9 FAM 41.31 Notes

(TL:VISA-629; 06-17-2004)
(Office of Origin: CA/VO/L/R)

9 FAM 41.31 N1 Importance of Facilitating International Travel

(TL:VISA-629; 06-17-2004)

a. The policy of the U.S. Government is to facilitate and promote international travel and the free movement of people of all nationalities to the United States both for the cultural and social value to the world and for economic purposes.

b. Consular officers shall expedite applications for the issuance of a visitor visa provided that the issuance is consistent with U.S. immigration and naturalization laws and regulations. The consular officer must be satisfied that the applicants have overcome the presumption of intending immigration. The consular officer may give particular attention to applicants traveling to the United States to attend conferences, conventions, or meetings on specific dates.

9 FAM 41.31 N2 Factors in Determining Entitlement to Temporary Visitor Classification

(TL:VISA-629; 06-17-2004)

In determining whether visa applicants are entitled to temporary visitor classification, consular officers must assess whether the applicants:

(1) Have a residence in a foreign country, which they do not intend to abandon;

(2) Intend to enter the United States for a period of specifically limited duration; and

(3) Seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure.

9 FAM 41.31 N2.1 Adequate Funds to Avoid Unlawful Employment

(TL:VISA-371; 03-15-2002)

The arrangements which the applicant has made for defraying the expenses of his or her visit and return abroad must be adequate in order to prevent their obtaining employment in the United States.

9 FAM 41.31 *N2.2* Specific and Realistic Plans

(TL:VISA-629; 06-17-2004)

The applicant must have specific and realistic plans for the entire period of the contemplated visit.

9 FAM 41.31 *N2.3* Period of Time in United States Consistent with Purpose of Trip

(TL:VISA-629; 06-17-2004)

The period of time projected for the visit must be consistent with the stated purpose of the trip. The applicant must establish with reasonable certainty that departure from the United States will take place upon completion of the temporary visit. Although “temporary” is not specifically defined by either statute or regulation, it generally signifies a limited period of stay. The fact that the period of stay in a given case may exceed six months or a year is not in itself controlling, provided the consular officer is satisfied that the intended stay actually has a time limitation and is not indefinite in nature.

9 FAM 41.31 *N2.3-1* Evaluating Cases

(TL:VISA-629; 06-17-2004)

In evaluating these cases, posts should not focus on the absolute length of the stay, but on whether the stay has some finite limit. For example, the temporariness requirement would be met in a case where the cohabitating partner will accompany, and depart with, the "principal" alien on a two-year work assignment or a four-year degree program.

9 FAM 41.31 *N2.3-2* Ties Abroad

(TL:VISA-629; 06-17-2004)

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

9 FAM 41.31 N3.1 Doubtful Cases not Resolved by Offer to Leave Dependent Abroad

(TL:VISA-371; 03-15-2002)

If a consular officer doubts an alien’s intent to return abroad, the alien cannot satisfy the officer’s doubts by offering to leave a child, spouse, or other dependent abroad.

9 FAM 41.31 N3.2 Mere Suspicion not Reason for Refusal

(TL:VISA-371; 03-15-2002)

Suspicion that an alien, after admission, may be swayed to remain in the United States because of more favorable living conditions, is not a sufficient ground to refuse a visa as long as the alien's current intent is to return to a foreign residence.

9 FAM 41.31 N3.3 Unlawful Activity While in Visitor Status

(TL:VISA-2; 08-30-1987)

The law contemplates that an alien is traveling to the United States for legal purposes. Therefore, an application for a visitor visa shall be denied in those cases where the consular officer has reason to believe or knows that, while in the United States as a visitor, the applicant will engage in unlawful or criminal activities.

9 FAM 41.31 N3.4 Incidental Expenses or Remuneration

(TL:VISA-268; 04-26-2001)

A nonimmigrant in B-1 status may not receive a salary from a U.S. source for services rendered in connection with his or her activities in the United States. A U.S. source, however, may provide the alien with an expense allowance or reimbursement for expenses incidental to the temporary stay. Incidental expenses may not exceed the actual reasonable expenses the alien will incur in traveling to and from the event, together with living expenses the alien reasonably can be expected to incur for meals, lodging, laundry, and other basic services.

9 FAM 41.31 N3.5 Honorarium Payment

(TL:VISA-629; 06-17-2004)

INA 212(p) provides that a B-1 nonimmigrant may accept an honorarium payment and associated incidental expenses for usual academic activities *(which can include lecturing, guest teaching, or performing in an academic sponsored festival) if:*

(1) The activities last no longer than nine days at any single institution or organization;

(2) Payment is offered by an institution or organization described in INA 212(p);

(3) The honorarium is for services conducted for the benefit of the institution or entity; and

(4) The alien has not accepted such payment or expenses from more than five institutions or organizations over the last six months.

9 FAM 41.31 N4 Aliens Traveling to United States as Visitors for Business

(TL:VISA-629; 06-17-2004)

a. Aliens who desire to enter the United States for business and who are otherwise eligible for visa issuance, may be classifiable as nonimmigrant B-1 visitors provided they meet the criteria described in 9 FAM 41.31 N5 through 9 FAM 41.31 N8. Engaging in business contemplated for B-1 visa classification generally entails business activities other than the performance of skilled or unskilled labor. Thus, the issuance of a B-1 visa is not intended for the purpose of obtaining and engaging in employment while in the United States. Specific circumstances or past patterns have been found to fall within the parameters of this classification and are listed below.

b. It can be difficult to distinguish between appropriate B-1 business activities, and activities that constitute skilled or unskilled labor in the United States that is not appropriate on B status. The clearest legal definition comes from the decision of the Board of Immigration Appeals in Matter of Hira, affirmed by the Attorney General. Hira involved a tailor measuring customers in the United States for suits to be manufactured and shipped from outside the United States. The decision stated that this was an appropriate B-1 activity, because the principal place of business and the actual place of accrual of profits, if any, was in the foreign country. Most of the following examples of proper B-1 relate to the Hira ruling, in that they relate to activities that are incidental to work that will principally be performed outside of the United States.

c. The consular officer may encounter a case involving temporary employment in the United States, which does not fall within the categories listed below. The consular officer shall submit such cases to CA/VO/L/A in accordance with the procedures in 9 FAM 41.31 N9 for an advisory opinion to ensure uniformity and proper application of the law.

