
Relative

NONIMMIGRANT » IMMIGRANT » U.S. CITIZEN

CHANGE OF STATUS TO B-1/B-2 BUSINESS/VISITOR (Nonimmigrant Visa)

A foreign national who plans to visit the U.S. on a temporary basis for business and/or pleasure may be granted B-1/B-2 status but only for the amount of time needed to accomplish the purpose of the trip (no more than six months). Foreign students who plan to stay and travel in the U.S. after graduation (beyond the 60-day grace period) should apply for a change of status from F-1 to B-2 before the current status expires and before the grace period starts.

File USCIS Form I-539, Application to Extend/Change Nonimmigrant Status with the following documentation:

- Copy of front and back of Form I-94, Arrival-Departure Card
- Copy of I-20 for F-1 students (or IAP-66 form for J-1 exchange students)
- Copy of face and data page in passport along with copy of current U.S. visa
- Include a letter with a valid explanation for change of status and provide evidence that you have the financial resources to cover the remaining time you are staying in the U.S.
- To show your intention to return to your own country, provide evidence of a job offer from home country, your travel itinerary and/or a copy of your return plane ticket if you have one.
- Filing fee of \$195 made out to "U.S. Citizenship and Immigration Service" - use a bank check or money order.

Mail to: USCIS Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

NOTE: You must apply for the change of status before your current visa status expires

E-1/E-2 TREATY TRADER/INVESTOR VISA (Nonimmigrant Visa)

- E Visa is used for purposes of conducting trade between the U.S. and the country of majority ownership of the company (E-1) or overseeing investment in the U.S. (E-2).
- Initial period of stay of one year with unlimited extensions as long as foreign national affirms they will leave the U.S. when period of authorized stay ends.
- Initial application made at U.S. consulate; preliminary petitions does not need to be approved by the USCIS.

REQUIREMENTS:

- A treaty of commerce and navigation or bilateral investment treaty must exist between the U.S. and applicant's country of nationality.
- Majority ownership or control of the investing or trading company must be held by nationals of the treaty country.
- Principal investor or trader and employees of the treaty enterprise must have same nationality as the treaty enterprise.
- For E-1 Treaty-trader status, the trading company must be engaged in substantial trade principally between the U.S. and the treaty country; and the employee or principal must serve company in managerial or in a specialized technical capacity.
- For E-2 Treaty-investor status, the investor makes an irrevocable commitment of funds that represents active and substantial investment which will create job opportunities for U.S. workers.

The foreign national must fill a key role as an investor who develops and directs the investment, as a qualified manager, or as a specially trained and highly qualified employee necessary for the development of investment. An E-2 must have sufficient income to support him/herself.

(E-2 treaty countries: Albania, Armenia, Australia, Austria, Bangladesh, Belgium, Bosnia-Herzegovina, Bulgaria, Cameroon, Canada, China (Taiwan only), Colombia, Congo (Brazzaville), Congo (Kinshasa), Costa Rica, Czech Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Grenada, Iran, Ireland, Italy, Jamaica, Japan, Kazakhstan, South Korea, Kyrgyzstan, Latvia, Liberia, Luxembourg, Mexico, Moldova, Mongolia, Morocco, Netherlands, Norway, Oman, Pakistan, Panama, Philippines, Poland, Romania, Senegal, Slovakia, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Ukraine, United Kingdom, Yugoslavia. The following thirteen (13) treaties have yet to be ratified: Azerbaijan, Belarus, Bolivia, Croatia, El Salvador, Haiti, Honduras, Jordan, Lithuania, Mozambique, Nicaragua, Russia & Uzbekistan.)

PROCESSING E VISA APPLICATIONS AT U.S. CONSULATE:

The E-visa application is submitted directly to the Treaty Visa Office at the U.S. Embassy or Consulate in the applicant's home country and reviewed by a Treaty Officer. Information often can be obtained from the Consulate's website. If the application meets all criteria, the visa is usually issued at time of visa interview, or in some cases by mail.

