



GUNSTER YOAKLEY IMMIGRATION SERIES



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# GUNSTER YOAKLEY IMMIGRATION SERIES

## OPTIONS AND CONSIDERATIONS FOR FOREIGN NATIONAL EXECUTIVES, PROFESSIONALS AND INVESTORS

*How to live and work temporarily  
in the United States of America*

Volume I

**Immigration Practice Group  
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**To our valued clients and friends,**

In the twenty-five years we have each been advising international clients, we have found that any decision to live or work temporarily in the United States must take into account U.S. immigration issues that affect executives, professionals and investors. Yet, the U.S. immigration laws can be an overwhelming and confusing maze. We have compiled this handbook to provide a guide to cover those issues which are key to any decision to live and work temporarily in the United States. We hope you will use it as a handy reference to assist you and your colleagues in familiarizing yourselves with this area.

Warmest regards,



Sarah Lea Tobocman  
Shareholder and Chair  
Immigration Practice Group



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## INTRODUCTION

The immigration laws of the United States contain provisions that foster the globalization of various markets by allowing the transfer of international personnel and by encouraging U.S. and foreign companies to engage in joint business ventures. U.S. law provides for specific visa classifications that enable international managers, executives, investors and professionals to work and do business temporarily in the United States. An individual who obtains a visa or is granted lawful status under one of these classifications is called a nonimmigrant.

This handbook discusses many of the legal requirements of the nonimmigrant visa classifications most frequently used by business persons and professionals. It also provides guidance with regard to post-9/11 developments.

## **NONIMMIGRANT ADMISSION TO THE UNITED STATES**

### **Visa Requirement and Classifications**

Most foreign nationals seeking to enter the United States must obtain a visa in their passports from a U.S. consulate abroad before arriving at a port of entry.<sup>1</sup> Generally, a nonimmigrant visa is assigned a letter classification that reflects the intent, purpose, and duration of the individual's authorized travel to the United States. The letter classifications that will be discussed in this handbook are B (visitor), TN (trade NAFTA), H-1B (specialty occupation), L (intracompany transferee), and E (treaty trader or investor), all of which are nonimmigrant classifications.

### ***USCIS Procedures***

In most cases an individual requiring a nonimmigrant visa must first obtain approval from the United States Citizenship and Immigration Services (USCIS), formerly the Immigration and Naturalization Service (INS), before applying for a visa at a U.S. consulate.<sup>2</sup> This process can take anywhere from several weeks to several months to complete. Once the USCIS approves, they will issue an approval notice (Form I-797) as confirmation. If the individual is abroad, he or she will take the approval notice to a U.S. consulate to apply for a nonimmigrant visa, which is granted for a limited time and a specific purpose. The approval of a petition or application by the USCIS does not, however, guarantee that the U.S. consulate abroad, which is part of the Department of State (DOS), will issue a visa. In fact, in the post-9/11 world, consular officers put great emphasis on processing security checks and on checking an individual's immigration history prior to issuing a visa.

### ***U.S. Consulate Procedures***

To apply for a visa at a United States consulate abroad, the applicant must present a valid passport, the requisite completed forms and supporting documents, a photograph in accordance with DOS guidelines, the I-797 approval notice (except for the E or TN classification), and required filing fees. The applicant must also submit to digital finger-scans and photographs, which will be collected and checked against a database of known criminals and terrorists. This information is later matched up against the same biometric data collected by an immigration officer at the port of entry where the nonimmigrant seeks admission to the United States (see US-VISIT page 5).

<sup>1</sup> The following are exempt from obtaining a visa: (1) lawful permanent residents of the United States (green card holders), (2) Canadians seeking entry into the United States in categories other than treaty trader or treaty investor, (3) citizens of countries that participate in the Visa Waiver Program, and (4) individuals that are "paroled" into the United States. In addition, automatic revalidation of an expired nonimmigrant visa is permitted when one travels from the United States to contiguous territory for fewer than 30 days and does not request a visa during such absence. This provision does not benefit nationals of countries identified as supporting terrorism.

<sup>2</sup> Applicants for E and TN classifications are not required to obtain pre-approval from the USCIS.

Once the consulate receives the completed visa application, the consular officers are responsible for interviewing the applicant, ensuring the application meets the legal requirements for the requested visa classification, and reviewing the application in accordance with the Technology Alert List (see discussion below).

Typically, a consular officer's decision to deny a visa is not subject to judicial review. Thus, a nonimmigrant applicant who was denied a visa generally may not request that a court overrule the consular officer and grant the visa. In certain cases the U.S. Department of State will review a consular officer's decision and issue an advisory opinion. In limited circumstances, an individual may request a court to rule that the consular officer applied an improper standard in deciding whether to issue the visa, in which case the court may order the officer to apply the proper standard.

Most applicants for nonimmigrant visas are required to undergo an interview with a consular officer before being issued a visa stamp. In certain circumstances the consular officer may waive the interview requirement, but, in general, applicants for the nonimmigrant visas between the ages of 14 and 60 must attend a personal interview.

This interview requirement has delayed processing of nonimmigrant visas significantly. Before implementation of this requirement, many consular offices issued visas within one day of receiving the application. Now, interview appointment backlogs have commonly resulted in delays of weeks and, in some circumstances, months.

### ***The Technology Alert List (TAL)***

The Technology Alert List (TAL) is one of the most important instruments used by consular officers in determining whether to grant a visa. Specifically, the DOS has instructed consular officers to refer to lists of "critical fields" and states that sponsor terrorism before issuing any foreign national a visa. If a foreign national either seeks a visa to work in one of the professional fields listed on the TAL or was born in one of the listed states (namely Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria), he or she must be cleared through numerous U.S. law enforcement databases, a procedure that can take many months. The purpose of the list is to maintain technological superiority and ensure that hostile regimes and terrorists do not become privy to certain technological secrets.

Since September 11, 2001, the DOS has expanded the critical fields on the list, causing significant hardship to many foreign nationals and companies sponsoring their nonimmigrant visas. The critical fields include biochemistry, immunology, microbiology, pharmacology, chemical engineering, speech processing/recognition systems, information security, laser technology, architecture, civil engineering, geography, and landscape architecture, among others.

Nonimmigrant applicants who can establish that their employment is "in the public domain," but who otherwise would be subject to increased scrutiny under TAL, will be processed routinely along with all other non-TAL nonimmigrant visa applicants.

### ***Another State Department List***

In addition to the TAL, the DOS maintains a list of more than twenty countries, nationals of which are subject to increased scrutiny by consular officers. These countries generally contain a large Muslim population and are located in Africa, the Middle East, and Central Asia.

### ***Overstaying and Its Effects***

Consular officers must also determine whether an individual has violated the terms of a visa or immigration status in the past. In particular, they try to determine whether an individual has either worked without authorization or stayed beyond the period authorized by the government. All nonimmigrants are authorized to stay in the United States for a defined period of time. Upon admission to the United States, an immigration officer will issue the nonimmigrant an I-94 "Arrival Departure Record," known as an "I-94 card," which specifies the authorized period of stay normally with a specific expiration date. Students (F-1/M-1) and exchange visitors (J-1) will be admitted for "Duration of Status" (D/S), which is tied to the period of the authorized study or of the exchange visitor program. The government may initiate removal proceedings against a nonimmigrant who fails to depart by the I-94 expiration date or otherwise violates status. In addition, failure to depart as required may prevent an individual from obtaining any future immigration benefits.