9 FAM 41.31 N5 Aliens Traveling to United States to Engage in Commercial Transactions, Negotiations, Consultations, Conferences, Etc.

(TL:VISA-268; 04-26-2001)

Aliens shall be classified B-1 visitors for business, if otherwise eligible, if they are traveling to the United States to:

(1) 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);

(2) Negotiate contracts;

(3) Consult with business associates;

(4) Litigate;

(5) Participate in scientific, educational, professional or business conventions, conferences, or seminars; or

(6) Undertake independent research.

9 FAM 41.31 N6 Aliens Coming to United States to Pursue Employment Incidental to Their Professional Business Activities

(TL:VISA-371; 03-15-2002)

The statutory terms of INA 101(a)(15)(B) specifically exclude from this classification aliens coming to the United States to perform skilled or unskilled labor. Aliens coming to the United States for the purpose of pursuing employment which does not qualify them for A, C, D, E, G, H, I, J, L, O, P, Q or NATO status must be classified as immigrants. Exception is made for aliens who may be eligible for B-1 business visas provided they meet the criteria of one of the categories listed below.

9 FAM 41.31 N6.1 Members of Religious and Charitable Activities

9 FAM 41.31 N6.1-1 Ministers on Evangelical Tour

(TL:VISA-268; 04-26-2001)

Ministers of religion proceeding to the United States, to engage in an evangelical tour, who do not plan to take an appointment with any one church, and who will be supported by offerings contributed at each evangelical meeting. [See 9 FAM 41.31 N14 and 9 FAM 41.113 PN14.2.]

9 FAM 41.31 N6.1-2 Ministers of Religion Exchanging Pulpits

(TL:VISA-629; 06-17-2004)

Ministers of religion temporarily exchanging pulpits with U.S. counterparts, *who* will continue to be reimbursed by the foreign church and will draw no salary from the host church in the United States.

9 FAM 41.31 N6.1-3 Missionary Work

(TL:VISA-14; 08-30-1988)

Members of religious denominations, whether ordained or not, entering the United States temporarily for the sole purpose of performing missionary work on behalf of a denomination, so long as the work does not involve the selling of articles or the solicitation or acceptance of donations and provided the minister will receive no salary or remuneration from U.S. sources other than an allowance or other reimbursement for expenses incidental to the temporary stay. “Missionary work” for this purpose may include religious instruction, aid to the elderly or needy, proselytizing, etc. It does not include ordinary administrative work, nor shall it be used as a substitute for ordinary labor for hire.

9 FAM 41.31 *N6.1-4* When Applicant Is Unable to *Qualify for R Status*

(TL:VISA-629; 06-17-2004)

In cases where an applicant is coming to perform voluntary services for a religious organization, and does not qualify for R status, the B-1 status remains an option, provided that the applicant meets the requirements in 9 FAM 41.31 N6.1, even if he or she intends to stay a year or more in the United States.

9 FAM 41.31 N6.1-6 When Period of Stay Exceeds Six Months

(TL:VISA-371; 03-15-2002)

A period of stay in the United States exceeding six months in a given case is not in itself a controlling factor, provided that the consular officer is satisfied that the intended stay actually has a time limitation, and is not indefinite in nature.

9 FAM 41.31 N6.1-7 Participants in Voluntary Service Programs

(TL:VISA-567; 08-04-2003)

a. Aliens participating in a voluntary service program benefiting U.S. local communities, who establish that they are members of, and have a commitment to, a particular recognized religious or nonprofit charitable organization. No salary or remuneration shall be paid from a U.S. source, other than an allowance or other reimbursement for expenses incidental to the volunteers' stay in the United States.

b. A "voluntary service program" is an organized project conducted by a recognized religious or nonprofit charitable organization to provide assistance to the poor or the needy or to further a religious or charitable cause. The program may not, however, involve the selling of articles and/or the solicitation and acceptance of donations. The burden that the voluntary program meets the Department of Homeland Security (DHS) definition of "voluntary service program" is placed upon the recognized religious or nonprofit charitable organization, which must also meet other criteria set out in the DHS Operating Instructions with regard to voluntary workers.

c. The consular officer must assure that the written statement issued by the sponsoring organization is attached to the passport containing the visa for presentation to the DHS officer at the port of entry. The written statement will be furnished by the alien participating in a service program sponsored by the religious or nonprofit charitable organization and must contain DHS required information such as the:

(1) Volunteer's name and date and place of birth;

(2) Volunteer's foreign permanent residence address;

(3) Name and address of initial destination in the United States; and

(4) Volunteer's anticipated duration of assignment.

[See 9 FAM 41.31 N14 of this section.]

9 FAM 41.31 N6.2 Members of Board of Directors of U.S. Corporation

(TL:VISA-14; 08-30-1988)

An alien who is a member of the board of directors of a U.S. corporation seeking to enter the United States to attend a meeting of the board or to perform other functions resulting from membership on the board.

9 FAM 41.31 N6.3 Personal/Domestic Employees

9 FAM 41.31 N6.3-1 Personal/Domestic Employees of U.S. Citizens Residing Abroad

(TL:VISA-371; 03-15-2002)

Personal or domestic employees who accompany or follow to join U.S. citizen employers who have a permanent home or are stationed in a foreign country, and who are visiting the United States temporarily. The employer-employee relationship existed prior to the commencement of the employer's visit to the United States.