- Nonimmigrant Treaty Trader/Investor Visa Application, Form DS-156E
- Nonimmigrant visa application, Form DS-156 for applicant and each family member (plus Form DS-157 for all males age 15 or older)
- Explanatory letter from enterprise
- Supporting documentation
- Passport and one photo for applicant and each family member
- Application fees, if any

TN Visa for Canadian Professional Employees under NAFTA (Nonimmigrant Visa)

One of NAFTA's goals is to enhance and facilitate economic and commercial interaction with the U.S., Canada and Mexico. Because New Hampshire borders Canada, there is much interest in this visa for Canadians. The Trade NAFTA (TN) visa allows the U.S. business to employ Canadian professionals for up to one year as long as the employee is engaged in one of the occupations or professions listed in NAFTA. Examples of some of the most common occupations are: engineers, graphic designers, occupational therapists, scientific technicians and accountants, to name only a few. [For list of professions: http://travel.state.gov/tn_visas.html] The Canadian employee must have the required degree or qualifications listed for that occupation, and the job in the U.S. must require a professional with those qualifications.

Business persons seeking entry to engage in self-employment are not eligible for the TN visa.

Documentation required:

- The Canadian professional applying for TN status must provide proof of citizenship,
- Evidence that the intended activity is in one designated by NAFTA, and
- Proof that he/she has the necessary credentials or license for that profession.

The U.S. employer must submit a statement indicating the purpose of the entry, outlining the applicant's professional qualifications, and describing the duties of the proposed professional employment, the anticipated length of the temporary stay (not more than one year), and the arrangement for compensation for the employment activity.

Canadian TN nonimmigrants may apply for entry with the NAFTA officer at the port of entry (international airport) or with the immigration inspector at a land border crossing. Recommend that applicants applying at the border avoid Sundays. TN visas are issued for one-year periods and often are renewable each year with no limitation. The filing fee is \$57. The spouse and children of a TN would receive TD status and are not allowed to work.

NAFTA Professions Listed in Appendix 1603.D.1.

Under the North American Free Trade Agreement (NAFTA) a citizen of a NAFTA country may work in a professional occupation in another NAFTA country provided that 1) the profession is on the NAFTA list (see below), 2) the alien possesses the specific criteria for that profession, 3) the prospective position requires someone in that professional capacity and 4) the alien is going to work for a U.S. employer. The spouse and unmarried, minor children of the principal alien are entitled to the derivative status, but they are unable to accept employment in the United States. Aliens entering under this classification are considered non-immigrants.

PROFESSION	MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS
Accountant	Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A., or C.M.A.
Architect	Baccalaureate or Licenciatura Degree; or

Computer Systems Analyst	state/provincial license Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post Secondary Certificate and three years exp.
Disaster Relief Insurance Claims Adjuster (Claims Adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	Baccalaureate or Licenciatura Degree and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims
Economist	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree; or state/provincial license
Forester	Baccalaureate or Licenciatura Degree; or state/provincial license
Graphic Designer	Baccalaureate or Licenciatura Degree; or post-secondary diploma and three years experience
Hotel Manager	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or post-secondary diploma or post-secondary certificate in hotel/restaurant management and three years experience in hotel/restaurant management
Industrial Designer	Baccalaureate or Licenciatura Degree; or post-secondary diploma or post-secondary certificate, and three years experience
Interior Designer	Baccalaureate or Licenciatura Degree; or post-secondary diploma or post-secondary certificate, and three years experience
Land Surveyor	Baccalaureate or Licenciatura Degree or state/provincial/federal license
Landscape Architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the province of Quebec)	L.L.B., J.D., L.L.L., B.C.L., or Licenciatura degree (five years); or membership in a state/provincial bar
Librarian	M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura degree was prerequisite)
Management Consultant	Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant , or five years experience in a field of specialty related to the consulting agreement

Mathematician (including statistician)	Baccalaureate or Licenciatura Degree
Range Manager/Range Conservationist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree
Scientific Technician/Technologist	Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research
Social Worker	Baccalaureate or Licenciatura Degree
Sylviculturist (including forestry)	Baccalaureate or Licenciatura Degree
Technical Publications Writer	Baccalaureate or Licenciatura Degree, or post-secondary diploma or post-secondary certificate, and three years experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counselor	Baccalaureate or Licenciatura Degree

