

NONIMMIGRANT BUSINESS VISA CHART

Williams Mullen Immigration Practice Group

VISA CATEGORY	DESCRIPTION	DURATION OF STAY	CRITERIA/SPECIAL RULES
Visa Waiver Program (VWP). Visitors; no visa required. Complete Form I-94W on airplane prior to entry.	For short stays as business visitor or tourist. Only for nationals of these countries: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, United Kingdom.	90 Days. No extension available. Cannot change to another temporary visa while in the United States.	<ol style="list-style-type: none"> 1. Biometric passport 2. Register on-line through the Electronic System for Travel Authorization (ESTA). www.cbp.gov/esta 3. Roundtrip airline ticket. 4. Business visitor cannot be paid from U.S. source. 5. Will get stamped WB for business visitor; WT for tourist. 6. Must not have previously overstayed in USA. 7. See B-1 visa category below for other criteria 8. Consult with counsel BEFORE using the Visa Waiver to avoid issues upon arrival.
B-1 Business Visitor. Apply at U.S. Consulate. Exception: Mexicans with border crossing cards and Canadians. Apply at port-of-entry.	Temporary business or professional activities furthering international trade/commerce.	6 month initial stay with up to 6 month extension as needed to complete purpose of visit. Must have foreign residence which one has no intent to abandon. Special rules for Canadian/Mexican business visitors under NAFTA.	Except in construction industry, can enter to install/service equipment or software under international sales contract. Can consult, negotiate, take orders, participate in training or business meetings, conduct independent research and observation. Must not engage in local productive employment or be paid from U.S. source. May use B-1 in lieu of H-1B if working for 6 months or less for foreign company on U.S. project as a professional.
E-1 Treaty Trader. Can apply at U.S. Consulate or CIS. Available to citizens of many countries under bilateral trade treaties or NAFTA for Canada and Mexico. Major exceptions: Brazil, China, India, Indonesia, Hong Kong, Russia, South Africa.	Alien coming to U.S. to carry on "substantial trade" between U.S. and alien's country or to be employed in key position in foreign-owned business carrying on "substantial trade." Trade includes goods, services and technology.	No limit on stay. E-1 visa issued for 1- 5 years with unlimited renewals. Admitted to U.S. for 2 years each time travel to U.S. on E-1 visa. While in U.S. can obtain unlimited number of 2-year extensions.	Must be business owner, manager, executive or key employee with essential skills. At least 50% of U.S. company must be owned by nationals of same treaty country as alien. No minimum volume of trade as long as can document regular flow of goods or services. Need not maintain foreign residence or overseas affiliate of U.S. company. Spouse can apply for work authorization in U.S. Received dependent E-1 Visa.
E-2 Treaty Investor. Can apply at U.S. Consulate or USCIS. Available to citizens of many countries. Major exceptions: Brazil, India, China, Hong Kong, Indonesia, Greece, Israel.	Alien coming to U.S. to make a substantial investment or be employed in position requiring executive, manager or specialists with essentials skills in foreign-owned business.	No limit on stay. E-2 visa issued for 1-5 years with unlimited renewals. Admitted to U.S. for 2 years each time travel to U.S. on E-2 visa. While in U.S. can obtain unlimited number of two-year extensions. New Accelerated Visa Programs are available as some U.S. Consulates (Paris, France).	Must be business owner or hired as executive manager or employee with essential skills. U.S. company must be at least 50% owned by nationals of same treaty country as individual E-2 applicant (alien). Investment can be in local business. Enterprise need not maintain foreign office. No minimum investment or minimum number of employees, but investment cannot be made marginal, that is, solely to support alien & immediate family. Substantial documentation of business plan and investment required. Spouse can apply for work authorization in U.S. Receives dependent E-2 Visa.

NOTICE: This chart is a summary only & does not contain all applicable technical & legal information related to these visas.

For additional information, please contact: Eliot Norman, Bill Benos, or Earl Baggett
enorman@williamsmullen.com; bbenos@williamsmullen.com; ebaggett@williamsmullen.com
www.williamsmullen.com/immigration | <http://www.williamsmullen.com/practice/FDI>

