

OUR PRACTICE

Business Visitors

The most convenient way to come to the U.S. for business is as a business visitor. For that reason, entry as a visitor should be considered first. The procedures for entry may vary depending on the person's country of citizenship. Unfortunately, the status of business visitor often does not allow as wide a range of activities as the worker may need to pursue.

Activities

The most important initial question is whether the activities to be undertaken by the foreign national are allowed for business visitors.

1. The alien's activities must be commercial;
2. The alien must have a clear intent and legal ability to continue his foreign residence;
3. The alien's salary must come from abroad;
4. The principal place of business and the actual accrual of profits must be predominantly in the foreign country; and
5. The alien's various entries into the U.S. must have a plainly temporary nature (although the business activity itself may be long-term).

Over the years, the U.S. State Department and U.S. immigration service have developed some *representative* lists of the types of activities that are normally considered to be appropriate for the B-1 classification:

- Aliens engaging in commercial transactions that do not involve gainful employment in the U.S. (such as a merchant who takes orders for goods abroad).
- Aliens negotiating contracts.
- Aliens consulting with business associates.
- Aliens participating in litigation.
- Aliens participating in scientific, educational, professional or business conventions, conferences, or seminars.
- Aliens undertaking independent research.
- Participants in a "voluntary service program benefiting local communities."
- Members of boards of directors of U.S. corporations attending meetings of the board or performing other functions resulting from board membership.
- Certain personal or domestic servants who accompany or follow to join: (a) U.S. citizens residing abroad and temporarily visiting the U.S.; (b) U.S. citizen employers having frequent foreign assignments for at least two years at a time, but now returning to the U.S. for not more than four years; or (c) foreign nationals in B, E, F, H, I, J, L, M, O, P, R, or TC status in the U.S. Numerous restrictions and procedures apply.
- Certain athletes: (a) Professional athletes who have no contract with a U.S. sponsor and receive no salary or payment other than prize money for their participation in a tournament or sporting event; (b) foreign athletes or teams based and primarily paid from abroad with membership in an international sports league coming to compete in the U.S.; (c) amateur players joining a professional team during the season or playoffs for tryouts with only transportation and incidental expenses paid; and (d) certain officiators for international competition.
- Private yacht crewmen cruising U.S. waters for more than twenty-nine days.
- "Coasting officers" of foreign vessels.

- Crewman of U.S., Canadian, or British registered vessels engaged solely in traffic on the Great Lakes or the St. Lawrence River and connecting waterways who are citizens of Canada or residents of Canada having common nationality with Canada.
- Prospective E-2 investors seeking investment in the U.S., but not performing productive labor or actively participating in the management of the business.
- A racehorse jockey, sulky driver, trainer, or groom for an employer of the alien's nationality.
- Certain Outer Continental Shelf employees under 33 CFR Part 141.
- Certain commercial or industrial workers coming to install, service, or repair commercial or industrial equipment or machinery or software products purchased from a company outside the U.S. or to train U.S. workers to perform such services pursuant to a contract of sale. Numerous restrictions apply.
- Foreign airline employees: (a) who do not qualify for E or L status, but are to perform executive, supervisory, or highly technical duties; or (b) who are coming to pickup aircraft and are not admissible as crewmen; (c) who are Canadian citizens or resident crewmen arriving directly on a flight originating in Canada; or (d) who are crew members coming as passengers solely to take an aircraft to a foreign port.
- Students at foreign medical schools coming for an "elective clerkship" at a U.S. medical school's hospital as part of the student's medical education.
- Persons coming exclusively to observe the conduct of business or other professional or vocational activity with no "hands-on" activity, where no appropriate exchange visitor program exists and the alien pays his own expenses.
- Participants in the Foreign Assistance Act Program.
- Peace Corps volunteer trainers not qualified for the "A" classification for governmental workers, who may be paid a salary.
- UNITAR interns who are not employees of foreign governments.
- Certain foreign government officials and exhibitor employees not eligible for "A" status, coming in connection with exhibits at international fairs or expositions.
- Aliens who would otherwise qualify for H-1 or H-3 classification, but who are paid from the alien's foreign employer (even the U.S. business' foreign affiliate having an overseas office with which the alien has been customarily employed) with at most incidental expenses paid from within the U.S. This is a controversial provision under which applicants can expect special scrutiny.
- Professional entertainers (broadly defined): (a) coming to participate in a cultural program sponsored by the sending country, performing before a nonpaying audience (voluntary donations to a charitable cause allowed), and receiving all expenses from the sending country's government; (b) coming to compete only for prizes or prize money and expenses; or (c) coming solely to audition with a prospective employer and receiving only incidental expenses.
- Still photographers taking photos and receiving no income from a U.S. source.
- Musicians coming only to make recordings for distribution only outside the U.S., and giving no U.S. public performances.
- Artists coming to paint, sculpt, etc. with no contract with a U.S. employer and with no intention regularly to sell such work in the U.S.
- Persons qualified for H-1B work coming to find an employer who will petition for H-1B classification on their behalf.
- Persons coming to establish a new branch, subsidiary or affiliate of their foreign employer, if they will be eligible for L-1 status upon obtaining necessary proof of acquisition of physical premises.
- Unpaid amateur entertainers or athletes coming to perform in a social and/or charitable context as a competitor in a talent show, contest, or athletic event.
- Supervisors of foreign combine harvester crews not performing actual harvester work.