MEDICAL/ALLIED PROFESSIONALS

Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or state/provincial license
Dietitian	Baccalaureate or Licenciatura Degree; or state/provincial license
Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States)	Baccalaureate or Licenciatura Degree; or post secondary diploma or post secondary certificate, and three years experience
Nutritionist	Baccalaureate or Licenciatura Degree
Occupational Therapist	Baccalaureate or Licenciatura Degree; or state provincial license
Pharmacist	Baccalaureate or Licenciatura Degree; or state provincial license
Physician (teaching or research only)	M.D., Doctor en Medicina; or state/provincial license
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Psychologist	State/provincial license; or Licenciatura degree
Recreational Therapist	Baccalaureate or Licenciatura Degree
Registered Nurse	State/provincial license or Licenciatura degree
Veterinarian	D.V.M., D.M.V., or Doctor en Veterinaria; or

state/provincial license

SCIENTIST

Agricultural (Agronomist)	Baccalaureate or Licenciatura Degree
Animal Breeder	Baccalaureate or Licenciatura Degree
Animal Scientist	Baccalaureate or Licenciatura Degree
Apiculturist	Baccalaureate or Licenciatura Degree
Astronomer	Baccalaureate or Licenciatura Degree
Biochemist	Baccalaureate or Licenciatura Degree
Chemist	Baccalaureate or Licenciatura Degree
Dairy Scientist	Baccalaureate or Licenciatura Degree
Entomologist	Baccalaureate or Licenciatura Degree
Epidemiologist	Baccalaureate or Licenciatura Degree
Geneticist	Baccalaureate or Licenciatura Degree
Geochemist	Baccalaureate or Licenciatura Degree
Geophysicist (including Oceanographer in Mexico and the United States)	Baccalaureate or Licenciatura Degree
Horticulturist	Baccalaureate or Licenciatura Degree
Meteorologist	Baccalaureate or Licenciatura Degree
Pharmacologist	Baccalaureate or Licenciatura Degree
Physicist (including Oceanographer in Canada)	Baccalaureate or Licenciatura Degree
Plant Breeder	Baccalaureate or Licenciatura Degree
Poultry Scientist	Baccalaureate or Licenciatura Degree
Soil Scientist	Baccalaureate or Licenciatura Degree
Zoologist	Baccalaureate or Licenciatura Degree
TEACHER	
College	Baccalaureate or Licenciatura Degree
Seminary	Baccalaureate or Licenciatura Degree
University	Baccalaureate or Licenciatura Degree

CHANGE OF STATUS TO H-1B TEMPORARY WORKER (Nonimmigrant Visa)

- The H-1B nonimmigrant visa category is used by companies and other organizations to employ foreign nationals temporarily in a specialty occupation.
- The position offered may be full or part-time and must require the services of a professional (someone who has a baccalaureate or higher degree).
- The employee must be qualified to perform the services in the specialty occupation by having attained a baccalaureate or higher degree in the field in which he/she will work.
- This initial period of stay for an H-1B can be up to 3 years, with a maximum period of six years.
- The employer petitions for the foreign national by filing Form I-129 with supporting documents.

NOTE: If changing from another nonimmigrant visa to an H-1B, you must apply for the change of status before your current visa status expires.

The H-1B visa process has the following four steps:

1. Prevailing Wage Determination - to determine that the H-1B employee will receive at least the actual wage paid to other similarly experienced employees --or-- the prevailing wage level for the occupation in the area of intended employment, whichever is greater.

2. Labor Condition Application (LCA), Form ETA 9035, filed with the U.S. Department of Labor - the employer must attest that the H-1B employee will be paid the prevailing wage rate for the occupation or the actual wage rate, whichever is higher; that the employment of the H-1B nonimmigrant will not adversely affect similarly employed workers; that there is no strike or lockout at the job site; and that the position has been posted at the employment site.

3. Application to the U.S. Citizenship and Immigration Service of an H-1B petition, Form I-129 & H Supplement - filed by the employer with the USCIS. Filing fee of \$1,685 (if exempt employer, fee is \$185).

4. If the H-1B is approved, the USCIS will issue one of two types of approval notices: Form I-797A to denote Change of Status - if the employee is already in the U.S. in valid visa status, he/she will receive a new I-94 card which shows the new status.