A person who overstays the authorized time period is deemed to be present unlawfully in the United States. Any individual who remains unlawfully present for a consecutive period of more than 180 days but less than one year and then departs the United States voluntarily prior to being put into removal proceeding is barred from re-entry for three years. Similarly, any individual who is unlawfully present for a consecutive period exceeding one year and departs voluntarily prior to being put into removal proceeding is barred from re-entry for ten years. Waivers of these bars and tolling of period of "unlawful presence" are available in limited circumstances. Special rules apply to those individuals admitted as Duration of Status (D/S).

### ***US-VISIT***

On January 5, 2004, the Department of Homeland Security (DHS) implemented the United States Visitor and Immigrant Status Indicator System (US-VISIT) at 115 airports and 14 major seaports. It has since been expanded to all land entry ports. This system is designed to monitor the entry and exit of approximately 24 million annual nonimmigrant visitors to the United States. Specifically, US-VISIT requires that once an individual arrives at a U.S. port of entry, his or her travel documents be scanned and a photo and two digital fingerprints be taken by the immigration officer. This information will then be compared to the photo and fingerprints previously collected at the U.S. consulate abroad to ensure that the person granted the visa at the consular office is the same person seeking admission at the port of entry. Exemptions from US-VISIT requirements exist for children under 14, persons over 79, and visitors with diplomatic or NATO visas, among select others.

### ***Visa Reissuance***

On July 16, 2004, the domestic visa revalidation service was discontinued. Therefore, any applications for visa reissuance must be made at a U.S. consular office in the applicant's home country or in a third country. Third country applicants may apply at U.S. consular posts in Mexico or Canada if they have scheduled a visa interview appointment in advance. It should be noted that an applicant who plans on entering a third country to apply for reissuance must ensure that he or she complies with any visa and travel requirements of that country. Furthermore, the decision of a U.S. consulate in a third country to accept jurisdiction is discretionary. Should the U.S. consulate in Mexico or Canada deny the application, the individual will not be allowed to re-enter the United States using a previously issued visa under the same category. The applicant would have to make arrangements to return to his/her home country to apply once again for a nonimmigrant visa.

## **NONIMMIGRANT VISA CLASSIFICATIONS WHICH ENCOURAGE BUSINESS**

### **Visitor for Business (B-1)**

Most people who travel to the United States enter for short periods of time, either for business or pleasure. United States law permits such persons to enter the United States in B visitor status: B-1 for business visitors, B-2 for tourists. We will focus on the B-1 category, which, facilitates and promotes international travel to the United States for business purposes.

#### ***Eligibility Requirements***

A B-1 business visitor is a foreign national who has a residence in a foreign country which he/she has no intention of abandoning, and who is visiting the United States temporarily for business. A foreign national is eligible for a B-1 visa if he or she seeks to enter the United States solely to engage in legitimate business activities that do not involve gainful employment. Thus, the B-1 business visitor may negotiate contracts, consult with business associates, litigate, undertake independent research, and participate in scientific, educational, professional or business conventions, conferences, and seminars. The B-1 applicant must also maintain a foreign residence and enter the United States for a specifically limited time period.

#### ***Procedure and Duration of Stay***

Absent an exemption, a B-1 visa must be issued at a U.S. consulate. The consular officer must be satisfied that, at the end of the applicant's authorized stay, the applicant intends to leave the United States and has permission to enter a foreign country, and that he/she has enough funds available to carry out the purpose of the visit to and departure from the United States. A consular officer will consider an applicant's prior immigration history in deciding whether to issue a business visitor visa. If a consular officer denies the visa, he or she must inform the applicant whether the refusal can be overcome by additional evidence. Even if the consular officer grants the visa, the immigration officer at the port of entry has discretion to deny admission.

Generally, B-1 visitors may remain in the United States for the period of the stated business activity and are granted a maximum six-month period of stay upon entry. B-1 visitors may be granted extensions of no more than six months, with limited exceptions. There is no limit on the number of B-1 extensions available to qualifying individuals.

#### ***Visa Waiver Program (VWP)***

The Visa Waiver Program (VWP) permits a waiver of the nonimmigrant B-1 (business visitor) and B-2 (visitor for pleasure) visa requirements for nationals of certain countries, allowing them to enter the United States without a visa as nonimmigrant visitors for a period of 90 days or less.

Currently 27 countries participate in the VWP. They are Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, New Zealand, the Netherlands, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

Machine readable passports are required for all VWP travelers. Alternatively, a visa in the passport is acceptable. This area is in flux, and counsel should be consulted before travel.

### **B-1 Entry Under NAFTA**

The North American Free Trade Agreement (NAFTA) expanded the range of allowable business activities for B-1 visitors as applied to Canadians and Mexicans who enter under this program. Specifically, NAFTA added the following business areas: (1) research and design, (2) growth, manufacture and production, (3) market research and analysis, (4) sales, (5) distribution, (6) after-sales service, and (7) general services.

In addition to the eligibility requirements of other B-1 visitors, Canadians and Mexicans entering to perform one of the business activities added by NAFTA must present a description of the purpose for which they seek admission and evidence of employment in one of the NAFTA categories. Otherwise, Canadians need only provide proof of citizenship at the border, while Mexicans are required to present a passport along with a visa or border-crossing card. Entry can be granted for one year.

### **Spouses and Children**

Spouses and unmarried minor children of B-1 visitors are not eligible for derivative status and therefore may not accompany or follow to join the beneficiary of the visa on this basis.

## **NAFTA – The TN “Professional” Category**

NAFTA is intended to promote and facilitate trade among the United States, Canada and Mexico. In addition to eliminating tariffs and other nontrade barriers, it provides for facilitated border crossing of business people from each country. The United States and Canada have enjoyed the benefits of the U.S.-Canada Free Trade Agreement (CFTA) since January 1, 1989. Its immigration provisions facilitated the entry of U.S. and Canadian citizen professionals under the “TC” (Trade Canada) classification. In early 1994, the North American Free Trade Agreement (NAFTA) was adopted, and its coverage incorporated Canadians and Mexicans for immigration purposes. The category was renamed “TN” for Trade NAFTA.

### **Eligibility Requirements**

Canadians and Mexicans who qualify as professionals under a list of professions specified by NAFTA are eligible for TN status. (See Appendix 1 for a list of the specified professions). The list includes the minimum educational requirements for each profession. Applicants must be matched up with one of the listed occupations in order to be granted entry into the United States under the TN category.

### **Procedure and Duration of Stay**

For the first ten years of NAFTA, the procedural treatment of Canadian citizens was substantially more favorable than that of Mexican citizens under the treaty. However, many provisions which legislated the different treatment sunsetted on January 1, 2004. Nevertheless, significant differences remain.

#### *NAFTA for Canadian Professionals*

A Canadian professional may apply for TN classification at any U.S. Class A port of entry, pre-flight inspection clearance, or U.S. airport handling international traffic. No prior nonimmigrant petition at USCIS or visa application is necessary. While Canadians are required to present proof of citizenship at the border, they are not required to present a valid passport.

To obtain an extension of stay, a Canadian in TN status may file a request for extension of stay with the USCIS. The individual also has the option of leaving the United States and re-entering at a U.S. border post, where an extension can be adjudicated.

Canadians in TN status may be admitted for a period not greater than one year. However, in theory, an unlimited number of one-year extensions is available for Canadian citizens.

Either a U.S. or foreign employer with a U.S. entity may sponsor a Canadian for TN classification.

