Nonimmigrant Visas: Part II
Fundamentals Track

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INA § 214(b)

- "every alien . . . shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15)."

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B Nonimmigrants

- B-1: Business Visitors
- B-2: Visitors for pleasure
- Visa Waiver: WB/WT
- BCC: Border Crossing Card

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B-1 Activities

- Cannot engage in gainful employment
- Can attend meetings, conventions, conferences
- Can consult with clients; observe business activities
- Can negotiate contracts; perform/receive training

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B-1 Business Visitors

- Honorariums
- Certain categories that can be employed: ministers on evangelical tour, boards of directors attending meetings, certain yacht crewman, certain professional athletes, investors seeking investment that would qualify for E status
- Different rules under NAFTA

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B-1 for Nanny or Domestic Worker/Other B-1s

- Domestic Worker of US citizen
- Nanny or Domestic Worker of Nonimmigrant visa holder
- 9 FAM § 41.31 nn. 9-11

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B-2 Visitors for Pleasure

- Tourism; social events; social visits to friends/family
- Medical reasons
- Dependents of members of the Armed Forces; dependents of crewmen
- Tourism + short course of study

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Duration/Extension/Change of Status

- Visas issued anywhere from three months to ten years depending on various factors
- Generally admitted for up to six months, but often tied to nature of trip
- May apply to change status (COS) or extend status (EOS)

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Visa Waiver Program (VWP)

- 36 countries currently participate
- Must register with "ESTA"
- Advantages: 90-day admission with no visa required
- Disadvantages: Cannot extend/change status; AOS only to IR; cannot challenge denial of admission

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Student and Exchange Visitor Information System (SEVIS)

- Track M, F, and J visa holders and their dependents
- Managed by USICE SEVP
- Schools must provide regular reports
- Must pay SEVIS fee

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M-1 Visas

- Definition found at: **INA § 101(a)(15)(M)**
- Used for **vocational and technical schools**, other than language training
- Used for studying in a vocation or other non-academic curriculum school which must be approved by USCIS
- Must be enrolled full-time
- Must be proficient in English *(or enrolled in courses to achieve proficiency)*

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M-1 Visas Continued

- May engage in practical training **after** studying is complete
- Must maintain residence abroad – no intention of abandoning
- Required to file & present SEVIS FORM I-20 to consular officer & pay SEVIS FEE (I-901). Family members must individually obtain SEVIS FORM I-20

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M-1 Visas Continued

- Admitted for specified time (+30 days) or one year – whichever is less. May obtain extensions up to three (3) years (+30 days)
- M-1 student may now be subject to 222(g) and the 3/10 year bar
- Family members cannot obtain employment and cannot engage in full-time study (*unless child is attending primary or secondary sc*hool)

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F-1 Student Visas

- See INA § 101(a)(15(F); 8 CFR § 214.2(f), 214.3, 214.4, 214.13; 22 CFR § 41.61; 9 FAM § 41.61 & accompanying notes
- "Full course of study" at institution designated by legacy INS or DHS that is enrolled in the SEVIS system
- Temporary visa; maintain residency in home country; granted for period of time to complete study (D/S)

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Who May Administer F-1 Program?

- Private elementary schools, public high schools, private secondary schools, postsecondary schools, language schools
- Apply for designation on Form I-17
- Subject to on-site visit
- PDSOs and DSOs
- SEVIS I-20

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Obtaining the F-1 Visa

- Financial support
- English language proficiency
- Maintaining residence abroad and intent to return home
- Valid passport/photo
- SEVIS fee paid
- Completed DS-160

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Employment Authorization for F-1 Students

- On-campus Employment
- Economic Hardship
- CPT/OPT
- Cap-Gap and OPT Extensions for STEM degree students

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Transferring Schools/Change of Status

- Transfers completed via SEVIS
- Old school "releases" student to new school
- Change of Status via Form I-539
- Special rules for B-1/B-2 visa holders

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Duration of Status/Overstay/Reinstatement

- F-1s admitted for Duration of Status ("D/S")
- 60-day grace period to depart, EOS, or COS
- Students are responsible for maintaining their status – watch for "events"
- "Reinstatement" is available to some students who have fallen out of status

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J-1 Exchange Visitors

- Students
- Trainees and Interns
- Scholars and Researchers
- Teachers and Professors
- Au Pairs
- Specialists
- Foreign Medical Graduates

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J-1 Qualifications

- J-1 program designated by DOS
- Leave the US at the conclusion of program
- Plan to remain in the US for temporary, specific, limited period
- Must possess
  - Adequate financial resources
  - SEVIS Form DS 2019 from designated sponsor
  - Medical insurance

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J-1 Documentation

- DS-2019, Certificate of Eligibility for Exchange Visitor Status
  - SEVIS generated
  - Provided by program sponsor
- Form DS-7002, Training/Internship Placement Plan
- Form DS-160, Online Nonimmigrant Visa Electronic Application
- Passport/One photograph

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J-1 Admission & Stay

- Admitted for "duration of status" (D/S)
- Admissible for up to 30 days before start date
- Granted up to 30 days after completion depart
- May change status from J-1 without departing in limited cases

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J-1 Employment

- During vacations with program sponsor
- For 18 months of post-degree practical training (36 months post-doctoral) or
- Under scholarship, fellowship, assistantship
- No EAD required
- Dependents (J-2) can work with EAD

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212(e) Foreign Residence

- Who is subject?
- Government funded exchange program
- Graduate medical education or training
- Specialized knowledge or skill: Skills List

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Does 212(e) Apply?

