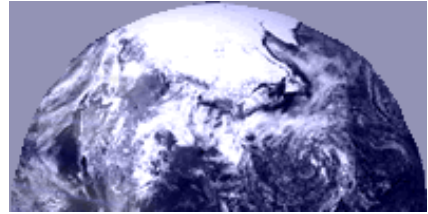


Thompson Immigration Law Associates

Providing U.S. & Global Immigration Solutions
to Businesses Around the World



Common U.S Work Visas Portfolio

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COMMONLY-USED U.S. WORK VISAS (H-1B/E-3/TN VISAS)

The H-1B nonimmigrant visa category is the most commonly used nonimmigrant work visa utilized by U.S. companies to employ foreign nationals. The basic requirement for any category of these categories of work visas is that the foreign national must have a U.S. bachelor's degree or its equivalent, and the position for which the foreign national is being sponsored must require a bachelor's degree as a minimum requirement. This equivalency can be established through a combination of education and experience.

1.1 H-1B AND E-3 VISA CATEGORIES

1.1.1 "BACHELORS-LEVEL" H-1B VISAS

A bachelors-level H-1B visa can be used to sponsor a foreign national from any country. There is currently a "cap" of 65,000 bachelors-level H-1B visas that may be issued every governmental fiscal year (from October 1-September 30). All foreign nationals who wish to work on an H-1B visa must obtain approval from the U.S. Citizenship and Immigration Services ("USCIS") prior to entering the United States on H-1B status or converting their current nonimmigrant status to H-1B status.

A bachelors-level H-1B nonimmigrant visa is valid for a three-year period. A foreign national may remain on H-1B status for a total of six years. However, an H-1B visa may be extended beyond this six-year period if the foreign national has a green card application in process for at least one year. This means that every H-1B worker should have a green card application filed before the end of their fifth year on H-1B status.

1.1.2 "SINGAPORE" AND "CHILE" H-1B VISAS

As part of the Free Trade Agreements between the United States and Chile and Singapore, 6800 of the 65,000 bachelors-level H-1B visas that are available each fiscal year are set aside for Chile and Singapore nationals. Of these, 5400 visas are set aside for Singapore nationals, and 1200 visas are set aside for Chile nationals. As such, the number of bachelor-level H-1B visas available each fiscal year is really 58,200 visas. However, any Singapore or Chile H-1B visas that are not used in a fiscal year are added back into the 65,000 bachelor-level H-1B cap.

Singapore and Chile H-1B visas are one-year visas that can be renewed indefinitely. Singapore and Chile nationals who are not already in the United States need not obtain approval from the USCIS prior to entering the United States on H-1B status. Instead, they may apply directly to a U.S. Embassy or consulate.

1.1.3 "MASTERS EXEMPT" H-1B VISAS

In addition to the 65,000 bachelors-level H-1B visas discussed above, Congress recently allowed for an additional 20,000 H-1B visas to be available for foreign national who earn a master's degree or higher from a U.S. college or university. Like the bachelors-level H-1B visa, a "masters exempt" H-1B visas may be utilized to sponsor a foreign national from any country. Similarly, all foreign nationals who wish to work on a masters exempt H-1B visa must obtain approval from the USCIS prior to entering the United States on H-1B status or converting their current nonimmigrant status to H-1B status.

The masters exempt H-1B visa is a three-year visa that may be renewed for a total of six years. However, as with a bachelors-level H-1B visa, a masters exempt H-1B visa holder may extend their H-1B status beyond the six-year period if the foreign national has a green card application in process for at least one year.

1.1.4 “CAP EXEMPT” H-1B VISAS

In addition to the above categories of H-1B visas, there are a number of instances in which a foreign national may obtain an H-1B visa irrespective of whether the 65,000 bachelors-level H-1B cap has been reached. These include:

- Foreign nationals who work for institutions of higher education, non-profit organizations or government research organizations;
- Foreign nationals who are transferring between an institute of higher education, a non-profit organization or government research organization; and
- Foreign nationals who are J-1 nonimmigrants who have a 2-year foreign residency waiver.

1.1.5 AUSTRALIAN “E-3” VISAS

In early 2006, the U.S. government initiated a new visa program called the E-3 visa program. While an E-3 visa is not in the same category as an H-1B visa, its primary requirements are identical to an H-1B visa; *i.e.*, the foreign national must have a U.S. bachelor’s degree or its equivalent, and the position for which the foreign national is being sponsored must require a U.S. bachelor’s degree or its equivalent.