#### *NAFTA for Mexican Professionals*

A Mexican professional may be admitted at any U.S. Class A port of entry, pre-flight inspection clearance, or U.S. airport handling international traffic upon presentation of a valid passport and a valid TN nonimmigrant visa. Thus, while no nonimmigrant petition is necessary, a Mexican seeking TN status must apply for a visa at a U.S. consulate before seeking admission.

To obtain an extension of stay, a Mexican in TN status must file a request for extension of stay with the USCIS. Should the individual opt to leave the United States, he/she would need to reapply for a visa at a U.S. consulate before seeking readmission.

Mexicans in TN status may be admitted for a period not greater than one year. However, as for Canadians, an unlimited number of one-year extensions is available, in theory, for Mexican citizens.

Either a U.S. or foreign employer with a U.S. entity may sponsor a Mexican for TN classification.

### **Effects of Work Stoppages on Foreign National's Entry**

Under NAFTA, a person seeking admission in TN status may be denied entry if his or her admission may adversely affect the settlement of a labor dispute or the employment of anybody involved in such a dispute. The employer must give specific notice of the existence

of a strike or other work stoppage to the Department of Labor (DOL), which in turn must certify to or otherwise notify the USCIS. A person seeking admission in TN status may not be denied entry if the DOL does not certify or otherwise notify the USCIS of the dispute.

### ***Spouses and Children***

Spouses and unmarried minor children of TN nonimmigrants may accompany or follow to join principal beneficiaries of TN status. Mexican spouses and children TN nonimmigrants are required to present a valid nonimmigrant TD (Trade Dependent) visa at the port of entry. Canadian spouses and children of TN nonimmigrants are not subject to the visa requirement. Like the TN category, TD status is valid in periods not greater than one year. Spouses and children in TD status are not authorized to accept employment.

### ***Filing for Permanent Residence***

The doctrine of “dual intent” does not apply to individuals in TN status. Thus, an individual in TN status may not simultaneously intend to file for lawful permanent residence. Moreover, it is presumed by consular and immigration officers that an individual seeking admission to the United States in the TN category is an intending immigrant. Therefore, the burden is on the individual to overcome that presumption by proving nonimmigrant intent to the consular officer, in the case of Mexicans applying for a TN visa at a U.S. consulate, or to the immigration officer, in the case of either Mexicans or Canadians seeking admission at a U.S. port of entry.

### ***The Intracompany Transferee (L-1)***

The Intracompany Transferee (L-1) classification is intended to expand U.S. exports, enhance competitiveness in foreign markets, and aid multinational companies in the transfer of executive, managerial, and specialized personnel to the United States for temporary employment.

### ***Eligibility Requirements***

Whether L-1 classification is available in a particular case depends upon (1) the relationship between the transferring foreign entity and the one to which the alien will be transferred, (2) the period of time for which the transferee has worked for the foreign entity, and (3) the nature of the duties of the transferee, both in the United States and abroad.

A foreign national is eligible for L-1 classification if he or she meets the following requirements:

1. Within the preceding 3 years he or she has been employed abroad for one continuous year by a “qualifying organization”;
2. He/she is coming temporarily to the United States to be employed by a parent, branch, affiliate, or subsidiary of that employer; and

3. The employment will be in a managerial or executive capacity, or in a position requiring specialized knowledge.

Periods spent in the United States in lawful status for the employer do not count toward nor interrupt the one year of continuous employment abroad.

### ***Procedure and Duration of Stay***

The initial petition is filed with USCIS in the United States. Once an approval is received, the L-1 beneficiary, if abroad, must apply for a visa at a U.S. consulate. Special procedures for Canadian citizens allow the L-1 to be processed directly at a port of entry, without prior USCIS approval.

A manager or executive (L-1A) can remain in the United States for seven years. “Specialized knowledge” personnel (L-1B) can remain for only five years. A specialized knowledge employee can change from an L-1B to an L-1A after five years (and thus gain two more years of L status), but the employee must have served in a managerial or executive capacity for at least six months before petitioning the USCIS for the change.

The initial period of admission for an L-1 beneficiary will be three years, unless the person is coming to staff a “new office.” A new office is one that has been doing business in the United States for less than one year. The initial period of admission in that case will be one year. Thereafter, the beneficiary is eligible for two-year extensions up to the maximum number of years applicable to his or her classification.

Upon reaching the maximum period of years, the alien must return abroad for at least one year before being eligible for another L-1 visa. Exceptions can be made in limited circumstances.

Currently, there is no cap on L issuance. However, the government has indicated that it will impose greater restrictions on the L classification, including a potential cap. It appears that any future restrictions, if any, will be primarily aimed at the specialized knowledge (L-1B) classification.

### ***Important Provisions***

#### ***Employment Abroad***

An applicant for L-1 classification must have been employed abroad in an executive, managerial, or specialized knowledge capacity. However, the applicant need not have performed the same work abroad as he or she will perform in the United States.

#### ***Qualifying Organization***

A “qualifying organization” may be a U.S. or foreign firm that must continue to do business in the United States and at least one other country for the duration of the alien’s L-1 status. The legal entities that may qualify include:

- Parent - a firm, corporation, or other legal entity that has subsidiaries.

- Branch - an operating division or office of the same organization housed in a different location.
- Subsidiary - a firm, corporation, or other legal entity of which a parent:
  - i. owns, directly or indirectly, more than half of the entity and controls the entity;
  - ii. owns, directly or indirectly, half of the entity and controls the entity;
  - iii. owns, directly or indirectly, 50 percent of a 50/50 joint venture and has equal control and veto power over the entity; or
  - iv. owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- Affiliate
  - i. One of two subsidiaries both of which are owned and controlled by the same parent or individual;
  - ii. One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity; or
  - iii. If the petitioner is an accounting partnership marketing services internationally, it may qualify, subject to special provisions.

#### *Executive, Managerial, and Specialized Knowledge Capacity*

As discussed above, a foreign national is admitted under the L category if he/she comes to the United States to work in either an executive, a managerial or a specialized knowledge capacity. The terms “executive capacity,” “managerial capacity,” “specialized knowledge” and “specialized knowledge professional” are specifically defined by law. An employee admitted in “executive capacity” or “managerial capacity” is an “L-1A”, while an employee admitted on the basis of “specialized knowledge” is an “L-1B.”

- Executive capacity

Executive capacity involves a position in which the employee primarily: (i) directs the management of the organization or a major component or function thereof; (ii) establishes the goals and policies of the organization, component, or function; (iii) exercises wide discretion in decision-making; and (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization. This category benefits small companies and new offices.

- Managerial capacity

To qualify as managerial capacity, the position must be one in which the employee primarily manages the organization, or a department, subdivision, function or component thereof; supervises and controls the work of other supervisory, professional or managerial employees; or manages an essential function within the organization or a department or subdivision of the organization. If at least one employee is directly supervised, the individual must have the authority to hire and fire or recommend those and other personnel

actions (such as granting promotions or authorizing leaves). If there is no direct supervision, the individual must function at a senior level within the hierarchy of the organization or with respect to the function managed and exercise discretion over day-to-day operations of the activity or function.

- Specialized knowledge

The meaning of specialized knowledge focuses on a product or process within a particular company. Knowledge of a product must be uncommon; knowledge of a process must be advanced. An applicant’s knowledge is not specialized if it is commonly known in the applicable industry. The characteristics of an employee with specialized knowledge include the following: (i) possesses knowledge that is valuable to the employer’s competitiveness in the marketplace; (ii) is uniquely qualified to contribute to the U.S. employer’s knowledge of foreign operating conditions; (iii) has been utilized as a key employee abroad and has been given significant assignments which have enhanced the employer’s productivity, competitiveness, image, or financial position; and (iv) possesses knowledge which can be gained only through extensive prior experience with that employer.