Again, this list is not exhaustive, and other activities fitting the general concept behind the B-1 classification could be found acceptable. The "bottom-line" test is whether a U.S. worker might realistically have been hired

had the alien not been admitted. The uncertainty arising from U.S. border officials' varying scrutiny of applicants for B-1/visa waiver entry under standards lacking clear definition is a significant incentive for an alien arguably qualified for B-1 entry nevertheless to choose to pursue a more dependable status as available, such as H-1B, E-2 or L-1.

Procedures (variations)

The procedures for entry as a business visitor depend on the country of the applicant's citizenship. We have a separate page on the [process of visa application and entry](#), but the general principles are as follows:

Most countries. Visitors from most countries must [apply](#) for a B-1 visa (often combined with B-2 on the stamp) from a U.S. consulate. A B-1 visa may be valid for entries into the U.S. for one or multiple entries within a specific time up to 10 years after issuance. Upon [admission](#) and using the visa, the visitor receives a white "I-94" departure card reflecting a period of stay that depends on the U.S. border or airport inspector's discretion in light of the visitor's description of intended activities, often up to six months and sometimes as much as one year. [Extensions](#) may be requested by filing form I-539 with USCIS.

Waiver Countries. Certain visitors may enter under one of several [waiver programs](#) allowing entry without any visa:

- Canadian citizens and Bermudan citizens entering from within the Western Hemisphere, who need no visa to enter and often receive no departure card with the understanding that they are allowed a 6 months stay. Canadian citizens are eligible to make business visits for a number of purposes listed in the North American Free Trade Agreement (NAFTA), but that list is only reflective of the activities appropriate for a B-1 business visitor from any country.
- Landed immigrants in Canada, Mexican citizens, and certain Canadian citizens and British subjects, who may seek one of several types of border crossing cards with varying conditions.
- Certain other persons generally not requiring visas.
- Visa Waiver Program— Citizens of countries designated under the State Department's "visa waiver program" may use their passports without a visa to enter the U.S. for a period not exceeding 90 days, receiving a green "I-94W" card (not to be confused with a "green card" for permanent residence!). The trade-off for the convenience of not having to obtain a visa is the set of limitations described on the back of the I-94W: no right to a hearing if the U.S. immigration inspector finds the person inadmissible (even on the basis that the person has not convinced the officer of his "nonimmigrant intent"), and no eligibility for extension of stay or for change of status. Visa Waiver entrants normally must possess "machine readable passports" and those issued past a certain date (different for each country) must have a passport with a digital photograph and/or an electronic chip containing biographic data.

Family Members

A spouse and children under age 21 may accompany a business visitor by entering in B-2 status as a visitor for pleasure, which may be done with a visa or, if the family member is independently eligible, under a visa waiver. However, the presence of the family when the "principal alien" seeks entry can sometimes tend to make the immigration inspector think that the purpose is more than a business visit, particularly if the family members are traveling with substantial belongings.

How We Can Help

The Immigration Team at Baker Donelson assists potential business visitors, businesses abroad to which they are connected, and entities they will be visiting to decide whether the B-1 (or waiver) will be appropriate. If so, we can help gather and prepare documents that will help persuade the consulate and/or U.S. immigration inspector that the situation qualifies. We can present arguments to consulates and to U.S. immigration

inspectors to overcome skepticism, citing and attaching legal authorities and internal agency manuals and memos to demonstrate the legitimacy of the planned activities. We can help present the alien's nonimmigrant intent. We can represent the alien in Immigration Court in exclusion hearings if not admitted. We can help decide if another classification is attainable that might be more appropriate for the purpose with less risk and more dependability, and we can prepare papers to pursue the chosen alternative classification. We can prepare applications to extend visitor stays, obtain new visas, change status to other classifications within the U.S., and even work toward permanent residence.