-OR-

Form I-797B to obtain Approval and Issuance by U.S. Embassy/Department of State of the H-1B visa - if the foreign national is outside the U.S. or is in the U.S. but ineligible to change status, the employee applies for the H-1B visa at the U.S. Embassy/Consulate in his/her home country.

H-1B Portability – An H-1B employee may change employers and begin working for the new prospective employer once a new H-1B petition is properly filed with the USCIS. The key advantage to this provision is that the H-1B employee does not have to wait until the USCIS has approved the new H-1B petition. This is available only to foreign nationals who presently hold valid H-1B status and are going to new H-1B employment. If the new petition is not approved by

the USCIS, the employment authorization for the H-1B employee ceases upon the receipt of the denial notice.

Example: H-1B works for Company X and is offered a position with Company Y. Once Company Y has physically filed the new H-1B petition with the USCIS Service Center, the H-1B employee may start working for Company Y.

U.S. Department of State
Bureau of Consular Affairs

HOW TO APPLY FOR A VISA AT A BORDER POST IF YOU ARE A THIRD COUNTRY NATIONAL PRESENT IN THE UNITED STATES OR VISITING CANADA

Website: <http://www.travel.state.gov/tcn.html>

Special Notice: In the wake of the September 11 terrorist attacks against New York, Washington, DC and Pennsylvania, temporary special processing requirements have been imposed on non-immigrant visa applicants. These requirements may lead to a significant delay in visa issuance.

All visa applicants should apply well in advance of anticipated travel to the U.S. to avoid any inconvenience as a result of the special processing requirements. Please see important information below about the exclusion from automatic revalidation of a nonimmigrant visa that may affect visa applicants.

APPOINTMENTS ARE REQUIRED

Any third country national (TCN)* present in the United States and visitors present in Canada who wish to apply for a nonimmigrant visa at any of our border posts in Canada or Mexico must make an appointment for an interview. U.S. Consular offices are located in Calgary, Halifax, Montreal, Ottawa, Quebec City, Toronto, Vancouver, Ciudad Juarez, Matamoros, Nogales, Nuevo Laredo and Tijuana.

* Please note that Border Posts can no longer accept applications from non-resident TCNs who are nationals of the seven countries currently designated as state sponsors of terrorism (Cuba, Iraq, Iran, Libya, North Korea, Sudan and Syria). For more information, please see the Notice: Special Visa Processing Procedures Pursuant to Section 306 of the Enhanced Border Security and Visa Reform Act of 2002. (<http://www.travel.state.gov/visa306.html>)

Appointments by Telephone: If you are in the United States and you wish to schedule an appointment, you should call **1-900-443-3131**; in Canada you should call **1-900-451-2778**. Callers from the United States or Canada wishing to charge the cost of the call to a credit card may schedule an appointment by calling **1-888-840-0032**. Unlike the 1-900 numbers, which are blocked from most hotel, office or pay telephones, the credit card line can be accessed from virtually any telephone. The appointment system requires a touch-tone phone; a push-button rotary phone will not work.

Appointments by Internet: Applicants can also book appointments via the Internet at <http://www.nvars.com>. Each appointment costs \$10.00 Canadian, which will be charged to a major credit card. Applicants are advised to have their credit card information handy. After your appointment is scheduled, you will be mailed an application form (DS-156) and an information sheet for the post where you will be applying. Please **DO NOT** call an individual

post directly to request an appointment. They can only be scheduled by calling the appropriate 1-900 or 1-888 telephone number or by using the Internet.

WHO CAN BE ISSUED A VISA AT A BORDER POST

Individuals who have ever been out of status in the United States because they overstayed their visa or their I-94 are not eligible to apply at a border post. In other words, if you have remained in the U.S. longer than the period authorized by the immigration officer when you entered the U.S. in any visa category, you must apply in the country of your nationality. If you are not certain about your status, check with the nearest U.S. Citizenship and Immigration Services in the Department of Homeland Security (USCIS) office.

Individuals seeking appointments should be aware that applicants may be more likely to encounter difficulties at the time of interview when they apply for a visa outside of their home district. Consular officers at border posts will deny visas whenever they believe there are fraud indicators present, or their lack of knowledge of local conditions and familiarity with documents in the applicant's home country prevents them from properly adjudicating the case.