9 FAM 41.31 N6.3-2 Personal/Domestic Employees of U.S. Citizens on Temporary Assignment in United States

(TL:VISA-371; 03-15-2002)

a. Personal or domestic employees who are accompanying or following to join U.S. citizen employers temporarily assigned to the United States provided the consular officer is satisfied that:

(1) The employee has a residence abroad which he or she has no intention of abandoning;

(2) The alien has been employed abroad by the employer as a personal or domestic servants for at least six months prior to the date of the employer's admission to the United States;

(3) In the alternative, the employer can show that while abroad the employer has regularly employed a domestic servant in the same capacity as that intended for the applicant;

(4) The employee can demonstrate at least one year experience as a personal or domestic servant by producing statements from previous employers attesting to such experience; and

(5) The employee is in possession of an original contract or a copy of the contract, to be presented at the port of entry, which contains the original signatures of both the employer and the employee.

b. The U.S. citizen employer is subject to frequent international transfers lasting two years or more as a condition of the job as confirmed by the employer's personnel office, and is returning to the United States for a stay of no more than four years. The employer will be the only provider of employment to the domestic employee, and will provide the employee free room and board and a round trip airfare as indicated under the terms of the employment contract; and

c. The required employment contract has been signed and dated by the employer and employee and contains a guarantee from the employer that, in addition to the provisions listed in item (b) above, the employee will receive the minimum or prevailing wages whichever is greater for an eight hour work-day. The employment contract shall also reflect any other benefits normally required for U.S. domestic workers in the area of employment. The employer will give at least two weeks notice of his or her intent to terminate the employment, and the employee need not give more than two weeks notice of intent to leave the employment.

9 FAM 41.31 N6.3-3 Personal Employees of Foreign Nationals in Nonimmigrant Status

(TL:VISA-469; 10-04-2002)

A personal or domestic employee who accompany or follows to join an employer who is seeking admission into or, is already in the United States in B, E, F, H, I, J, L, M, O, P, or Q nonimmigrant status, provided that:

(1) The employee has a residence abroad which he or she has no intention of abandoning (notwithstanding the fact that the employer may be in a non immigrant status which does not require such a showing);

(2) The employee can demonstrate at least one year's experience as a personal or domestic employee; and

(3) The employee has been employed abroad by the employer as a personal or domestic employee, for at least one year prior to the date of the employer's admission to the United States; or

(4) If the employee-employer relationship existed immediately prior to the time of visa application, the employer can demonstrate that he or she has regularly employed (either year-round or seasonally) personal or domestic employees over a period of several years preceding the domestic employee's visa application for a nonimmigrant B-1 visa.

(5) The employer and the employee have signed an employment contract which contains statements that the employer is guaranteed the minimum or prevailing wages, whichever is greater, and free room and board, and the employer will be the only provider of employment to the employee [See 9 FAM 41.31 N14 of this section.]

(6) The employer must pay the domestic's initial travel expenses to the United States, and subsequently to the employer's onward assignment, or to the employee's country of normal residence at the termination of the assignment.

9 FAM 41.31 N6.3-4 Personal Employees/Domestics of Lawful Permanent Residents (LPRs)

(TL:VISA-371; 03-15-2002)

Personal employees of all lawful permanent residents (LPRs), including conditional permanent residents and LPRs who have filed a Form N-470, Application to Preserve Residence for Naturalization Purposes, must obtain permanent resident status, as it is contemplated that the employing LPR is a resident of the United States.

9 FAM 41.31 N6.3-5 Source of Payment to B-1 Personal Employees/Domestics

(TL:VISA-268; 04-26-2001)

The source of payment to a B-1 personal or domestic employee or the place where the payment is made or the location of the bank is not relevant.

9 FAM 41.31 N6.4 Professional Athletes

(TL:VISA-479; 10-04-2002)

a. Professional athletes, such as golfers and auto racers, who receive no salary or payment other than prize money for his or her participation in a tournament or sporting event.

b. Athletes or team members who seek to enter the United States as members of a foreign based team in order to compete with another sports team shall be admitted provided:

(1) The foreign athlete and the foreign sports team have their principal place of business or activity in a foreign country;

(2) The income of the foreign based team and the salary of its players are principally accrued in a foreign country; and

(3) The foreign-based sports team is a member of an international sports league or the sporting activities involved have an international dimension.

c. Amateur hockey players who are asked to join a professional team during the course of the regular professional season or playoffs for brief try-outs. The players are draft choices who have not signed professional contracts, but have signed a memorandum of agreement with a National Hockey League-parent team. Under the terms of the agreement, the team will provide only for incidental expenses such as round-trip fare, hotel room, meals, and transportation. At the time of the visa application or application

for admission to the United States, the players must provide a copy of the memorandum of agreement and a letter from the NHL team giving the details of the try-outs. If an agreement is not available at that time, a letter from the NHL team must give the details of the try out and state that such an agreement has been signed.

9 FAM 41.31 N6.5 Yacht Crewmen

(TL:VISA-14; 08-30-1988)

Crewmen of a private yacht who are able to establish that they have a residence abroad which they do not intend to abandon, regardless of the nationality of the private yacht. The yacht is to sail out of a foreign home port and cruising in U.S. waters for more than 29 days.

9 FAM 41.31 N6.6 Coasting Officers

(TL:VISA-268; 04-26-2001)

See 9 FAM 41.41 N4 for aliens seeking to enter the United States as "coasting officers."

9 FAM 41.31 N6.7 Investor Seeking Investment in United States

(TL:VISA-629; 06-17-2004)

An alien seeking investment in the United States, *including an investment which* would qualify him or her for status as an E-2 investor. Such an alien is precluded from performing productive labor or from actively participating in the management of the business prior to being granted E-2 status.

9 FAM 41.31 N6.8 Horse Races

(TL:VISA-469; 10-04-2002)

An alien coming to the United States to perform services on behalf of an employer of the alien's nationality as a jockey, sulky driver, trainer, or groomer.