- Specialized knowledge professional

Finally, a specialized knowledge professional is a person with specialized knowledge who typically has a professional degree and is a member of the professions, which include, but are not limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries. This classification is commonly used with blanket L petitions because a specialized knowledge position must be “professional” to qualify for approval under such petitions. Blanket L petitions are further discussed below.

#### *Premium Processing*

The USCIS is required by statute to process L petitions within 30 days of filing. However, USCIS often fails to meet this deadline. Therefore, in 2001, the USCIS (then the INS) implemented the Premium Processing Program, in which the applicant pays \$1,000 and, in return, the agency guarantees it will act on the application within 15 days by issuing either an approval notice, notice of intent to deny, request for evidence, or notice of investigation for fraud or misrepresentation.

If the USCIS fails to adjudicate an L petition within the 15-day period, it will return the premium fee. However, it will still expedite the processing of the petition.

#### *Blanket Petitions*

A blanket petition enables the beneficiary to apply directly to a U.S. consulate abroad without filing an individual petition with the USCIS. This not only speeds up the application process, but also eliminates the costs associated with filing USCIS petitions. To qualify for a blanket petition, the petitioner (employer) must meet the following criteria:

- The petitioner and each of the qualifying organizations must be engaged in commercial trade or services;
- The petitioner must have an office in the United States that has been doing business for one year or more;
- The petitioner must have three or more domestic and foreign branches, subsidiaries, or affiliates; and
- The petitioner and the other qualifying organizations must have obtained approval of at least 10 individual L-1 petitions in the last 12 months; or the petitioner must have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or the petitioner must have a U.S. workforce of at least 1,000 employees.

A blanket petition has an initial approval period of three years, but thereafter it can be extended indefinitely.

### ***Spouses and Children***

Spouses and minor unmarried children may be admitted under the L-2 classification, as accompanying or following to join the principal beneficiaries of L-1 visas. An L-2 spouse is authorized to work in the United States. To receive work authorization, the spouse must first file an Application for Employment Authorization (Form I-765). Once approved, the L-2 spouse may commence work on the start date as specified on the employment authorization document (EAD). Employment authorization is typically granted for a period not to exceed two years.

### ***Filing for Permanent Residence***

USCIS recognizes the concept of “dual intent,” that the alien may legitimately come to the United States as a nonimmigrant under the L classification and intend to depart voluntarily at the end of his or her authorized stay, while, at the same time, lawfully seek to become a permanent resident. With respect to most other nonimmigrant categories, seeking permanent residence disqualifies the applicant from obtaining or maintaining nonimmigrant status. By contrast, an L nonimmigrant may apply for permanent residence without prejudice to his or her nonimmigrant status.

### ***Specialty Workers (H-1B)***

The H-1B category is intended to allow employers to hire well-educated foreign professionals to fulfill the need for professional workers and to foster economic development and global competition.

Specifically, an H-1B employee is a foreign professional who comes to the United States to work temporarily in a “specialty occupation.” To qualify as a specialty occupation, one of the following criteria must be satisfied: (1) the particular position has a minimum entry requirement of a baccalaureate degree or the equivalent thereof; (2) the position has a

degree requirement that is common in the industry for parallel positions in similar organizations or, alternatively, the position is so complex and unique that it requires a degree; (3) the employer normally requires a degree or its equivalent for the position; or (4) the nature of the job is so specialized and complex that the knowledge required to perform the job duties is typically associated with the attainment of, at a minimum, a baccalaureate degree or its equivalent.

An individual is deemed to be a professional in a specialty occupation if he or she has (1) a bachelor's or higher degree in the specific specialty, (2) a state license to practice, or (3) experience in the specialty equivalent to a bachelor's degree and peer recognition of professional expertise acquired through progressively responsible positions in the specialty.

The H-1B category covers accountants, financial analysts, computer analysts, engineers, university professors, certain health professionals, and fashion models “of distinguished merit or ability,” among others.

### ***Procedure and Duration of Stay***

As a prerequisite to the filing of an H-1B petition with the USCIS, employers must file a Labor Condition Application (LCA) with the Department of Labor. This application is designed to protect American workers by ensuring that (1) employers pay H-1B workers the greater of the “actual wage” or “prevailing wage” as those terms are defined by the regulations; (2) the working conditions of the H-1B employee will not adversely affect the working conditions of similarly employed U.S. workers; (3) the H-1B employee is not being hired to replace U.S. workers during a strike, lockout, or work stoppage; and (4) notice has been given to the employer's U.S. workers in the same occupational classification.

Once the LCA is approved, the employer must file a petition for H-1B classification with the USCIS. Then, the beneficiary (unless exempt) must apply for a visa at a U.S. consulate abroad. If the beneficiary is already in the United States, he or she may file a change of status or extension application.

H-1B classification can be held for a total of six consecutive years. There is generally an initial grant of three years, with eligibility for further extensions.

The six-year maximum will be extended in one-year increments for any H-1B worker if, on the day the H-1B status would have otherwise expired, more than 365 days have elapsed since the filing of an immigrant petition or application for alien employment certification on the employee's behalf.

### ***Important Provisions***

#### ***Numerical Cap***

Currently, there is a numerical cap of 85,000 H-1B visas issued per year, 20,000 of which are reserved for individuals who obtain master's degrees from U.S. institutions of higher learning. However, petitions submitted by current H-1B workers to extend status, change

the terms of employment, change employers, and work concurrently in a second H-1B position do not count toward the cap. Moreover, petitions for H-1B employment are not subject to the annual cap if the beneficiary will be employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit or governmental research organization.

#### *Singapore and Chile Free Trade Acts*

The United States entered into free trade agreements with Singapore and Chile which took effect on January 1, 2004. Both agreements created a new H-1B category. As a result Chilean or Singaporean nationals can apply for H-1B visas directly at the consulate without having to file a petition with USCIS. The agreements allow no more than 1,400 professionals from Chile and 5,400 professionals from Singapore, per fiscal year.

#### *LCA Record-Keeping Requirements*

The regulations require employers with H-1B employees to maintain certain records for public access, and make other records available “on request” by the DOL. The employer must keep the required documents at the H-1B alien’s place of employment or the employer’s principal place of business, and the documents must be available within one day of filing the LCA with the DOL.

The required documents are those that prove the employer is complying with the H-1B requirements. They include, but are not limited to, the signed LCA, posting notices, payroll records, the signed H-1B petition, and information on employee benefits.

Failure to comply with the LCA requirements or to provide the necessary records and documents for public or DOL examination can subject an employer to fines, debarment from future use of the H-1B program and, in certain circumstances, criminal penalties.

#### *H-1B Dependent Employers and Willful Violators*

Employers deemed “H-1B dependent” and “willful violators” are required to comply with additional attestations to the four requirements (required wage, working conditions, no strike or lockout, and notice) imposed on all employers.

H-1B dependency is determined by the percentage of H-1B workers employed at a company, and willful violators are those employers that have been found to have violated the LCA requirements willfully or who have misrepresented a material fact in the five years before filing the LCA.

Under these provisions, the DOL also prohibits employers that have been deemed H-1B dependent or willful violators from laying off a U.S. worker beginning ninety days before and ending ninety days after the filing of an H-1B petition. Further, DOL requires such employers to ensure that any H-1B workers placed at a secondary location are not displacing U.S. workers at that location. Finally, H-1B dependent and willful violator

employers must maintain documentation that they have recruited U.S. workers in good faith, which includes having offered them compensation at least equivalent to that paid to the H-1B worker.