None of the border posts will accept applications for "E" visas from third country national applicants who are not resident in their consular districts.

HOURS OF OPERATION

Operators are available from 7 A.M. to 10 P.M. Eastern Time. Callers may have difficulty getting through if they call during the peak times of 7 A.M., 11 A.M., 2 P.M., 4:30 P.M. and 7 P.M. Eastern Time. Appointments for border posts outside the Eastern Time Zone can only be made after it is 7 A.M. in the post's time zone. The Internet system is available 24 hours a day, seven days a week.

ADDITIONAL INFORMATION

Applicants who are unable to attend their scheduled appointments must cancel them two full working days prior to the appointment by calling toll-free to 1-888-611-6676.

Visa applicants should take their appointment letters to the interview. They may be admitted without one, but absence of the letter could cause delays.

Certain nationalities require visas from Canadian authorities in order to enter Canada.

Would-be applicants who do not need a visa to remain in the United States may find it more convenient to apply for a visa elsewhere in conjunction with their next foreign travel. Those who plan to visit Canada, Mexico or, in the cases of students and exchange visitors, adjacent islands, may re-enter the U.S. within thirty days on expired visas as long as they possess a valid I-94 form unless they are excluded from automatic revalidation, as noted below.

EXCLUSION FROM AUTOMATIC REVALIDATION OF A NONIMMIGRANT VISA

The U.S. Government has undertaken a variety of efforts since September 11 to enhance border security and ensure that only individuals eligible to enter the United States are allowed entry. Effective April 1, 2002, aliens who have applied for and been refused visa issuance while outside the U.S. are prohibited from returning to the United States, even if they are in possession of a valid I-94 form. The revised regulation also prohibits aliens who are citizens of countries on the State Department's list of State Sponsors of Terrorism from re-entering the U.S. using solely an I-94 form if their visa has expired.

The previous regulation allowed individuals whose visas had expired but whose I-94 forms remained valid to re-enter the U.S. without obtaining a new visa. The previous regulation made limited distinctions among citizens of various nationalities, and aliens who applied for and were denied a new visa were nonetheless permitted to re-enter the United States. The changes we are now implementing enhance border security by requiring that aliens from state sponsors of terrorism obtain a new visa (and thus go through a new set of interviews, computer checks, etc.) before re-entering the United States, and by ensuring that people who were found by one of our overseas embassies or consulates to be ineligible for a visa cannot get around such a finding by re-entering the U.S. using solely their I-94 form.

The exclusion from automatic revalidation will apply to aliens who attempt to re-enter the United States on or after April 1, 2002, regardless of whether their application for a visa was filed prior to that date.

Revised August 2002

CONSEQUENCES OF VISA OVERSTAYS

OVERSTAY BY NONIMMIGRANT VOIDS VISA

Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Section 632), any nonimmigrant visa is void as soon as a foreign national overstays his or her period of authorized stay. Such person is ineligible to be readmitted to the U.S. except on the basis of a new visa issued in a consular office located in the alien's country of nationality, unless "extraordinary circumstances" exist.

This means that if a nonimmigrant overstays his or her period of authorized stay, even by one day, the visa immediately becomes void. Consequently, when the person leaves the United States, all prior visas automatically becomes invalid, and he or she must obtain a new visa from the U.S. consulate in their home country to reenter.

UNLAWFUL PRESENCE BARS REENTRY

Also under the 1996 Immigration Act (Section 301), any nonimmigrant who overstays his or her admission or is in unlawful status for more than 180 days and leaves the U.S. will not qualify for readmittance for three years from the date of departure. Any alien unlawfully present for one year or more is inadmissible for 10 years from the date of departure. For example, if a nonimmigrant's period of authorized stay expired on September 1, and he or she remained in the U.S. for more than 6 months o March 1, all previous visas become void once the person leaves the U.S. and that foreign national will be ineligible for any new visa to the U.S. for three years.

NOTE: The above currently does not affect students admitted with duration of stay (D/S) on their I-94s UNLESS a determination is made by the USCIS or the immigration court that the student's status has been violated. Unlawful presence commences on the date of the determination.