9 FAM 41.31 N6.9 Outer Continental Shelf (OCS) Employees

(TL:VISA-597; 11-17-2003)

The Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) were enacted on September 18, 1978. 43 U.S.C. 1356 of OCSLA directs, that with specified exceptions, all units operating on the Outer Continental Shelf (OCS) must employ only U.S. citizens or lawful permanent resident (LPR) aliens as members of the regular complement of the unit. Subsequently, the U.S. Coast Guard issued regulations (33 CFR 141), which became effective on April 5, 1983. The regulations contain guidelines concerning exemptions available to units operating on the OCS.

Not included are nonmembers of the regular complement of a unit such as specialists, professionals, or other technically trained personnel called in to handle emergencies or other temporary operations, and extra personnel on a unit for training or for specialized operation, i.e., construction, alteration, well logging, or unusual repairs or emergencies.

9 FAM 41.31 N6.9-1 B-1 Visa Applicants

(TL:VISA-597; 11-17-2003)

The citizenship requirement under the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) and the U.S. Coast Guard regulations may be waived in certain circumstances specified in the U.S. Coast Guard's regulations at 33 CFR 141. Exemptions to the OCSLA manning restrictions can be obtained from the U.S. Coast Guard, which will issue a letter of exemption for the vessel or individual(s). Based on this letter, a B-1/OCS (Outer Continental Shelf) visa may be issued for the purpose and validity specified in the letter, without the need of an advisory opinion from the Department. If an alien requests a B-1 visa to work on the OCS, and cannot satisfy that the work has been exempted by the U.S. Coast Guard, an advisory opinion request must be submitted to the Department (CA/VO/L/A) before a visa can be issued.

9 FAM 41.31 N6.9-2 Visa Notation

(TL:VISA-371; 03-15-2002)

If issuance of a visa is approved, the consular officer should annotate the machine readable visa (MRV) with "OCS."

9 FAM 41.31 N6.9-3 Requests for Exemption from Restrictions on Alien Employment

(TL:VISA-597; 11-17-2003)

Employers who wish to employ persons other than citizens of the United States or permanent resident aliens as part of the regular complement of the unit must request, in writing, an exemption from the restrictions on employment in accordance with specific U.S. Coast Guard regulations. The request for the exemption must be addressed to:

Commandant
U.S. Department of Homeland Security
U.S. Coast Guard
(G-MOC-2)
2100 2nd Street, SW
Washington, DC 20593-0001

9 FAM 41.31 N7 Other Business Activities Classifiable B-1

(TL:VISA-14; 08-30-1988)

While the categories listed below generally may be classified under the proper applicable nonimmigrant class, i.e., A, E, H, F, L or M visas, consular officers may issue B-1 visas to otherwise eligible aliens under the criteria provided below.

9 FAM 41.31 N7.1 Commercial or Industrial Workers

(TL:VISA-371; 03-15-2002)

a. An alien coming to the United States to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the United States or to train U.S. workers to perform such services. However, in such cases, the contract of sale must specifically require the seller to provide such services or training and the visa applicant must possess specialized knowledge essential to the seller's contractual obligation to perform the services or training and must receive no remuneration from a U.S. source.

b. These provisions do not apply to an alien seeking to perform building or construction work, whether on-site or in-plant. The exception is for an alien who is applying for a B-1 visa for the purpose of supervising or training other workers engaged in building or construction work, but not actually performing any such building or construction work.

9 FAM 41.31 N7.2 Foreign Airline Employees

(TL:VISA-529; 03-24-2003)

Foreign airline employee aliens who:

(1) Seek to enter the United States for employment with a foreign airline that is engaged in international transportation of passengers and freight;

(2) Are working in an executive, supervisory, or highly technical capacity; and

(3) Otherwise meet the requirements for E visa classification but are precluded from entitlement to treaty trader E-1 classification solely because there is no treaty of friendship, commerce, and navigation in effect between the United States and the country of the aliens' nationality, or because they are not nationals of the airline's country of nationality.

9 FAM 41.31 N7.3 Employees of Foreign Airlines Coming to United States to *Join* Aircraft

(TL:VISA-629; 06-17-2004)

Employees of foreign airlines coming to the United States to *join* aircraft may also be documented as B-1 visitors in that they are not transiting the United States and are not admissible as crewmen. Such applicants, however, must present a letter from the headquarters branch of the foreign airline verifying their employment and the official nature of their duties in the United States.

9 FAM 41.31 N7.4 Clerkship

(TL:VISA-529; 03-24-2003)

Except as in the cases described below, aliens who wish to obtain hands-on clerkship experience are not deemed to fall within B-1 visa classification.

9 FAM 41.31 N7.4-1 Medical

(TL:VISA-629; 06-17-2004))

An alien, who is studying at a foreign medical school and seeks to enter the United States temporarily in order to take an “elective clerkship” at a U.S. medical school’s hospital without remuneration from the hospital. The medical clerkship is only for medical students pursuing their normal third or fourth year internship in a U.S. medical school as part of a foreign medical school degree. (An “elective clerkship” affords practical experience and instructions in the various disciplines of medicine under the supervision and direction of faculty physicians at a U.S. medical school’s hospital as an approved part of the alien’s foreign medical school education. *It does not apply to graduate medical training, which is restricted by 212(e) and normally requires a J-visa).*

9 FAM 41.31 N7.4-2 Business or Other Professional or Vocational Activities

(TL:VISA-629; 06-17-2004)

An alien who is coming to the United States merely and exclusively to observe the conduct of business or other professional or vocational activity may be classified B-1, provided the alien pays for his or her own expenses. However, aliens, often students, who seek to gain practical experience *through on-the-job training or clerkships* must qualify under INA 101(a)(15)(H) or *(L), or when an appropriate exchange visitors program exists (J).*

9 FAM 41.31 N7.5 Participants in Foreign Assistance Act Program

(TL:VISA-529; 03-24-2003)

An alien invited to participate in any program furnishing technical information and assistance under section 635(f) of the Foreign Assistance Act of 1961, 75 Stat. 424.