#### *Duty to Notify the USCIS of a Change or Termination of Employment*

If an H-1B beneficiary’s eligibility for the H-1B classification is affected by a change in the terms and conditions of employment, the employer is required to file an amended I-129 petition to continue to employ the beneficiary. If the beneficiary’s employment is terminated, the petitioning employer must send a letter to the USCIS notifying the agency of this change.

#### *Cost of Return Transportation*

If an employer dismisses an alien before the H-1B period of authorized stay has ended, the employer is liable for the reasonable cost of the alien’s transportation to return to his or her home country.

#### **Spouses and Children**

Spouses and minor unmarried children of H-1B nonimmigrants may accompany or follow to join the H-1B beneficiary as H-4 beneficiaries. However, spouses and children of H-1B beneficiaries, if not otherwise eligible, may not work in the United States.

#### **Filing for Permanent Residence**

As with the L category discussed above, USCIS recognizes the concept of “dual intent,” that the alien may legitimately come to the United States as a nonimmigrant under the H-1B classification and intend to depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident. With respect to most other nonimmigrant categories, seeking permanent residence may disqualify the applicant from obtaining or maintaining nonimmigrant status. By contrast, an H-1B nonimmigrant may apply for permanent residence without prejudice to his or her nonimmigrant status.

#### **Treaty Trader/Treaty Investors (E-1/E-2)**

The purpose of the E category is to facilitate economic and commercial interaction between the United States and countries with which it has economic treaties.

#### **Eligibility Requirements**

##### *Requirements Common to Both Classifications*

A treaty national may live and work in the United States under the E classification if entering solely, in the case of a “treaty trader” (E-1), entering solely to engage in substantial trade principally between the United States and the treaty country or, in the case of a “treaty investor” (E-2), to develop and direct a qualifying investment enterprise. An E-1 or E-2

visa is also available to employees of a qualifying treaty company provided the employees serve in an executive or supervisory capacity or have essential skills.<sup>3</sup>

- Qualifying Treaty

There must be a qualifying treaty of Friendship, Commerce, and Navigation (FCN) between the United States and another state. Certain Bilateral Investment Treaties (BITS) that have been held to be equivalent to the FCN treaty also may serve as the basis for E status. (See Appendix 2 for a list of all treaty countries and the permissible E classifications under their respective treaties.)

- Nationality

The treaty trader or investor must, whether an individual or business, possess the nationality of the treaty country. If a business, at least 50 percent of the business must be owned by nationals of the treaty country. In corporate structures the nationality of the stockholders is determinative. However, the government will not consider shares owned by permanent resident aliens.

It is important to note that the country of incorporation is irrelevant to the nationality requirement for E visa purposes. In addition, several treaties allow for employment of workers regardless of their nationality depending on the duties involved.

- Employees Who Are Executive or Supervisory, or Have “Essential Skills”

Executive or supervisory employees of treaty traders or treaty investors qualify for E-1 or E-2 classification. To determine whether an individual is executive or supervisory, the government will consider, in part, a person’s work experience, job title, position within the company structure, discretionary power, and whether he or she supervises other professionals or high-level personnel.

In addition, employees with “essential skills” qualify for E status. This latter category of employees must possess “special qualifications that make [their] services essential to the efficient operation of the enterprise.” To determine whether a skill is a “special qualification,” the USCIS service officer will look into all the facts of a given case. Some of the factors the officer will consider are the degree of expertise, the amount of training required to obtain the skill, the value of the skill in relation to company products or

<sup>3</sup> E-3 Classification for Australian Nationals. President George W. Bush signed the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005 (P.L. 109-13) into law on May 11, 2005. Section 501 of the Act provides 10,500 reciprocal visas for nationals of Australia, which will be granted under the title of E-3. This category is available to Australian nationals who intend to travel to the United States to perform services in a “specialty occupation,” the same definition used for the H-1B category. As with the H-1B category, the Department of Labor must certify that the intending employer has filed an attestation in support of the petition. It should be noted that, while this classification is under the E category, its requirements resemble the H-1B far more than the E-1 or E-2 classifications. The addition of the new E-3 classification provides a welcome option for Australian nationals in light of recent shortages in the H-1B classification. At the time of this publication, detailed guidance had not yet been provided on this new classification.

processes, the salary that the skill commands, and whether the skill is readily available in the United States. Knowledge of a foreign language or culture, by itself, does not amount to an essential skill.

Whether the employee is executive or supervisory, or one with essential skills, he or she must have the same nationality as the principal alien employer and work for the treaty company.

A person who seeks to employ an individual under the E category must maintain E status if living in the United States or, if living abroad, must be classifiable as a treaty investor or treaty trader. An enterprise or organization that seeks to sponsor an E employee must be at least 50 percent owned by people in E status if living in the United States, or by people classifiable as treaty traders or treaty investors if living abroad.

#### *Treaty Trader (E-1) Requirements*

The treaty trader must be in the United States solely to carry on substantial trade which is international in scope and principally between the United States and the treaty country.

- Trade

Trade must constitute an exchange, be international in scope, and involve qualifying activities. In addition to the actual exchange of goods or monies, trade also includes the exchange of services, such as international banking, insurance, transportation, tourism, communications, and some news-gathering activities. To qualify for E classification, the applicant must already be trading, not just seeking to enter the United States to establish a trading relationship.

- Percentage of Trade Between the United States and the Treaty Country

The trade must be principally between the United States and the country of the alien’s nationality, which means that “over fifty (50%) percent of the total volume of trade conducted by the treaty trader in the United States must be between the United States and the treaty country. . . .”

- Trade Must Be “Substantial”

“Substantial” trade may be shown by the volume of trade conducted as well as the monetary value of the transactions. However, greater emphasis is placed on volume of trade and conducting numerous transactions over time. Thus, the E applicant will likely satisfy the substantial trade requirement if he or she demonstrates a continuous flow of international trade items between the United States and the treaty country. It is unlikely that a single transaction would suffice.

Both the DOS and USCIS will take into account conditions in the applicant’s home country that impede his or her ability to carry on substantial trade.

### *Treaty Investor (E-2) Requirements*

A treaty investor must have invested or be actively investing a substantial amount of capital in a bona fide enterprise in the United States, and must be seeking solely to develop and direct the enterprise.

- Applicant Must Have Invested or Actively Be in the Process of Investing

To meet this requirement the investor must demonstrate (1) possession and control of the funds invested, (2) that the funds are “at risk” and (3) that the funds or assets have been irrevocably committed to the investment.

- Enterprise Must Be Bona Fide

To be bona fide, the enterprise must be a real, active, and operating commercial enterprise. The investment may not be a relatively small amount of capital in a marginal enterprise solely for the purpose of making a living. A speculative investment, such as underdeveloped land or stocks held for future appreciation will not be deemed bona fide.

- The Investment Must Be “Substantial”

No set dollar figure constitutes a minimum amount of investment. The consular officer generally uses the “proportionality test” to compare the amount of qualifying funds invested and the cost of an established business or, if a newly created business, the cost of establishing such a business.

The lower the cost of the business, the higher a percentage of investment is required; in contrast, a highly expensive business would require a lower percentage of qualifying investment.