- Review Form DS-2019
- Skills List
- "G" program designation could be 212(e)
- Annotation on visa not dispositive (Advisory Opinion from DOS)
- Waivers available for 212(e) foreign residency requirement: No objection statement; Exceptional hardship; Persecution; Interested government agency; Conrad Program

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J-2 Dependents

- J-2 visa for spouses and children under 21
- Own DS-2019 form
- J-2 spouse may work
- Spouse and children may study in US without F-1 visa

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Q-1 Visas

- Definition found at: **INA § 101(a)(15)(Q)**
- Q-visa used for an **international cultural exchange program**
- Beneficiaries provided practical training employment and most importantly: sharing customs, history, culture & philosophy &/traditions of country of nationality

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Q-1 Visas Continued

- Certain conditions to be met by Employer & Beneficiary:
  - Maximum period of stay – 15 months
  - Employer must maintain established international cultural program
- Employer must demonstrate financial ability to remunerate Beneficiary(-ies) in program
- Beneficiary to maintain foreign residence

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Q-1 Visas Continued

- Beneficiary's wages and working conditions must be same as U.S. workers
- After 15 months, Beneficiary to be physically present out of the U.S. for one year *(Brief B-1/B-2 trips to U.S. permitted – does not break physical presence)*
- Form I-129, Petition for Nonimmigrant Worker + appropriate supporting documents

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R-1 Religious Worker Visas

- Definition found at: **INA § 101(a)(15)(R)**
- Temporary employment (*min. 20 hrs p/w*) for ***bona fide*** religious organization *(or bona fide organization affiliated with U.S. religious denomination)*
- For a period not to exceed 5 years
- **November 26, 2008:** New RWVP regulations

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R-1 Visas Continued

- All R-1's filed @ California Service Center
- Seeking entry as:
  - Minister of Religion or
  - Religious Vocation or
  - Religious Occupation
- Member of religious denomination @ least 2 years immediately prior to filing petition

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R-1 Visas Continued

- Evidence that Beneficiary qualifies to perform duties of offered position
- Petitioner: 501(c)(3) Tax Exempt Status
- Compensation of Religious Worker: Salaried vs. Non-salaried
- Religious Denomination Certification
- On-Site Inspection

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R-1 Visas Continued

- Family members: R-2 visas (accompanying/following to join)
  - May not accept employment
  - May study in the U.S.
- Form I-129, Petition for Nonimmigrant Worker + R-1 Supplement
- Useful tool (USCIS website)
- Form M-736: Optional Checklist

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A Visas

- See INA § 101(a)(15)(A); 9 FAM § 41.22
- **Includes:** Diplomats, Officials, Employees
- **3 categories:** A-1, A-2, A-3

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A Visas Qualifications

- Visa classification determined by purpose of entry
  - Heads of state / government exception
- Not applicable to local government officials

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A Visa Documentation

- Form DS-156, Nonimmigrant Visa Application,
- Form DS-1648 Application for A, G and NATO Visa
- Diplomatic Note
- Passport /Photograph
- A-3
  - Employment Contract

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A Visa Admission & Stay

- Duration of Status "D/S"
- Annotation of "TDY" for assignment lasting less than 90 days
- A-3
  - 3 years + 2 year extensions

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A Visa Dependents

- Immediate Family; Spouse; Unmarried Sons and daughters; Domestic partner and same-sex domestic partner; Someone residing regularly in the household
- Employment of Dependents
- Dependent of A-1 and A-2
- A-3 family members
  - no employment

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G Visas

- See International Organizations Immunities Act, 22 U.S.C. section 288
- Alien employed by International Organization
- 9 FAM, § 41.24 Exhibit 1
- Alien representing foreign government to international organizations
- **5 Categories:** G-1, G-2, G-3, G-4, G-5

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G Visa Qualifications

- Representative of int'l organizations
- Purpose of trip to US
- Special expeditious treatment of UN representatives
  - 9 FAM § 41.24 N.3.1.
- No need to be native of the country's government
- No need to maintain a foreign residence

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G Visa Documentation

- Online Form DS-160, Nonimmigrant Visa Application
- Online Form DS-1648, Application for A,G, and NATO Visa
- Diplomatic Note
- Passport/Photograph
- G-5 Visa
  - Interview at US Embassy or Consulate
  - Employment Contract

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G Visa Admission & Stay

- G-1 to G-4 – indefinitely
  - 8 C.F.R. section 214.2(g)(1)
- G-5 – 3 year + 2 year extensions

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G Visa Dependents

- Immediate Family; Spouse; Unmarried Sons and daughters; Domestic partner and same-sex domestic partner; Someone residing regularly in the household of the principal applicant
- Employment
- G-1 and G-3 dependents – may apply
- G-4 dependent
  - may apply to work in the US

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Suggested Resources

- INA § 101(a)(15)
- 8 CFR § 214; 22 CFR § 41
- 9 FAM § 41 (& accompanying notes)
- Kurzban's Immigration Law Sourcebook
- AILA*Link* Online
- AILA InfoNet
- www.uscis.gov; www.state.gov; www.ice.gov
- Form instructions

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Questions & Answers

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