9 FAM 41.31 N7.6 Peace Corps Volunteer Trainers

(TL:VISA-529; 03-24-2003)

An alien invited to participate in the training of Peace Corps volunteers or coming to the United States under contract pursuant to sections 9 and 10(a)(4) of the Peace Corps Act (75 Stat. 612), unless the alien qualifies for A classification. [See 9 FAM 41.113 PN11.1 for notation to be inserted on any visa issued under this legislation.]

9 FAM 41.31 N7.7 Internship with United Nations Institute for Training and Research (UNITAR)

(TL:VISA-529; 03-24-2003)

Participants in the (UNITAR) program of internship for training and research who are not employees of foreign governments.

9 FAM 41.31 N7.8 Aliens Employed by Foreign or U.S. Exhibitors at International Fairs or Expositions

(TL:VISA-529; 03-24-2003)

Aliens who are coming to the United States to plan, construct, dismantle, maintain, or be employed in connection with exhibits at international fairs or expositions may, depending upon the circumstances in each case, qualify for one of the following classifications.

9 FAM 41.31 N7.8-1 Foreign Government Officials

(TL:VISA-529; 03-24-2003)

Aliens representing a foreign government in a planning or supervisory capacity and/or their immediate staffs are entitled to “A” classification if an appropriate note is received from their government, and if they are otherwise properly documented.

9 FAM 41.31 N7.8-2 Employees of Foreign Exhibitors

(TL:VISA-529; 03-24-2003)

Employees of foreign exhibitors at international fairs or expositions who are not foreign government representatives and do not qualify for "A" classification ordinarily are classified B-1.

9 FAM 41.31 N7.8-3 Employees of U.S. Exhibitors

(TL:VISA-529; 03-24-2003)

While alien employees of U.S. exhibitors or employers are not eligible for B-1 visas they may be classifiable as H-1 or H-2 temporary workers.

9 FAM 41.31 N8 Aliens Normally Classifiable H-1 or H-3

(TL:VISA-629; 06-17-2004)

There are cases in which aliens who qualify for H-1 or H-3 visas may more appropriately be classified as B-1 visa applicants in certain circumstances, e.g. a qualified H-1 or H-3 visa applicant coming to the United States to perform H-1 services or to participate in a training program. In such a case, the applicant will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses incidental to the alien's temporary stay. For purposes of this Note, it is essential that the remuneration or source of income for services performed in the United States continue to be provided by the business entity located abroad, and that the alien meets the following criteria:

(1) With regard to foreign-sourced remuneration for services performed by aliens admitted under the provisions of INA 101(a)(15)(B), the Department has maintained that where a U.S. business enterprise or entity has a separate business enterprise abroad, the salary paid by such foreign entity shall not be considered as coming from a "U.S. source."

(2) In order for an employer to be considered a "foreign firm" the entity must have an office abroad and its payroll must be disbursed abroad. To qualify for a B-1 visa, the employee must customarily be employed by the foreign firm, the employing entity must pay the employee's salary, and the source of the employee's salary must be abroad.

(3) An alien classifiable H-2 shall be classified as such notwithstanding the fact that the salary or other remuneration is being paid by a source outside the United States, *or the fact that the alien is working without compensation (other than a voluntary service worker classifiable B-1 in accordance with N6.1-7.* A nonimmigrant visa petition accompanied by an approved labor certification must be filed on behalf of the alien.

9 FAM 41.31 N8.1 Entertainers

(TL:VISA-629; 06-17-2004)

a. Except for the following cases, *B visa status is not appropriate for* a member of the entertainment profession (professional entertainer) who seeks to enter the United States temporarily to perform services. *Instead, performers* shall be accorded *another* appropriate visa classification, *which in most cases will be P,* regardless of the amount or source of compensation, whether the services will involve public appearance(s), *or whether the performance is for charity or U.S. based ethnic society (but see N10.7 on B-2 visas for amateur performances.)*

b. The term "member of the entertainment profession" includes not only performing artists such as stage and movie actors, musicians, singers and dancers, but also other personnel such as technicians, electricians, make-up specialists, film crew members coming to the United States to produce films, etc.

9 FAM 41.31 N8.2 Participants in Cultural Programs

(TL:VISA-629; 06-17-2004)

A professional entertainer may be classified B-1 if the entertainer:

(1) Is coming to the United States to participate only in a cultural program sponsored by the sending country;

(2) Will be performing before a nonpaying audience; *and*

(3) All expenses, including per diem, will be paid by the member's government.

9 FAM 41.31 N8.3 Participants in International Competitions

(TL:VISA-629; 06-17-2004)

A professional entertainer may be classified B-1 if the entertainer is coming to the United States to participate in a competition for which there is no remuneration other than a prize (monetary or otherwise) and expenses.

9 FAM 41.31 N8.4 Still Photographers

(TL:VISA-629; 06-17-2004)

The Department of Homeland Security (DHS) permits still photographers to enter the United States with B-1 visas for the purpose of taking photographs, provided that they receive no income from a U.S. source.

9 FAM 41.31 N8.5 Musicians

(TL:VISA-629; 06-17-2004)

An alien musician may be issued a B-1 visa, provided:

(1) The musician is coming to the United States in order to utilize recording facilities for recording purposes only;

(2) The recording will be distributed and sold only outside the United States; and

(3) No public performances will be given.

9 FAM 41.31 N8.6 Medical Doctor

(TL:VISA-629; 06-17-2004)

A medical doctor otherwise classifiable H-1 as a member of a profession whose purpose for coming to the United States is to observe U.S. medical practices and consult with colleagues on latest techniques, provided no remuneration is received from a U.S. source and no patient care is involved. Failure to pass the Foreign Medical Graduate Examination (FMGE) is irrelevant in such a case.

