



# **U.S. Visa Strategies for International Personnel**

## **E&M Mayock and Associates, PC**

**220 Sansome Street, 12<sup>th</sup> Floor**

**San Francisco CA 94104**

**415-765-5111**

**e-mail: [jmayock@emvisa.com](mailto:jmayock@emvisa.com)**

**[www.emvisa.com](http://www.emvisa.com)**



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## **1. Introduction**

The United States offers a variety of non-immigrant visas for international business personnel to undertake medium and long-term work assignments in America. For those who clearly qualify, such visas can often be obtained in a month or less, and are valid for multiple entries during initial periods ranging from as little as a year to as much as five years. Many such visas can be renewed for a total of 5 – 7 years.

The spouse and children [under 21] may accompany the principal visa holder. Domestic servants may obtain B-1 visas to continue to work in the principal's household. Children may attend U.S. public elementary and high schools at no additional charge. Certain spouses may enjoy an independent "open market" work authorization. All other spouses may obtain an independent work authorization in their own right, if they qualify.

International companies with an existing or nascent U.S. presence can easily move key personnel to the U.S. quickly as L-1 Multinational Intracompany Transferees or employees of E-1/2 Treaty Trader / Treaty Investor enterprises. The guidelines for establishing eligibility are clear, and U.S. government personnel are generally eager to facilitate investment in and trade with the U.S.

## **2. Four Federal Agencies Govern the Process**

A number of federal agencies are involved in the process, including the Department of State "DOS" [[www.state.gov](http://www.state.gov)] – which handles visa issuance; the Citizenship & Immigration Services "CIS" [[www.uscis.gov](http://www.uscis.gov)] – which approves visa petitions; Customs & Border Protection "CBP" [[www.cbp.gov](http://www.cbp.gov)] – which handles inspections at ports of entry; and the Department of Labor "DOL" [[www.dol.gov](http://www.dol.gov)] – which monitors protection of U.S. workers. Because the interaction of these agencies is not tightly integrated, navigating the process can be challenging to the uninitiated.

## **3. Offer of Employment Required**

With the exception of O-1 Outstanding Individuals petitioned by an agent in the U.S., there is no place in the U.S. visa scheme for "independent contractors." Most U.S. work visa holders are expected to fulfill a specific role as an employee of either a U.S. or foreign enterprise. Only an E-2 Treaty Investor principal may "develop and direct" a U.S. enterprise – without being an actual day-to-day employee.

## **4. CIS Reviews Employer Petitions; DOS Interviews Visa Applicants**

Passport holders of 36 countries may visit the U.S. for limited business purposes for up to 90 days without visa, but productive U.S. employment is prohibited [[http://travel.state.gov/visa/temp/without/without\\_1990.html#countries](http://travel.state.gov/visa/temp/without/without_1990.html#countries)]. Visa issuance by a Department of State consular post is required for all other passport holders and all other visas. Few U.S. posts now permit "walk-in" visa applications; most require a scheduled appointment.



Visa fraud is perceived to be rampant in non-EU countries. Deterrence of terrorism and detection of fraud requires U.S. government personnel at all levels to be skeptical and vigilant. Coupled with personnel turnover and lack of adequate training, these factors make a pleasant U.S. work visa experience the exception rather than the rule. Once the desired visa is obtained and entry to the U.S. is achieved, however, the foreign worker is readily accepted and blends easily into the multicultural American workforce.

Only the E-1, 2 & 3 Treaty categories [and H-1B for Singapore and Chile] permit the U.S. consular post abroad to have sole responsibility for work visa adjudication. All other work visas require prior approval by the Citizenship & Immigration Services agency [CIS] in the United States before the consular post may issue the visa.

The timeframe for adjudication of visa petitions by CIS is often months, but this can be expedited by the payment of \$1,000 for a decision within two weeks. Obtaining a visa appointment at a consular post abroad may take only a few days or a few weeks [[http://travel.state.gov/visa/temp/wait/tempvisitors\\_wait.php](http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php)]. Completion of an online visa application form DS-160 will soon be required worldwide before applicants appear at the visa interview appointment.

The work visa applicant is expected to appear at the consular post with all documents necessary for visa issuance on the day of the appointment. Because principal jurisdiction for most work-related visa petitions lies with CIS, the consular posts outside the U.S. often have limited information about the actual requirements to obtain an approved work visa petition.

Due to heavy volume, both DOS and CIS are relatively inaccessible by phone or email, and the standard information provided is often inadequate, out of date, or simply wrong.