- The Investment Must Be More Than “Marginal”

An investment will be considered “marginal” if, within five years after the start of normal business activity, the investment does not yield income beyond what is required for minimal living expenses for the applicant and his/her family. However, an investment need not produce such income if it makes a significant economic contribution, such as creating substantial employment.

While the DOS regulations clearly grant the treaty investor five years to satisfy the requisite income level or to demonstrate a significant economic contribution, the USCIS regulations only explicitly apply the five years to the ability to realize income. This could present potential differences between a USCIS officer’s decision to approve an E-2 petition domestically and a consular officer’s decision to grant or deny an E-2 visa abroad.

In addition to showing the future capacity to generate income or to make a significant economic contribution, evidence of other assets and sources of income will be considered in determining the marginality of an investment.

- The Applicant Must Be in a Position to “Direct and Develop” the Investment

The investor must control the enterprise through ownership of at least 50 percent of the business by possessing operational control through a managerial position or other corporate device, or by being in a position to control the enterprise by other means.

### ***Procedure and Duration of Stay***

Consular officers have the power to grant E visas at U.S. consulates without pre-approval from USCIS. Although E classification can be given based upon a change of status granted in the United States by USCIS, it is not binding on a consular officer.

The period of validity of the E passport visa varies between countries based upon a reciprocity schedule. However, the initial period of admission is two years and may be renewed indefinitely for an executive, supervisor, or principal investor, as long as the E beneficiary’s presence is still necessary to supervise or direct and develop the enterprise. Employees with essential skills will be subject to greater scrutiny with respect to initial entry and renewal.

### ***Important Provisions***

#### *Intent to Depart upon Termination of Status*

An E visa beneficiary does not need to prove that it is his or her intent to come to the United States for a specific temporary period of time, or that he or she has not abandoned a residence abroad. His or her stated intention to return when the E status ends is normally sufficient, absent information to the contrary.

#### *Substantive and Non-substantive Changes in Employment*

If there has been a substantive change in the employment, then the beneficiary is required to demonstrate continued eligibility by submitting a new petition to the USCIS. If the beneficiary is abroad and seeks readmission, he or she may be required to obtain a new visa at a U.S. consulate. A new visa is not required if, at the port of entry, he or she presents a USCIS approval letter reflecting the changes or if he or she meets a host of other requirements, including applying for readmission after an absence of thirty days or less solely in contiguous territory. Substantive changes include a fundamental change in the employing entity’s basic characteristics, such as a merger, acquisition, or sale of a division where the beneficiary is employed.

If there has been a non-substantive change in the terms of employment, then the beneficiary may either submit a letter to the USCIS explaining the nature of the change, request a new E approval notice reflecting the change, or apply at a consular office for a new visa reflecting the change. If the beneficiary fails to take one of these steps, he or she may still demonstrate his or her admissibility to the satisfaction of the immigration officer at a port of entry.

### ***Spouses and Children***

Spouses and minor unmarried children can accompany or follow to join the principal beneficiary of E status. The nationality of the spouse or child is not relevant to whether they qualify for this benefit. Furthermore, the spouse of the principal E beneficiary is authorized to work in the United States. To receive work authorization, the spouse must first file an Application for Employment Authorization (Form I-765). Once approved, the spouse may commence work on the start date as specified on the employment authorization document (EAD). Employment authorization is typically granted for a period not to exceed two years.

### ***Filing for Permanent Residence***

The doctrine of dual intent is not statutorily recognized for persons in E status. However, an individual may not be denied initial admission, change of status, or extension of stay in E classification solely because he or she has received an approved request for labor certification or filed or received approval of an immigrant visa petition. Thus, absent any additional negative factors, an E nonimmigrant may file for permanent residence without prejudice to his or her E status.

### **CONCLUSION**

Since September 11, 2001, the government has taken measures to restrict travel and limit the availability of nonimmigrant options in an effort to improve national security. Recent developments suggest this trend will likely continue. Nevertheless, current immigration law provides a wide range of options in light of the strong domestic demand for foreign entrepreneurs, executives, and professionals. Indeed, the pertinent legal provisions facilitate the free movement of these critical foreign workers across international boundaries. This in turn fosters globalization through the sharing of important technologies, cultures and ideas. As such, companies located in the United States continue to hire foreign workers under the various nonimmigrant categories to secure a competitive edge in the global economy.

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## APPENDIX 1

### NAFTA Professional Job Series List

#### Profession

#### Minimum Education Requirements and Alternative Credentials

Accountant

Baccalaureate or Licenciatura degree, or C.P.A., C.A., C.G.A., C.M.A.

Architect

Baccalaureate or Licenciatura degree, or state/provincial license

Computer System Analyst

Baccalaureate or Licenciatura degree, or post-secondary diploma or post-secondary certificate and three years' experience

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

**Profession**

Industrial Designer

Interior Designer

Land Surveyor

Landscape Architect

Lawyer (including Notary  
in the province of Quebec)

Librarian

Management Consultant

Mathematician (including Statistician)

Range Manager/Range Conservationist

Research Assistant (working in a  
post-secondary educational institution)**Minimum Education Requirements  
and Alternative Credentials**Baccalaureate or Licenciatura degree, or  
post-secondary diploma or post-secondary  
certificate and three years' experienceBaccalaureate or Licenciatura degree, or  
post-secondary diploma or post-secondary  
certificate and three years' experienceBaccalaureate or Licenciatura degree, or  
state/provincial/federal license

Baccalaureate or Licenciatura degree

L.L.B., J.D., L.L.L., B.C.L., or Licenciatura  
degree (five years), or membership in a  
state/provincial barM.L.S. or B.L.S. (for which another  
Baccalaureate or Licenciatura degree was  
prerequisite)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

Baccalaureate or Licenciatura degree

Baccalaureate or Licenciatura degree

Baccalaureate or Licenciatura degree

**Profession**

Scientific Technician/Technologist

Social Worker

Sylviculturist (including forestry)

Technical Publications Writer

Urban Planner (including Geographer)

Vocational Counselor

Medical/Allied Professionals

Dentist

Dietitian

Medical Laboratory Technologist  
(Canada)/Medical Technologist  
(Mexico and the United States)

Nutritionist

Occupational Therapist

**Minimum Education Requirements  
and Alternative Credentials**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

Baccalaureate or Licenciatura degree

Baccalaureate or Licenciatura degree

Baccalaureate or Licenciatura degree, or  
post-secondary diploma or post-secondary  
certificate and three years' experience

Baccalaureate or Licenciatura degree

Baccalaureate or Licenciatura degree

D.D.S., D.M.D., Doctor en Odontologia or  
Doctor en Cirugia Dental or state/provincial  
licenseBaccalaureate or Licenciatura degree, or  
state/provincial licenseBaccalaureate or Licenciatura degree, or  
or post-secondary diploma or post-secondary  
certificate and three years' experience

Baccalaureate or Licenciatura degree

Baccalaureate or Licenciatura degree,  
or state/provincial license

<b>Profession</b>	<b>Minimum Education Requirements and Alternative Credentials</b>
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

<b>Profession</b>	<b>Minimum Education Requirements and Alternative Credentials</b>
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