IMMIGRANT VISA PROCESS – three stages

1. LABOR CERTIFICATION – filed with the U.S. Department of Labor

For most employment-based immigrant visa petitions, the employer must prove to the U.S. Department of Labor (DOL) that the position was open to qualified U.S. workers and that no U.S. workers were available. This process is called labor certification. The risk to a foreign national during the recruitment process of the labor certification is if a qualified U.S. worker applies for the position. The employer is not obliged to hire the U.S. applicant but it does prevent the labor certification from being approved.

The labor certification may be waived by the USCIS if (1) the applicant qualifies for the first preference category or (2) the applicant qualifies for second preference and the foreign national's admission would be in the "national interest". There is a high level of scrutiny by the USCIS for this category. The factors below will determine whether the foreign national's admission would be in the "national interest".

The foreign national's admission will improve:

- the U.S. economy;
- wages and working conditions of U.S. workers';
- education and training programs for U.S. children and underqualified workers;
- health care;
- more affordable housing for young, aged, or poor U.S. residents;
- the U.S. environment and lead to more productive use of the national resources; or
- admission is requested by an interested U.S. government agency.

2. IMMIGRANT VISA PETITION – filed with the U.S. Citizenship and Immigration Service

Upon approval of the labor certification (if the labor certification is necessary), the employer files Form I-140, Immigrant Petition for Alien Worker, and documents the foreign national's education and/or experience.

3. ADJUSTMENT OF STATUS -- OR -- CONSULAR VISA PROCESSING

For employment-based immigrant visa applicants who are in the U.S. in valid status, the employee and his/her family may file for **adjustment of status to permanent residence**, the Form I-485 packet. The I-485 may be filed concurrently with the I-140, Immigrant Petition; the entire application package is filed by mail to the USCIS.

While the I-485 petition is pending, the foreign national cannot leave the U.S. until permanent resident status is granted or unless travel is specifically requested via application (Form I-131 for Advance Parole) to the USCIS. If the applicant has a valid H or L visa, no travel document is required. Also while the I-485 is pending, it is important to remember to remain in valid work status. For example, if the H-1B visa expires while the I-485 is pending, the person must file an I-765 to request work authorization.

Consular visa processing may be requested in some cases instead of adjustment of status. In this instance, the final immigrant visa processing takes place at the U.S. Embassy or Consulate in the person's home country. It may be to the person's advantage to consular visa process because it takes much less time than the adjustment of status process.

FIRST EMPLOYMENT-BASED (EB-1) PREFERENCE (Immigrant Visa)

There are three EB-1 categories: Aliens of Extraordinary Ability, Outstanding Professors and Researchers, and Multinational Managers/Executives. No labor certification is required.

REQUIREMENTS for Outstanding Professors and Researchers with universities or private employers with established research departments:

- The offer of a tenured or tenure track teaching or research position **-or-** the offer of a research position having no fixed term and in which the employee will ordinarily have an expectation of permanent employment **-or-** the offer of a comparable research position with a private employer if the employer has at least three full-time researchers and documented accomplishments in the research field;
- At least three years of teaching or research in the field (of which can be gained while working on an advanced degree but only if the research is recognized as outstanding, or if the foreign national had full responsibility for the courses taught;
 - Recognition internationally as outstanding in a specific academic field by submitting at least two of the following:
 - Receipt of major international prizes or awards for outstanding achievement in the academic field,
 - Membership in associations in the academic field which require outstanding achievements of their members,
 - Published material in professional publications written by others about the foreign national's work in the field,
 - Participation on a panel, or individually, as the judge of the work of others in the same or allied academic field,
 - Original scientific or scholarly research contributions to the academic field,
 - Authorship of scholarly books or articles in scholarly journals with international circulation.

SUBMITTING USCIS FORM I-140

USCIS Form I-140, Immigrant Petition for Foreign national Worker - submitted by the employer with the following:

- Employer's letter with evidence regarding ability to pay the foreign national's salary;
- Proof of credentials;
- Filing fee of \$115

SECOND EMPLOYMENT-BASED (EB-2) PREFERENCE (Immigrant Visa)

There are two EB-2 categories: Exceptional Ability and Advance Degree Professionals. The employer (petitioner) must consider the following in order for the foreign national (beneficiary) to qualify for this preference category:

- The employment must be full-time and permanent (meaning not seasonal).
- The position must require a Master's or higher degree to perform the job duties.