9 FAM 41.31 N8.7 H-3 Trainees

(TL:VISA-629; 06-17-2004)

a. Aliens already employed abroad, who are coming to undertake training and who are classifiable as H-3 trainees. *Department Of Homeland Security* (*DHS) regulations state that in order for an alien to be classifiable as H-3, the petitioner must demonstrate that:*

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

b. They will continue to receive a salary from the foreign employer and will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses (including room and board) incidental to the temporary stay. In addition, the fact that the training may last one year or more is not in itself controlling and it should not result in denial of a visa, provided the consular officer is satisfied that the intended stay in the United States is temporary, and that, in fact, there is a definite time limitation to such training.

9 FAM 41.31 N8.8 Artists

(TL:VISA-629; 06-17-2004)

An artist coming to the United States to paint, sculpt, etc. who is not under contract with a U.S. employer and who does not intend to regularly sell such art-work in the United States.

9 FAM 41.31 N9 Advisory Opinion Required if Applicant not Clearly Identifiable B-1

(TL:VISA-529; 03-24-2003)

a. An advisory opinion must be requested prior to the issuance of a B-1 visa in any case involving temporary employment in the United States, other than as clearly set forth in 9 FAM 41.31 N6, 9 FAM 41.31 N7, or 9 FAM 41.31 N8. The Department recognizes that there are cases which might possibly be classifiable B-1, but which do not fit precisely within one of the classes described above. An advisory opinion is required in these cases to ensure uniformity and to avoid the issuance of a B-1 to an alien classifiable H-2 and thus subject to the safeguards of the petition and labor certification requirements.

b. The request may be made by telegram and must provide full details as to:

(1) Occupation of the applicant;

(2) Type of work to be performed;

(3) Place and duration of the contemplated employment;

(4) Source and amount of salary to be paid;

(5) Identity of United States and/or foreign employer;

(6) The consular officer’s reasons for believing B-1 classification appropriate; and

(7) Any other relevant information.

9 FAM 41.31 N10 Aliens Coming to United States as Visitors for Pleasure

(TL:VISA-529; 03-24-2003)

Aliens who wish to enter the United States temporarily for pleasure, and who are otherwise eligible to receive visas, may be classifiable as nonimmigrant B-2 visitors provided they meet the criteria listed below.

9 FAM 41.31 N10.1 Tourism or Family Visits

(TL:VISA-529; 03-24-2003)

Aliens traveling to the United States for purposes of tourism or to make social visits to relative or friends.

9 FAM 41.31 N10.2 Medical Reasons

(TL:VISA-529; 03-24-2003)

Aliens coming to the United States for health purposes. [See 9 FAM 40.11 and 9 FAM 40.41.]

9 FAM 41.31 N10.3 Participation in Social Events

(TL:VISA-529; 03-24-2003)

Aliens participating in conventions, conferences, or convocation of fraternal, social or service organizations.

9 FAM 41.31 N10.4 Armed Forces Dependents

(TL:VISA-529; 03-24-2003)

Dependents of an alien member of any branch of the U.S. Armed Forces temporarily assigned for duty in the United States.

9 FAM 41.31 N10.5 Dependents of Crewmen

(TL:VISA-529; 03-24-2003)

Alien dependents of category “D” visa crewmen who are coming to the United States solely for the purpose of accompanying the principal alien.

9 FAM 41.31 N10.6 Short Course of Study

(TL:VISA-597; 11-17-2003)

The following annotation is to be placed in the 88-character field of the machine readable visa (MRV) for aliens coming to the United States primarily for tourism, who also incidentally will engage in a short course of study during their visit: **STUDY INCIDENTAL TO VISIT—Form I-20 NOT REQUIRED.**

9 FAM 41.31 N10.7 Amateur Entertainers and Athletes

(TL:VISA-629; 06-17-2004)

A person who is an amateur in an entertainment or athletic activity is, by definition, not a member of any of the profession associated with that activity. *An amateur is someone who normally performs without remuneration (other than an allotment for expenses). A performer who is normally compensated for performing cannot qualify for a B-2 visa based on this note even if the performer does not make a living at performing, or agrees to perform in the United States without compensation.* Thus, an amateur (or group of amateurs) who will not be paid for performances and will perform in a social and/or charitable context or as a competitor in a talent show, contest or athletic event is eligible for B-2 classification, even if the incidental expenses associated with the visit are reimbursed.

9 FAM 41.31 N11 Aliens Classifiable B-2 Visitors under Special Circumstances

(TL:VISA-529; 03-24-2003)

The following classes of aliens may be classified B-2 visitors under the following special circumstances.

9 FAM 41.31 N11.1 Alien Fiancé(e)s

9 FAM 41.31 N11.1-1 Fiancé(e) of U.S. Citizens or Permanent Resident Aliens

(TL:VISA-529; 03-24-2003)

An alien proceeding to the United States to marry a U.S. citizen is classifiable K-1 as a nonimmigrant under INA 101(a)(15)(K). [See 22 CFR 41.81.] The fiancé(e) of a U.S. citizen or lawful permanent resident may, however, be classified as a B-2 visitor if the consular officer is satisfied that the fiancé(e) intends to return to a residence abroad soon after the marriage. A B-2 visa may also be issued to an alien coming to the United States:

(1) Simply to meet the family of his or her fiancé;

(2) To become engaged;

(3) To make arrangements for the wedding; or

(4) To renew a relationship with the prospective spouse.

9 FAM 41.31 N11.1-2 Fiancé(e) of Nonimmigrant Alien in United States

(TL:VISA-567; 08-04-2003)

Fiancé(e)s who establish a residence abroad to which they intend to return, and who are otherwise qualified to receive visas, are eligible for B-2 visas if the purpose of the visit is to marry a nonimmigrant alien in the United States in a valid nonimmigrant F, H, J, L M, O, P or Q status. The consular officer shall advise the fiancé(e) to apply soon after the marriage to the nearest office of Department of Homeland Security (DHS) to request a change in nonimmigrant status to that of the alien spouse.