## APPENDIX 2

### Treaties Containing Trader and Realty Investor Provisions in Effect Between the United States and Other Countries

Updated 03-31-2004

Country	Classification	Entered into Force
Albania	E-2	01/04/1998
Argentina	E-1	12/20/1854
Argentina	E-2	12/20/1854
Armenia	E-2	03/29/1996
Australia	E-1	12/16/1991
Australia	E-2	12/27/1991
Austria	E-1	05/27/1931
Austria	E-2	05/27/1931
Azerbaijan	E-2	08/02/2001
Bahrain	E-2	05/30/2001
Bangladesh	E-2	07/25/1989
Belgium	E-1	10/03/1963
Belgium	E-2	10/03/1963
Bolivia	E-1	11/09/1862
Bolivia	E-2	06/06/2001
Bosnia & Herzegovina	E-1	11/15/1982
Bosnia & Herzegovina	E-2	11/15/1982
Brunei	E-1	07/11/1853
Bulgaria	E-2	06/02/1954
Cameroon	E-2	04/06/1989
Canada	E-1	01/01/1993
Canada	E-2	01/01/1993
China (Taiwan) <sup>1</sup>	E-1	11/30/1948
China (Taiwan) <sup>1</sup>	E-2	11/30/1948
Colombia	E-1	06/10/1948
Colombia	E-2	06/10/1948
Congo (Brazzaville)	E-2	08/13/1994
Congo (Kinshasa)	E-2	07/28/1989

Country	Classification	Entered into Force
Costa Rica	E-1	05/26/1852
Costa Rica	E-2	05/26/1852
Croatia <sup>11</sup>	E-1	11/15/1982
Croatia <sup>11</sup>	E-2	11/15/1982
Czech Republic <sup>2</sup>	E-2	01/01/1993
Denmark <sup>3</sup>	E-1	07/30/1961
Ecuador	E-2	05/11/1997
Egypt	E-2	06/27/1992
Estonia	E-1	05/22/1926
Estonia	E-2	02/16/1997
Ethiopia	E-1	10/08/1953
Ethiopia	E-2	10/08/1953
Finland	E-1	08/10/1934
Finland	E-2	12/01/1992
France <sup>4</sup>	E-1	12/21/1960
France <sup>4</sup>	E-2	12/21/1960
Georgia	E-2	08/17/1997
Germany	E-1	07/14/1956
Germany	E-2	07/14/1956
Greece	E-1	10/13/1954
Grenada	E-2	03/03/1989
Honduras	E-1	07/19/1928
Honduras	E-2	07/19/1928
Iran	E-1	06/16/1957
Iran	E-2	06/16/1957
Ireland	E-1	09/14/1950
Ireland	E-2	11/18/1992
Israel	E-1	04/03/1954
Italy	E-1	07/26/1949
Italy	E-2	07/26/1949
Jamaica	E-2	03/07/1997
Japan <sup>5</sup>	E-1	10/30/1953

<b>Country</b>	<b>Classification</b>	<b>Entered into Force</b>
Japan <sup>5</sup>	E-2	10/30/1953
Jordan	E-1	12/17/2001
Jordan	E-2	12/17/2001
Kazakhstan	E-2	01/12/1994
Korea (South)	E-1	11/07/1957
Korea (South)	E-2	11/07/1957
Kyrgyzstan	E-2	01/12/1994
Latvia	E-1	07/25/1928
Latvia	E-2	12/26/1996
Liberia	E-1	11/21/1939
Liberia	E-2	11/21/1939
Lithuania	E-2	11/22/2001
Luxembourg	E-1	03/28/1963
Luxembourg	E-2	03/28/1963
Macedonia	E-1	11/15/1982
Macedonia	E-2	11/15/1982
Mexico	E-1	01/01/1994
Mexico	E-2	01/01/1994
Moldova	E-2	11/25/1994
Mongolia	E-2	01/01/1997
Morocco	E-2	05/29/1991
Netherlands <sup>6</sup>	E-1	12/05/1957
Netherlands <sup>6</sup>	E-2	12/05/1957
Norway <sup>7</sup>	E-1	01/18/1928
Norway <sup>7</sup>	E-2	01/18/1928
Oman	E-1	06/11/1960
Oman	E-2	06/11/1960
Pakistan	E-1	02/12/1961
Pakistan	E-2	02/12/1961
Panama	E-2	05/30/1991
Paraguay	E-1	03/07/1860
Paraguay	E-2	03/07/1860

<b>Country</b>	<b>Classification</b>	<b>Entered into Force</b>
Philippines	E-1	09/06/1955
Philippines	E-2	09/06/1955
Poland	E-2	08/06/1994
Romania	E-2	01/15/1994
Senegal	E-2	10/25/1990
Slovak Rep <sup>2</sup>	E-2	01/01/1993
Slovenia <sup>11</sup>	E-1	11/15/1982
Slovenia <sup>11</sup>	E-2	11/15/1982
Spain <sup>8</sup>	E-1	04/14/1903
Spain <sup>8</sup>	E-2	04/14/1903
Sri Lanka	E-2	05/01/1993
Suriname <sup>9</sup>	E-1	02/10/1963
Suriname <sup>9</sup>	E-2	02/10/1963
Sweden	E-1	02/20/1992
Sweden	E-2	02/20/1992
Switzerland	E-1	11/08/1855
Switzerland	E-2	11/08/1855
Thailand	E-1	06/08/1968
Thailand	E-2	06/08/1968
Togo	E-1	02/05/1967
Togo	E-2	02/05/1967
Trinidad & Tobago	E-2	12/26/1996
Tunisia	E-2	02/07/1993
Turkey	E-1	02/15/1933
Turkey	E-2	05/18/1990
Ukraine	E-2	11/16/1996
United Kingdom <sup>10</sup>	E-1	07/03/1815
United Kingdom <sup>10</sup>	E-2	07/03/1815
Yugoslavia <sup>11</sup>	E-1	11/15/1882
Yugoslavia <sup>11</sup>	E-2	11/15/1882