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F-1 Student Employees. Apply to Foreign Student Advisor (DSO).	F-1 students can obtain work authorization in certain situations: on-campus; work/study co-op education curricular practical training (CPT); economic hardship; Optional Practical Training (OPT), pre- and post-graduation.	During full time study plus up to 12 months of post-graduation Optional Practical Training (OPT).	No work until completed one year of study. Can work full-time during vacation and summer in OPT, but this may reduce 12 months post-graduation OPT. F-1 students working on OPT often apply to change status to H-1B.
H-1B Specialty Occupation Workers. Petition USCIS in U.S.	Employee has at least a bachelor's degree or equivalent; working in a job requiring a degree. May work part time or multiple concurrent employers. Graduates with US advanced degrees have separate lottery for CAP of 20,000 H-1Bs per year.	3 years with 3 year extension for total of 6 years. Under special circumstances can extend beyond 6 yrs.	Employee must have four-year college degree or equivalent. Employer must pay at least prevailing wage. Must post job notice and file Labor Condition Application. 65,000 Cap on number of H-1Bs per yr. Exemptions from cap: university jobs; non-profit research institutions. Must maintain Public Access File.
H-2A, H-2B and H-3 Temporary workers and trainees. Petition USCIS in U.S.	Short-term skilled/unskilled workers for temporary positions or training. May be part-time position.	H-2A/2B: up to 1 year, generally renewable for up to 3 years. H-3 Trainee: 18-24 months.	H-2A/B: Temporary "special needs" positions in agriculture or business. Labor Certification required. Must pay 100% of prevailing wage. H-3: Detailed written training curriculum. Limited productive employment allowed only if incidental to training.
J-1 Exchange Visitor/Trainee or Student. Apply with Department of State (DOS) or J-1 sponsor.	Industrial trainees, medical graduates, students, research scholars, teachers in program approved by DOS	Business/Industrial trainees: 18 months. Students: For duration of studies, up to 6 years. Scholars: 3 years with up to 6 months extension for good cause. Interns: 12 months.	(Business Trainees). Can engage in productive employment under bona fide training program; college degree not required for J-1; can adjust to permanent residence/change status to other nonimmigrant category; may have to return abroad for 2 years after training, possible to obtain waiver of 2 year foreign residency requirement. (Student) 18 months of academic training after graduation, if related to studies. 36 months if Ph.D. J-2 spouse/children can be employed. Requires SEVIS Form 2019.
L-1A Executive/Manager. Intra-Company Transferee. Petition filed with USCIS in U.S.	Alien transferring from abroad to work as an executive or manager. Can manage essential function without directly supervising others. Need not be college graduate or professional. May work part time in U.S.	New office L-1A: 1 year, three 2 year extensions to maximum of 7 years. Existing office L-1A: 3 years, two 2 year extensions to maximum of 7 years.	1 year of employment with affiliate, branch, subsidiary or parent corporation of U.S. employer within 3 years prior to entry. Salary can be from abroad or U.S. source. Blanket L-1A requires employment of 1 year overseas. Blanket petitions avoid extra costs and time of filing individual L-1 petitions in the United States. Spouse can apply for work authorization in U.S.
L-1B Specialized Knowledge Intra-Company Transferees.	Alien transferring from company abroad with specialized knowledge of company, products or processes. Need not be college graduate or professional. Alien's knowledge must be: (a) uncommon; (b) not easily or rapidly acquired, but is gained from significant experience or in-house training; and, (c) necessary and relevant to successful conduct of the employer's operations.	New office L-1B: 1 year. Two 2 year extensions up to maximum 5 years. Existing office L-1B: 3 years, one 2 year extension up to maximum 5 years.	1 year of employment with affiliate, branch, subsidiary or parent corporation of U.S. employer within 3 years immediately prior to admission. Salary can be from abroad or U.S. source. Blanket L-1Bs require employment of 1 year overseas. College degree or equivalent. Avoid extras costs of filing individual L-1 petitions in the United States. Spouse can apply for work authorization in U.S.
O Visa – Outstanding Ability. Apply to USCIS in U.S.	Outstanding ability in arts, athletics, science, business. Available to athletes, researchers, university faculty, artists, outstanding businesspersons, , film crews and cast.	3 year or duration of event; can extend for additional events.	Must show recognition and renown through at least 3 of following: Prizes/awards; membership in prestigious societies; review of work of others; contributions of significance to field; significant publications; high salary; published material about alien; employment in critical capacity.
TN (Treaty NAFTA Visa). Canadians and Mexicans only.	Management consultants, scientific and medical technologists, computer systems analysts, engineers & other professionals.	1-3 years with unlimited renewals/extensions.	Self-employment generally not permitted. Obtain TN at border for Canadians or at U.S. Consulate for Mexicans.

For information contact Eliot Norman (804.420.6482), Bill Benos (804.420.6402) or Earl Baggett (804.420.6478).
enorman@williamsmullen.com; bbenos@williamsmullen.com; ebaggett@williamsmullen.com
www.williamsmullen.com/immigration | <http://www.williamsmullen.com/practice/FDI>