## **5. Eligibility Criteria Vary According to Visa Category**

Criteria that often play key roles in work visa eligibility include:

- U.S. job title and job duties,
- educational and training requirements for the U.S. job,
- wage to be paid the prospective worker,
- length and nature of prior and current employment abroad,
- fame or demonstrated leadership in the field of the prospective worker,
- availability of American workers,
- citizenship of the prospective worker,
- citizenship of the ultimate owners of the employing enterprise,



- intra-corporate relationship between the foreign enterprise and linked U.S. enterprise,
- number of employees in the U.S. and/or foreign enterprise(s),
- financial strength of the U.S. and/or foreign enterprise(s),
- amount of foreign investment in the U.S. enterprise,
- amount and nature of international trade undertaken by the U.S. enterprise.

Information about some or all of these criteria are sought by the federal agencies as part of the visa petition, visa issuance and admission process. Often an individual may qualify for more than one visa option.

Choice of visa sought is driven by:

- eligibility criteria,
- perceived difficulty of documentation,
- time to complete the process,
- length of stay,
- government filing fees and legal fees, and
- spousal ability to work.

Annual numerical limits on certain visa categories may limit availability.

## **6. Non-Immigrant Work Visa Options**

All of the temporary, non-immigrant U.S. visas are denominated by a letter of the alphabet, often with suffixes, beginning with A-1 [diplomats] through V-3 [for dependents of certain Permanent Residents].

Work visas most commonly used include:

H-1B	Temporary Professional
H-2B	Shortage Worker
L-1	Multinational Intracompany Transferee
J-1	Practical Trainee
E-1 / E-2	Treaty Trader / Treaty Investor & Employees



- E-3 Australian Temporary Professional
- O-1 Outstanding Individual
- TN Canadian or Mexican Temporary Professional [agreed list of job titles]

A comparison chart is attached.

### **7. H-1B Temporary Professional**

The single most common visa used by companies with a U.S. presence is the H-1B Temporary Professional visa. The nationality of the worker and the nationality of the company is irrelevant. Prior employment at a related company abroad is not required.

The most basic requirement is a 4-yr U.S. Bachelors degree [or its equivalent in education and/or training abroad] – which both the candidate must hold AND the job must require. The “prevailing wage” at the employment site must be ascertained and paid, but no showing of shortage of American workers is required.

H-1B visas are good in 3-yr increments up to 6 years initially, and indefinitely for those who are timely pursuing a “green card.” There is an annual numerical nation-wide limit on such visas [85,000 at this time], which is often exhausted long before the fiscal year begins [October 1<sup>st</sup>].

### **8. H-2B Shortage Worker**

The H-2B visa category is available for non-professional temporary workers undertaking a position which itself is temporary in nature, i.e. one-time occurrence, seasonal, peak-load, or intermittent need. A showing of shortage of American workers is required, and the visa is usually good for less than a year. There is also an annual numerical limitation on H-2Bs of 66,000 per year, which is not enough to meet demand.

### **9. L-1 Multinational Intracompany Transferee**

Executives, managers and employees with specialized knowledge can be transferred among multinational companies linked by common ownership via the L-1 category. The individual must have held one of these three roles at the foreign company for at least a year before the transfer, and must hold one of these roles at the linked U.S. company. No showing of shortage of American workers is required. Spouses may obtain a work authorization. Visas are issued in one and two-year increments for up to seven years in total.

### **10. J-1 Practical Trainee**

Almost any person – regardless of nationality and work history abroad, with or without degree, for almost any role with no required wage rate – can be employed on a one-time



basis as a J-1 Practical Trainee for up to 18 months. Spouses may obtain an “open market” work authorization.

### **11. E-1 / E-2 Treaty Trader / Treaty Investor & Employees**

International companies from 83 countries may find the E1/E2 Treaty visa category particularly attractive for rapid deployment of personnel to the US. The ultimate owners of the U.S. enterprise and the visa candidate must both be of the country that has the E treaty with the US.

Individuals of a qualifying multinational enterprise who are new to the foreign company may use the E1/E2 visa when the L-1 would be unavailable. Only executives, managers and “essential skills” employees are eligible.

U.S. Embassies abroad have principal jurisdiction over E1/E2 visa applications and maximum reciprocity permits issuance of a 5-year visa, indefinitely renewable. Each admission to the U.S. during the validity of the visa is good for two years. Spouses may obtain an “open market” work authorization.

### **12. O-1 Outstanding Individuals**

The O-1 Outstanding Individual category is used mostly by the entertainment industry, but has enormous utility for business, particularly when no other category fits. The O-1 category requires that the applicant be a “rock star” in his or her field. When the field is defined narrowly, often seemingly ineligible workers can be made to fit! The visa is issued in 3-year increments and is indefinitely renewable.

### **13. Conclusion**

Advance planning, adequate documentation, and experienced assistance can make the U.S. temporary worker process fast and efficient.

**E&M Mayock and Associates, PC**  
220 Sansome Street, 12th Floor, San Francisco, CA 94104  
Tel: 415-765-5111 Fax: 415-765-5122  
e-mail: [jmayock@emvisa.com](mailto:jmayock@emvisa.com)  
[www.emvisa.com](http://www.emvisa.com)