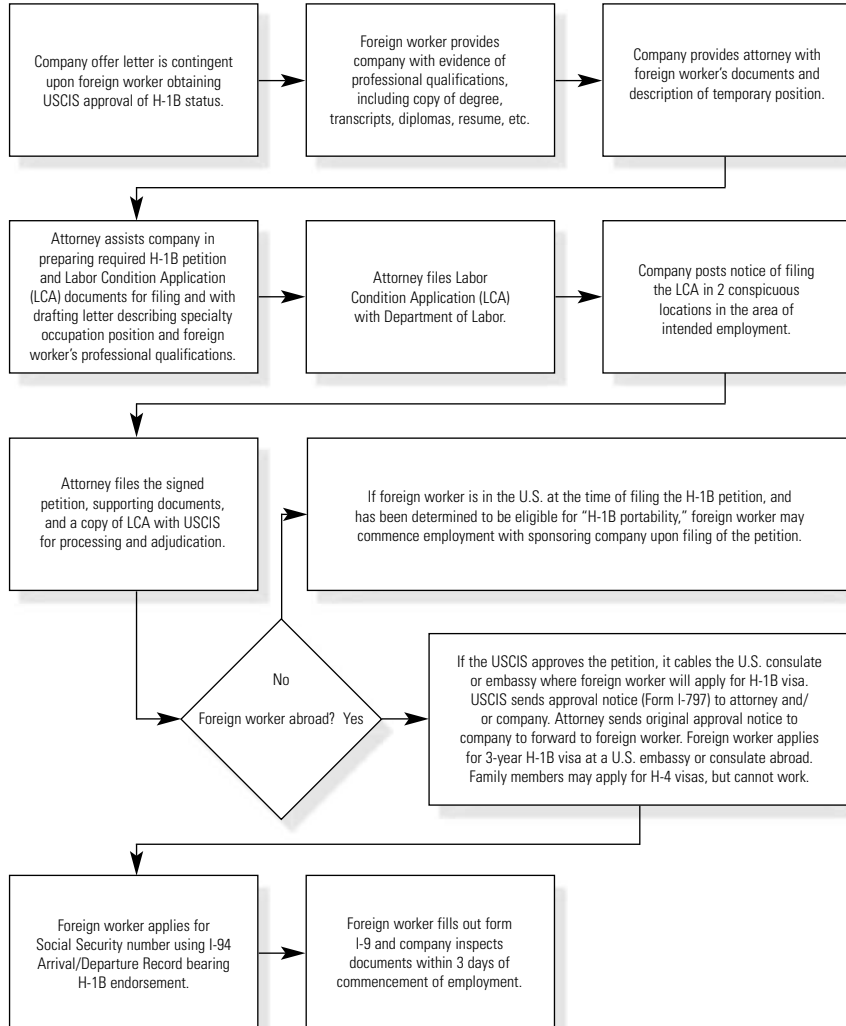
## Footnotes to Appendix 2

1. China (Taiwan). Pursuant to Section 6 of the Taiwan Relations Act, Public Law 96-8, 93 Stat, 14, and Executive Order 12143, 44 F.R. 37191, this agreement, which was concluded with the Taiwan authorities prior to January 1, 1979, is administered on a nongovernmental basis by the American Institute in Taiwan, a nonprofit District of Columbia corporation, and constitutes neither recognition of the Taiwan authorities nor the continuation of any official relationship with Taiwan.
2. Czech Republic and Slovak Republic. The treaty with the Czech and Slovak Federal Republics entered into force on December 19, 1992; it entered into force for the Czech Republic and Slovak Republic as separate states on January 1, 1993.
3. Denmark. The Convention of 1826 does not apply to the Faroe Islands of Greenland. The treaty, which entered into force on July 30, 1961, does not apply to Greenland.
4. France. The treaty, which entered into force on December 21, 1960, applies to the departments of Martinique, Guadeloupe, French Guiana and Reunion.
5. Japan. The treaty, which entered into force on October 30, 1953, was made applicable to the Bonin Islands on June 26, 1968, and to the Ryukyu Islands on May 15, 1972.
6. Netherlands. The treaty, which entered into force on December 5, 1957, is applicable to Aruba and Netherlands Antilles.
7. Norway. The treaty, which entered into force on September 13, 1932, does not apply to Svalbard (Spitzbergen and certain lesser islands).
8. Spain. The treaty, which entered into force on April 14, 1903, is applicable to all territories.
9. Suriname. The treaty with the Netherlands, which entered into force December 5, 1957, was made applicable to Suriname on February 10, 1963.
10. United Kingdom. The convention, which entered into force on July 3, 1815, applies only to British territory in Europe (the British Isles (except the Republic of Ireland), the Channel Islands and Gibraltar) and to "inhabitants" of such territory. This term, as used in the Convention, means "one who resides actually and permanently in a given place, and has his domicile there." Also, in order to qualify for treaty trader or treaty investor status under this treaty, the alien must be a national of the United Kingdom. Individuals having the nationality of members of the Commonwealth other than the United Kingdom do not qualify for treaty trader or treaty investor status under this treaty.
11. Yugoslavia. The United States' view is that the Socialist Federal Republic of Yugoslavia (SFRY) has dissolved. The successors that formerly made up the SFRY (Bosnia; Herzegovina; Croatia; Macedonia; Slovenia; and Serbia and Montenegro, formerly, the Federal Republic of Yugoslavia) continue to be bound by the treaty in force with the SFRY at the time of dissolution.

## APPENDIX 3

### H-1B Flow Chart

#### Processing H-1B Visas on Behalf of Foreign Specialty Occupation Workers

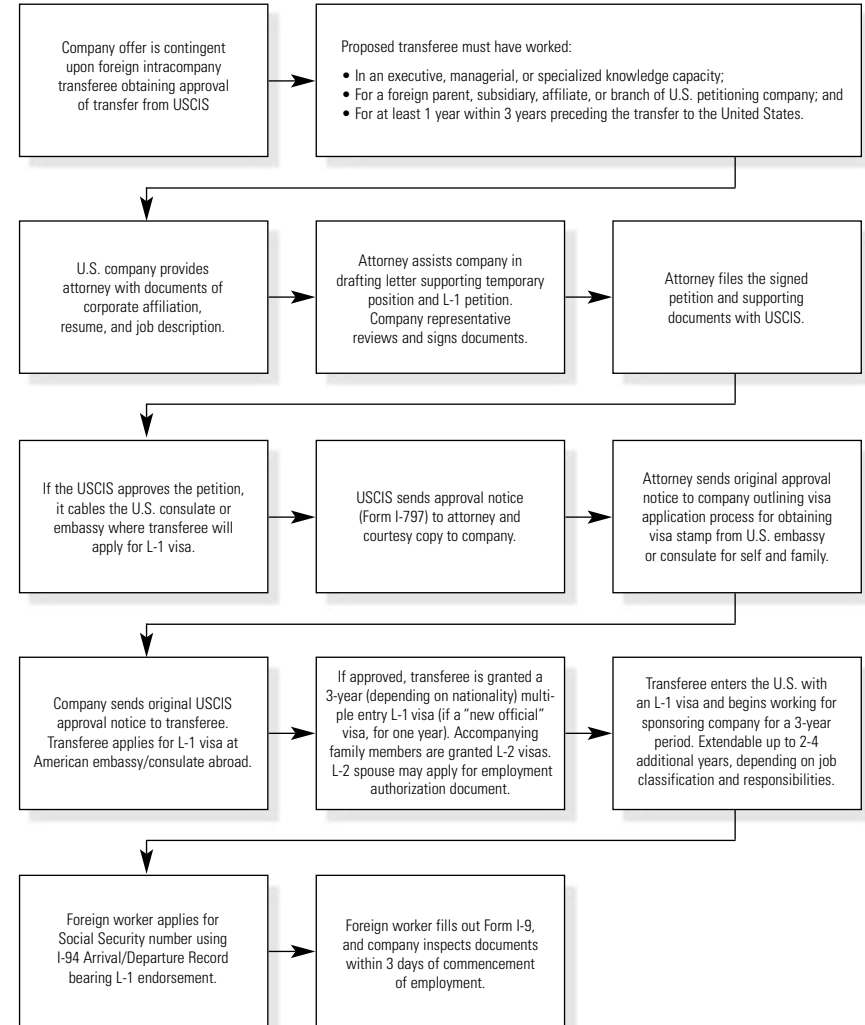


## APPENDIX 4

### L-1 Flow Chart

#### Processing L-1 Visas for Foreign Intra-company Transferees

(not applicable for L blanket petitions)





**Fort Lauderdale**

Broward Financial Centre  
500 East Broward Blvd., Suite 1400  
Fort Lauderdale, FL 33394-3002  
(954) 462-2000

**Miami**

One Biscayne Tower  
2 South Biscayne Blvd., Suite 3400  
Miami, FL 33131-1897  
(305) 376-6000

**Palm Beach**

151 Royal Palm Way  
Palm Beach, FL 33480  
(561) 833-1970

**Stuart**

800 S.E. Monterey Commons Blvd.  
Suite 200, Stuart, FL 34996-3346  
(772) 288-1980

**Vero Beach**

3055 Cardinal Dr., Suite 301  
Vero Beach, FL 32963-4901  
(772) 234-1040

**West Palm Beach**

Phillips Point  
777 South Flagler Dr., Suite 500 East  
West Palm Beach, FL 33401-6194  
(561) 655-1980