- The Department of Labor (DOL) must certify that there are no qualified U.S. workers available to fill the position. The labor certification requirement can be waived if the foreign national's admission is in the "national interest".
- The foreign national must meet the minimum requirements for the job, the employer must be able to pay the foreign national's salary, and the foreign national and the employer must both intend for the foreign national to undertake the position.

EXCEPTIONAL ABILITY ALIENS - to qualify for this immigrant visa category, the employee must have at least three of the following:

- An official academic record showing a degree, diploma, or similar award for a college, university, school, or other institutions of learning relating to the area of exceptional ability,
- Letters from current or former employers showing at least ten years of full-time experience in the occupation for which employment is sought,
- A license to practice the profession or certification for a particular profession or occupation,
- Evidence of commanding a salary, or other remuneration for services, which demonstrates exceptional ability,
- Membership in professional associations,
- Recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business associations.

ADVANCE-DEGREE PROFESSIONALS - requirements:

- U.S. academic or professional degree (or foreign equivalent) above a bachelors degree level,

-OR-

- A bachelor's degree plus at least five years of progressive experience in the specialty (if specified in the labor certification as the minimum requirements).

SUBMITTING USCIS FORM I-140

USCIS Form I-140, Immigrant Petition for Alien Worker - submitted by the employer with the following:

- Approved labor certification (Form ETA 750, Parts A & B) from the Department of Labor;
- Employer's letter with evidence regarding ability to pay the foreign national's salary;
- Evidence of exceptional ability or advanced-degree;
- Filing fee of \$190

THIRD EMPLOYMENT-BASED (EB-3) PREFERENCE (Immigrant Visa)

This immigrant visa classification has three categories: Professionals, Skilled Workers and Other Workers. The below concerns Professionals.

- The employment must be full-time and permanent (meaning not seasonal).

- An approved labor certification from the Department of Labor (DOL) is required to certify that there are no qualified U.S. workers available to fill the position.

PROFESSIONALS WITH A BACHELOR'S DEGREE

- Requires an official college or university record showing when the bachelor's degree was granted and in what area of study;
- Document that the position (job offer) is a professional occupation on the basis that a bachelor's degree is required for entry into that occupation;
- Document that foreign national meets the professional requirement by virtue of education and experience (such as diplomas, transcripts, resume, letters from colleagues or employers).

USCIS FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

- USCIS Form I-140 - submitted by employer with the following:
- Approved labor certification, original Form ETA 750, Parts A & B, and attachments (Note: employer must obtain labor certification from the U.S. Department of Labor prior to filing Form I-140)
- Employer letter supporting the petition with evidence regarding ability to pay
- Supporting documentation
- Filing fee of \$190

IMMEDIATE RELATIVE ISSUES

Spouses of United States Citizens:

- Immediate relative petitions (Form I-130) can be filed by U.S. citizens on behalf of their spouses, children and parents.
- Fiance(e) petitions (Form I-129F) can be filed by a U.S citizen to allow the foreign fiance(e) to obtain a K-1 visa from a U.S. consulate. Once the fiance(e) enters the U.S., the marriage must take place within 90 days.

For both of the above to obtain permanent residence status ("green card"), the I-485 packet must be submitted to the USCIS.

Spouses of Nonimmigrants and Pending Immigrants:

- Spouses of nonimmigrants can receive dependent visas such as H-4, L-2, E-2, TD.
- Spouses of E-1, E-2 and L-1 visa holders are now eligible to apply for work authorization.
- Spouses of H-1B and TN may only work if they are eligible to apply for their own H-1B or TN.
- Spouses of pending immigrants will be automatically included in the green card process IF the marriage took place prior to final adjustment.
- For H-1Bs who are going through the green card process and have not married but who plan to marry another foreign national during the green card process – the marriage must take place before filing for adjustment of status or for consular visa processing to allow the spouse to get his/her own green card.

DIVERSITY VISA LOTTERY

Diversity visa lottery registration must be done on-line. For more information:

<http://www.dvlottery.state.gov/>