9 FAM 41.31 N11.2 Proxy Marriage

(TL:VISA-629; 06-17-2004)

A spouse married by proxy to an alien in the United States in a nonimmigrant status may be issued a visitor visa in order to join the spouse already in the United States. Upon arrival in the United States, the joining spouse must apply to the DHS for permission to *change* to the appropriate derivative *nonimmigrant* status after consummation of the marriage.

9 FAM 41.31 N11.3 Spouse or Child of U.S. Citizen or Resident Alien

(TL:VISA-529; 03-24-2003)

An alien spouse or child, including an adopted alien child, of a U.S. citizen or resident alien may be classified as a nonimmigrant B-2 visitor if the purpose of the travel is to accompany or follow to join the spouse or parent for a temporary visit.

9 FAM 41.31 N11.4 Cohabitating Partners, Extended Family Members, and Other Household Members not Eligible for Derivative Status

(TL:VISA-567; 08-04-2003)

The B-2 classification is appropriate for aliens who are members of the household of another alien in long-term nonimmigrant status, but who are not eligible for derivative status under that alien's visa classification. Such aliens may include cohabitating partners or elderly parents of temporary workers, students, diplomats posted to the United States, etc. B-2 classification may also be accorded to a spouse or child who qualifies for derivative status (other than derivative A or G status) but for whom it may be inconvenient or impossible to apply for the proper H-4, L-2, F-2 or other derivative visa. If such individuals plan to stay in the United States for more than six months, they should be advised to ask the Department of Homeland Security (DHS) for a one-year stay at the time they apply for admission. If needed, they may, thereafter apply for extensions of stay, in increments of up to six months, for the duration of the principal alien's nonimmigrant status in the United States.

9 FAM 41.31 N11.5 Aliens Seeking Naturalization under INA 329

(TL:VISA-567; 08-04-2003)

In order to facilitate the naturalization under INA 329, consular officers (CO) may issue a B-2 visa to the adopted child of a U.S. citizen who resides abroad and does not intend to reside permanently in the United States. The B-2 applicant must:

(1) Present a DHS-issued Form G-56, General Call-In Letter;

(2) Establish eligibility under INA 101(a)(15)(B);

(3) If not an orphan, satisfy the two-year residency and custody requirement of INA 101(b)(1)(E); or

(4) If an orphan, be the beneficiary of an approved Form I-600, Petition to Classify Orphan as an Immediate Relative, and establish that the Form I-604, Request for and Report on Overseas Orphan Investigation, has been conducted showing that the applicant meets the criteria of INA 101(b)(1)(F).

9 FAM 41.31 N11.6 Issuance of B-2 Visa for Expeditious Naturalization of a Child under INA 322

(TL:VISA-529; 03-24-2003)

Naturalization is a permissible activity in B-2 status. A consular officer may issue a B-2 visa to a foreign-born child to facilitate that child's expeditious naturalization pursuant to INA 322. The child's intended naturalization, however, does not exempt the child from the requirements of INA 214(b); the child must intend to return to a residence abroad after naturalization. A child whose parents are residing abroad will generally overcome the presumption of intended immigration, whereas, a child whose parents habitually reside in the United States will not. [Note that the naturalization must be completed prior to the child's 18th birthday.] [See 9 FAM 42.21 N13.17 and 9 FAM 42.21 N17.]

9 FAM 41.31 N11.6-1 Criteria to Be Met

(TL:VISA-567; 08-04-2003)

a. The applicant must:

(1) Overcome INA 214(b);

(2) If not the natural child of the parents, prove that he or she has been legally and fully adopted by the U.S. citizen parents;

(3) Present a Form G-56, Call-In Letter, from Department of Homeland Security (DHS), signifying the child has an appointment for a naturalization interview; and

(4) Show that he or she is the beneficiary of either an approved Form N-600, Application for Certification for Citizenship, or Form N-643, Application for Certification of Citizenship on Behalf of an Adopted Child, which confirms that the child qualifies for naturalization under INA 322.

b. The parents must meet the transmission requirements.

9 FAM 41.31 N11.6-2 Form I-864, Affidavit of Support under Section 213A of the Act, not Required

(TL:VISA-529; 03-24-2003)

Because the child is applying for a nonimmigrant visa, no Form I-864, Affidavit of Support under Section 213A of the Act, is required.

9 FAM 41.31 N11.6-3 Immigrant Visa Required if Stay Is not Temporary

(TL:VISA-567; 08-04-2003)

The child would not qualify for a B-2 visa if the family were relocating to the United States. If this were the case, then the child would be required to have an immigrant visa. Consular officers should not issue a nonimmigrant visa in lieu of the IR3/4. The issuance of a nonimmigrant visa (NIV) to an orphan to effect a child's immigration violates the law, places the child in an untenable immigration predicament, and circumvents the scrutiny intended to protect the orphan and the adoptive parents. The issuance of a nonimmigrant visa also does not accomplish the intended goal, since the orphan cannot adjust status under DHS regulations.

9 FAM 41.31 N11.6-4 Children Paroled into United States

(TL:VISA-529; 03-24-2003)

Children paroled into the United States have not been lawfully admitted to the United States for the purpose of the certificate of citizenship under INA 322.

9 FAM 41.31 N11.7 Dependents of Alien Members of U.S. Armed Forces Eligible for Naturalization under INA 328

(TL:VISA-567; 08-04-2003)

a. An alien who is a dependent of an alien member of the U.S. Armed Forces who qualifies for naturalization under INA 328 and whose primary intent is to accompany the spouse or parent on the service member's assignment to the United States. The further possibility of adjustment of status need not necessitate a "denial of visa" under INA 214(b). A dependent of an alien service member who is refused a visa under INA 214(b) as an intending immigrant must be referred to the Department of Homeland Security (DHS) office having jurisdiction over the dependent's place of residence for parole consideration under INA 212(d)(5).

b. Since the purpose of parole in these cases is to serve humanitarian interests, it is not appropriate for an alien dependent to seek parole from DHS to enter the United States while the service member served a tour of duty outside the United States.