BUSINESS & EMPLOYMENT-BASED PERMANENT RESIDENCE ("GREEN CARDS")*

Williams Mullen Immigration Practice Group

VISA CATEGORY	DESCRIPTION	CRITERIA/SPECIAL RULES
<p>First Preference Priority Workers (EB-1).</p> <p>Petition filed with United States Citizenship & Immigration Service ("CIS"). Labor Certification (PERM) not required. The employer does not have to post a notice of the job vacancy or advertise the position in a local or national newspaper or trade publication.</p> <p>Three types:</p> <ul style="list-style-type: none"> A. Extraordinary Ability B. Outstanding Researcher/ Professor C. Multinational Executive or Manager 	<p>A. Persons of Extraordinary Ability in business, sciences, arts, education or athletics.</p>	<p>Sustained national/international acclaim; extensive documentation. Must intend to continue work in area of extraordinary ability. No job offer required. Can be self-employed. Must show receipt of major prize (Nobel) OR 3 of following: lesser prizes; membership in prestigious societies; published material about alien; work judging the work of others; significant contributions to field; authorship of scholarly articles; display of work; employment in leading or critical capacity; high salary; other.</p>
	<p>B. Outstanding Researcher or Professor.</p>	<p>International recognition; 3 years experience as teacher and/or researcher in the academic field; requires documentation showing research achievements of alien similar to Extraordinary Ability. Must have a job offer letter stating that teaching position is tenured or tenure-track or that research position is permanent. Available for university positions, and for private employers with demonstrated research achievements.</p>
	<p>C. Multinational Executive or Manager.</p>	<p>Transfer from non-U.S. entity to related U.S. entity. Must have worked abroad as manager or executive for at least 1 year within 3 years immediately preceding admission for a foreign parent, subsidiary or affiliate of U.S. company. College degree not required. U.S. company must be in business for at least 1 year prior to filing of petition.</p>

NOTICE: This chart is a summary only and does not contain all of the technical and legal information related to these visas.
www.williamsmullen.com/immigration | enorman@williamsmullen.com; bbenos@williamsmullen.com | 804.420-6482
www.world-visas.com | http://www.williamsmullen.com/practice/FDI_1644672v1

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VISA CATEGORY	DESCRIPTION	CRITERIA/SPECIAL RULES
<p>Second Preference Employees (EB-2).</p> <p>Petition filed with USCIS in U.S. Labor Certification (PERM), Job Notice and Advertisement required, unless candidate qualifies for National Interest Waiver.</p> <p>Three types:</p> <p>A. Exceptional Ability/ National Interest Waiver</p>	<p>A. Exceptional Ability in Sciences, Arts or Business. Can obtain National Interest Waiver ("NIW") of Labor Certification and Job Offer requirements by showing how alien's activities will substantially benefit national interest (work will substantially improve: U.S. economy, wages and working conditions of U.S. workers, education and training programs for U.S. children, health care, environment, use of natural resources, scientific pursuits, etc.).</p> <p>National Interest Waiver (NIW) also applies to foreign physicians working in medically underserved areas for at least 5 years.</p>	<p>USCIS Regulations require proof of 3 of the following 6 factors: college degree in field; 10 years experience; recognition of achievements; high salary; licenses; or membership in professional associations. Must show that work is in the national interest, <u>and</u> that advertising to find a qualified U.S. worker would not be in the national interest.</p>
<p>Second Preference Employees (EB-2).</p> <p>B. Advanced degree professionals</p>	<p>B. Professionals holding advanced degrees (M.S. M.A., J.D., M.D. Ph.D., etc.) must obtain Labor Certification and job offer.</p>	<p>Can qualify with M.S. degree or foreign equivalent; or B.A. or B.S. or foreign equivalent and 5 years of post-baccalaureate progressively responsible experience in the specialty.</p>
<p>C. "Optional Special Recruitment" for university teaching faculty</p>	<p>C. University "Optional Special Recruitment". University can prefer foreign candidate over other candidates meeting minimum qualifications for the position.</p>	<p>For tenured or tenure track teaching faculty. Must file labor certification (PERM) within 18 months of university decision to hire.</p>
<p>Third Preference Skilled Workers, Professionals and Others (EB-3).</p> <p>Petition filed with USCIS. Labor Certification (PERM) required.</p>	<p>A. Skilled workers and managers. No college degree required.</p>	<p>Position must require 2 years training or experience.</p>
<p>PERM, I-140 Petition.</p>	<p>B. Professionals.</p>	<p>Professionals must have B.A. or B.S. degree or its foreign equivalent in the field. Cannot substitute work experience for college degree.</p>
<p>PERM, I-140 Petition</p>	<p>C. Unskilled workers.</p>	<p>Jobs do not require 2 years exp. or training.</p>
<p>Schedule A, Group I</p>	<p>A. Physical Therapists B. Registered Nurses C. Exceptional Ability Aliens</p>	<p>Current quota is exhausted. No PERM required. File I-140 Petition and I-485 Adjustment of Status or Consular Process at U.S. Embassy. RNs and Physical Therapist require Visa Screen from CGFNS or FCCPT.</p>
<p>EB-5 Regional Center</p>	<p>Usually requires \$500,000 investment in a pre-approved Regional Center which has been determined to create 10 direct or indirect jobs in a rural or high unemployment area.</p>	<p>2 year conditional permanent residence, then permanent residence. Investor does not have to be involved in management of enterprise. Investment funds can be loan if not collateralized by assets of Regional Center.</p>
<p>EB-5 Individual</p>	<p>Requires \$500,000 (rural or high unemployment area) or \$1 million investment in enterprise that will directly create 10 jobs for U.S. workers. Can buy existing business if expands business net worth or number of employees by at least 40%. Investment funds can be a loan if enterprise is not collateral.</p>	<p>Investor must establish policies or otherwise manage the investment. Can delegate day-to-day management to employee. 2 year conditional permanent residence, then permanent residence.</p>