

# OUR PRACTICE

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## Trainees

Four classifications specifically allow temporary training. Before approaching any of them, one should consider whether one of the more clearly work authorizing classifications is available (such as E, H, L, or TN).

- **B-1 Business Visitors**
- **J-1 Exchange Visitors (which allows various programs other than training)**
- **H-3 Trainees**
- **Q-1 Cultural Visitors**

Each classification has different, cumbersome procedures, eligibility rules and allowable activities, discussed below. We can help with any of them.

### **B-1 Business Visitors**

If the activities can be limited and the alien can be paid from abroad, the **B-1 classification** for business visitors may be sufficient, which could save on time and expense in relation to the other training classifications. The B-1 classification allows an alien to participate in a structured training program on behalf of his foreign employer if the alien will continue to be paid by the alien's foreign employer (even the foreign affiliate of a U.S. business) with at most incidental expenses from within the U.S. No productive work can be involved.

### **J-1 Exchange Visitor Trainees**

"Trainee" is one of the 13 categories of programs in which J-1 exchange visitors may be sponsored. Few employers themselves have incurred the substantial effort and expense necessary to become a "program sponsor" approved directly by the State Department. Thus, most employers providing training to an exchange visitor do so through an "umbrella program" that has obtained State Department approval to oversee individual employers' training. The employer and trainee must follow not only the normal **J-1 exchange visitor rules and procedures**, but also the rules developed by the specific umbrella program involved. Specific advantages to the J-1 classification are the lack of need for a preliminary USCIS petition, the ability to engage in substantial work in the form of "on-the-job" training, and the availability of unrestricted work authorization for the J-2 dependents of the trainee. Disadvantages include unique personal insurance requirements, the possibility of a requirement of two years of home residency after the training, fees to the umbrella program, and paperwork and procedures of the umbrella program. The rules for trainees were tightened in 2007, and the umbrella programs have tightened their procedures.

### **H-3 Trainees**

The H-3 classification is specifically for training. It requires a highly structured program that includes a fixed schedule, organized curriculum, and objectives subject to evaluation. It cannot be designed primarily to provide productive employment, the alien cannot be placed in a position normally occupied by U.S. workers, and any productive work incidental to the training should be offset by time spent by existing workers training the alien and should not exceed 25% of total activity. A classic example is a management trainee rotation for rising managers from foreign operations who need exposure to the process in the United States in order best to understand company philosophy and American business practices. Less impressive arrangements can receive

approval, but a business justification for providing the training other than receiving productive work should be advanced in such situations. A unique requirement is that the training must not be available to the alien in his home country. The petition should show that the alien does not already have substantial training in the field (such as through past F-1 practical training) and that the training will benefit the alien's career outside the U.S.

The employer need not undergo routine regulation as a sponsor (as in the J-1 program). The employer must file a USCIS petition, but H-3 workers may be grouped in one petition when they are coming for the same program at the same time. An H-3 alien may enter the U.S. for only two years at a time, after which he must remain outside the United States for six months before returning in H or L status. The trainee's spouse and unmarried children under age 21 may accompany the alien in H-4 status.

### **Q Cultural Visitors**

An employer actively doing business in the U.S. may establish a program of practical training and employment (including active work with pay and conditions comparable to U.S. workers) in a public setting through which the alien will actively exhibit or explain his or her home country's attitude, customs, history, heritage, philosophy, or traditions. The primary example is Disney World's Epcot Center (and the Q classification is often referred to as the "Disney Visa"), but USCIS acknowledges that seminars, courses, lecture series, or language camps may qualify. A participating alien must be at least eighteen years old, be qualified for the work or training, and have the ability to communicate effectively to the U.S. public about his or her home country's culture.

As with H-3, a USCIS petition is required, and the petition may cover multiple aliens in the same program. Neither the program nor the alien's stay may exceed 15 months, and an alien with an aggregate of 15 months in Q-1 status must spend one year outside the U.S. before being admitted under Q-1 again. There is no classification for spouse or children of Q-1 aliens, but they may seek entry as [B-2 visitors](#).

### **Nonimmigrant Intent**

In each of the classifications above, the trainee and any accompanying family member must be prepared to demonstrate intention to return to a home abroad, which is inconsistent with taking any steps toward permanent residence.

### **How We Can Help**

Baker Donelson's Immigration Group can represent employers and other entities establish J-1, H-3, and Q training programs, including umbrella J-1 programs. We help prospective employers and trainees identify and cooperate with umbrella programs to accomplish J-1 training and to maintain J-1 status. We help J-2 dependents coordinate the tricky arrangements necessary to obtain and maintain continuous employment authorization. We help trainees who have developed problems with their status or who wish to change to another status. We help determine whether the J-1 home residency rule may apply, help avoid its application, and seek waivers when it applies.

### **Important Links**

- [Temporary Workers](#)
- [Exchange Visitors](#)
- [DOS ECA: Trainees \(with programs listed\)](#)