9 FAM 41.31 N11.8 Aliens Destined to Avocational or Recreational School

(TL:VISA-597; 11-17-2003)

An alien enrolling in such a school may be classified B-2 if the purpose of attendance is recreational or vocational. When the nature of a school's program is difficult to determine, the consular officer (CO) shall request the DHS for the proper classification of the program and whether approval of Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status – for Academic and Language Students, will be more appropriate.

9 FAM 41.31 N12 Lawful Permanent Resident Issued Nonimmigrant Visitor Visa for Emergency Temporary Visit to United States

(TL:VISA-567; 08-04-2003)

A lawful permanent resident (LPR) may, in some cases, need to get a visa more quickly than obtaining a returning resident visa would permit. For example: a permanent resident alien employed by a U.S. corporation is temporarily assigned abroad but has not necessarily remained more than one year and may not use Form I-551, Alien Registration Receipt Card (Machine Readable) (Green Card), in order to travel to the United States for an urgent conference and then return abroad. The alien has never relinquished permanent residence, has continued to pay U.S. income taxes, and perhaps even maintains a home in the United States. The alien may be issued a nonimmigrant visa for this purpose and Form I-551 need not be surrendered. The relinquishment of either of these forms shall not be required as a condition precedent to the issuance of either an immigrant or nonimmigrant visa (NIV) unless Department of Homeland Security (DHS) has requested such action.

9 FAM 41.31 N13 B-2 for Adoptive Child Coming to United States for Acquisition of Citizenship

(TL:VISA-529; 03-24-2003)

Consular officers may issue a B-2 visa to a child seeking to enter the United States for the acquisition of U.S. citizenship under the Child Citizenship Act of 2000 (Public Law 106-395) provided the child demonstrates an intent to return abroad after a temporary stay in the United States.

9 FAM 41.31 N14 Authority to Classify Certain Visas "B-1/B-2" and Amount of Fees to Be Collected

(TL:VISA-529; 03-24-2003)

a. Consular officers (CO) may properly issue B-1/B-2 visitor visas to aliens who are registered for immigration. The CO must be satisfied that the alien's intent in seeking entry into the United States is to engage in activities consistent with B-1/B-2 classification for a temporary period and that the alien has a residence abroad which he or she does not intend to abandon. While immigrant visa registration is reflective of an intent to immigrate, it may not be proper for the CO to refuse issuance of a visa under INA 214(b) solely on the basis of such registration, unless the CO has reason to believe the applicant's true intent is to remain in the United States until such a time as an immigrant visa becomes available.

b. Also eligible for B-1/B-2 visas are qualified applicants whose principal purpose for visiting the United States at various times falls within the B-1 or B-2 category.

c. When the fee prescribed in the appropriate schedule of 9 FAM Appendix C is not the same for each classification, the higher of the two fees must be collected.

9 FAM 41.31 N15 Procedures for Obtaining Social Security Cards

(TL:VISA-567; 08-04-2003)

a. The Department, the Department of Homeland Security (DHS) and the Social Security Administration (SSA) have agreed that certain nonimmigrant aliens who are coming to the United States for the purpose of pursuing certain employment activities incidental to the aliens' professional business commitments, and who will receive remuneration or salary from sources in the United States, may apply for a social security card. Although for immigration purposes these activities might not constitute "employment in the United States," even with a U.S. source of income, the activities might be considered "employment" for other purposes or by other agencies, such as the Internal Revenue Services (IRS). In order to qualify for a social security card, the employee must have the B-1 visa annotated to identify the employer for whom the employee will be working in the United States and the applicable 9 FAM reference. This annotation will enable the social security officer to quickly identify these aliens as being eligible for issuance of a working social security card which in turn will enable the employer and employee to comply with legal requirements such as participation in the social security fund, IRS tax payments, workmen compensation and any other work related requirements. [See 9 FAM 41.113 PN8 for the appropriate visa annotation.]

b. Personal or domestic servants of U.S citizen employers or nonimmigrant employers who are classifiable B-1, E, F, H, I, J, L, M, O, P, or Q provided they meet the criteria under 9 FAM 41.31 N6.

c. Airline employees who because of their visa classification and the nature of their work are authorized to be employed and receive compensation in the United States. [See 9 FAM 41.31 N7.2.]

d. Visiting Ministers in B-1 visa category who are engaged in an evangelical tour and are supported by offerings contributed at each evangelical meeting. [See 9 FAM 41.31 N6.1.]

9 FAM 41.31 N16 Consular Officer Notations on Nonimmigrant Visas

(TL:VISA-567; 08-04-2003)

Notations on nonimmigrant visas (NIV) regarding the purpose and duration of stay are encouraged when the visas are limited and when the use of such notations would be helpful to the Department of Homeland Security (DHS) inspectors or consular officers (CO) when processing future visa applications. Positive notations such as **VISIT UNCLE SAN FRANCISCO, THREE WEEKS** are helpful and are authorized. However, endorsements of a negative type such as **NO ADJUSTMENT OF STATUS OR EXTENSION OF STAY RECOMMENDED** or any other notation which tends to tell DHS what to do or which questions the alien's veracity are not allowed.

9 FAM 41.31 N17 Maintenance of Status and Departure Bonds

(TL:VISA-529; 03-24-2003)

See 9 FAM 41.11 PN1.7.

9 FAM 41.31 N18 Border Crossing Identification Cards

(TL:VISA-529; 03-24-2003)

For instructions concerning processing of applications for border crossing identification cards by posts in Mexico, see 9 FAM 41.32.

9 FAM 41.31 N19 Issuance of Two-entry Visa in Lieu of Reciprocal Single-entry Visa

(TL:VISA-529; 03-24-2003)

See 9 FAM 41.112 N5.

9 FAM 41.31 N20 Residence Abroad

(TL:VISA-529; 03-24-2003)

See 9 FAM 41.11 N2.

9 FAM 41.31 N21 Classification Choice

(TL:VISA-529; 03-24-2003)

See 9 FAM 41.11 N3.