

Business Visitor (B-1 Status)/Visa Waiver Program (VWP) and ESTA – Not Work-Authorized

Eligibility:

1. The purpose of the trip is to enter the United States for business of a legitimate nature;
2. The plan is to remain for a specific limited period of time;
3. Must have sufficient funds to cover the expenses of the trip and stay in the United States;
4. Must maintain a residence outside the United States that the foreign national has no intention of abandoning, as well as other binding ties that will ensure the foreign national's return abroad at the end of the visit.

What the visitor **can do** while in the United States:

1. Consult with business associates;
2. Travel for a scientific, educational, professional or business convention, or a conference on specific dates;
3. Settle an estate;
4. Negotiate a contract;
5. Participate in short-term training;
6. Engage in commercial transactions, which do not involve gainful employment in the United States (such as a merchant who takes orders for goods manufactured abroad);
7. Undertake independent research.

*Activities in the United States must be incidental to work that is to be performed outside the United States.

What the visitor **cannot do** while in the United States: productive work, skilled or unskilled labor.

Example: A tailor can come to the United States in B-1 status to meet with clients and take their measurements. However, The tailor cannot undertake to actually create the clothing in the United States.

Period of Stay: Usually 1-6 months.

Not dual-intent – a foreign national cannot enter in B-1 status with an intent to remain in the United States and become a permanent resident.

L-1A – Work Authorized for Specific Employer

Eligibility:

1. Petitioning employer has a “qualifying relationship” with a foreign company (“qualifying organization”). “Qualifying relationship” = parent, branch, subsidiary, or affiliate
2. Petitioning employer is doing business as an employer in the U.S. and at least 1 other country directly or through the qualifying organization. “Doing business” = regular, systematic, and continuous provision of goods and/or services.
3. Foreign national has worked abroad for the qualifying organization in an executive*, managerial**, or specialized knowledge*** capacity for 1 continuous year within the 3 years immediately preceding admission to the U.S.
4. Foreign national will serve the petitioning employer in an executive* (L-1A), managerial** (L-1A), or specialized knowledge*** (L-1B) capacity.

*Executive → Foreign national has ability to make decisions of wide latitude with little oversight

**Managerial → Foreign national (1) supervises and controls the work of professional employees and manages a department, subdivision, function, or component of the organization; or (2) manages an essential function of the organization at a high level without direct supervision by others

***Specialized knowledge → Foreign national has (1) special knowledge of petitioning employer's product, service, research, equipment, techniques, or management and its application in international markets; or (2) an advanced level of knowledge in the organization's processes or procedures. For special knowledge, the employer must be able to document that the knowledge is distinguished, noteworthy, or uncommon. For an advanced level of knowledge, the employer must be able to document that the knowledge is highly developed or complex.

Period of Stay:

1. L-1A status is granted for an initial period of up to 3 years; may be extended for 2 subsequent 2-year periods, for a total of 7 years (inapplicable to commuters).
2. L-1B status is granted for an initial period of up to 3 years; may be extended for a subsequent 2-year period, for a total of 5 years (inapplicable to commuters).
3. Exception for commuters: The limits on L-1 stay do not apply to foreign nationals who reside abroad and spend 6 months or less per year working in the U.S.

4. Time spent outside the U.S while in L-1 status does not count towards the maximum periods of stay and may be “recaptured” in a later petition.
5. Time spent in L-1A, L-1B, or H-1 status counts toward the maximum period of stay in each of the respective categories.
6. A foreign national who has maxed out period of L-1 stay is again eligible for L-1 status after spending 1 year working abroad for a qualifying organization.
7. A petition to extend stay based on change from L-1B to L-1A must be approved before the final 6 months in L-1B status and the foreign national must have been performing managerial duties for at least 6 months before the extension is filed.

Dependents:

1. Spouses and unmarried children (under 21 years of age) are eligible for L-2 classification.
2. L-2 children are not eligible for work authorization.
3. L-2 spouses are eligible for work authorization, but must apply for an Employment Authorization Document.

Dual-intent allowed.

H-1B – Work Authorized Status for Specific Employer

Eligibility:

1. Job is in a “specialty occupation.” This prong is satisfied if a bachelor’s or higher degree or its equivalent is:
 - a) normally the minimum entry requirement for the position;
 - b) normally required by the employer for the position;
 - c) common to the industry; or
 - d) necessitated by the complexity or uniqueness of the position and/or its job duties.
 - e) There must be an identifiable nexus between the specialty occupation and the foreign national’s field of study. This prong is satisfied if any of the following is true:
 - (i) The foreign national holds a U.S. bachelor’s or higher degree or an equivalent foreign degree and the degree is required by the specialty occupation;
 - (ii) The foreign national holds a state license, registration, or certification authorizing the practice of the specialty occupation; or
 - (iii) The foreign national has education, training, or experience that is equivalent to a degree and expertise in the specialty occupation gained by holding progressively responsible positions directly related to the specialty.
2. The foreign national must earn the higher of the prevailing wage or the actual wage.
 - a) Prevailing wage = wage the government has determined to be appropriate for a particular job in a particular geographic location.
 - b) Actual wage = wage paid to comparable employees with similar experience and qualifications at the same work location.
3. There must be an available H-1B visa number available or an exemption applies.
 - a) H-1B cap = 65,000 H-1B visa numbers made available each year
 - b) H-1B lottery = computer-generated process used to select the petitions needed to meet caps
 - c) Cap-subject = generally, all foreign nationals who have never held H-1B status; the availability of a visa number depends on demand during a given fiscal year and luck in the lottery. Typically need to register for the H-1B lottery in March

to have a chance of being selected in the lottery. Individuals selected in the lottery submit petitions for a start date in H-1B status of October 1.

- d) Cap-exempt = foreign nationals who are extending H-1B status or changing H-1B employers do not count against the cap
- e) Master's cap = an additional 20,000 visa numbers available to foreign nationals holding a Master's degree

Period of Stay

1. H-1B status is granted for an initial period of up to 3 years; may be extended for a subsequent 3-year period, for a total of 6 years.
2. Time spent outside the U.S. while in H-1B status does not count towards the 6-year maximum and may be "recaptured" in a later petition.
3. Time spent in L-1A or L-1B status counts toward the 6-year maximum.
4. Additional extensions may be available if the green-card process has been started by filing a labor certification application at least 365 days before the completion of 6 years in H-1B status.
5. A foreign national who has maxed out his/her 6 years is again eligible for H-1B status after spending 1 year abroad.

Dependents

1. Spouses and unmarried children under 21 years of age are eligible to receive H-4 classification.
2. H-4 children are not allowed to work. Generally, spouses are not permitted to work either; however, certain H-4 spouses whose H-1B counterpart have received an immigrant petition approval may be issued work authorization documents.

Dual-intent allowed.