The E-3 visa category was established under the Free Trade Agreement between the United States and Australia. There are 10,500 E-3 visas available every governmental fiscal year (from October 1-September 30). This total is not set aside from the 65,000 bachelors-level H-1B visa cap like the Singapore and Chile H-1B visas. *As such, the E-3 visa category is a valuable resource for employers who cannot hire H-1B workers because the H-1B cap has been reached – a situation that has existed for the last three governmental fiscal years and which is expected to re-occur next fiscal year.*

Another significant benefit of this visa category is that the spouse of an E-3 visa holder may obtain work authorization within the United States. Such work authorization is not available for an H-1B dependent spouse.

An E-3 visa is a two-year visa that may be renewed indefinitely. Like the Singapore and Chile H-1B visas, Australian nationals who are not already in the United States need not obtain approval from the USCIS prior to entering the United States on E-3 status. Instead, they may apply directly to a U.S. Embassy or consulate.

1.1.6 THE H-1B/E-3 VISA PROCESS

All of the H-1B and E-3 visa processes discussed above consist of three steps. First, if the foreign national was educated outside of the United States, his or her educational credentials must be evaluated by an independent credentialing consultant to determine whether his or her education (and work experience, if necessary) is equivalent to a U.S. bachelor’s degree or higher.

Next, a “Labor Condition Application” (or “LCA”) must be filed with the U.S. Department of Labor (“DOL”). The LCA certifies that the salary being offered meets the actual or prevailing wage for the position for which the foreign national is being sponsored in the geographic region where the foreign national will be employed.

Once these first two steps are completed, an H-1B or E-3 nonimmigrant visa petition can be filed either with the USCIS or with a U.S. Embassy or consulate, depending on the category utilized and the location of the foreign national. If filed with the USCIS, an H-1B petition may be filed under the standard processing approach or the “premium processing” approach. Under the premium processing approach, the USCIS will review an H-1B petition within two weeks of filing. Note that this does not mean that the USCIS will decide a case within two weeks, although most cases are decided within this time frame. An E-3 applicant may not rely upon the premium processing approach.

1.1.7 H-1B/E-3 FAMILY MEMBERS

The spouse and unmarried minor children of any category of H-1B or E-3 worker may be admitted as H-4 or E-3 dependent nonimmigrant, respectively. Family members must make a separate filing with the USCIS and/or U.S. Embassy or consulate to obtain H-4 or E-3 status.

Family members of an H-1B worker are not authorized to work in the United States unless they have an independent basis for employment authorization. However, as discussed above, spouses of an E-3 visa holder may work in the United States so long as they obtain prior authorization from the USCIS.

Family members under any of the above categories may attend school.

1.2 TN VISAS FOR CANADIAN AND MEXICAN NATIONALS

The “TN”, or “Trade NAFTA”, nonimmigrant visa category was created by the North American Free-Trade Agreement (“NAFTA”) in 1994. NAFTA covers citizens, not landed immigrants or permanent residents, of Canada, Mexico, and the United States. A TN professional may be admitted into the United States for a period of time not exceeding three years; but this stay can be extended indefinitely in yearly increments.

1.2.1 MINIMUM QUALIFICATIONS REQUIRED FOR A TN VISA

In order to qualify for a TN visa, the position for which a Canadian or Mexican citizen is being sponsored must be one listed under NAFTA, and the Canadian or Mexican citizen must possess the credentials specified under NAFTA as necessary to qualify for the position. For example, a “Computer Systems Analyst” must have one of the following: (1) a baccalaureate degree, (2) a licenciatura degree, or (3) a post secondary diploma/certificate plus three years of relevant experience.

1.2.2 THE TN APPLICATION PROCESS

A TN visa is usually obtained from a Free Trade Officer at any Class A port of entry, as well as at a number of international airports. Mexican citizens must apply at the U.S. Embassy or consulate nearest the applicant’s place of residence. Minimal documentation is required to apply for a TN visa at the border. However, it is important to note that many qualified applicants fail to receive a TN visa because the letter of support and supporting documentation are not properly presented.

TN professionals already in the United States may apply for TN status by filing a TN petition with the USCIS. Petitions filed with the USCIS can be filed under the standard approach or the “premium processing” approach. Under the premium processing approach, the USCIS will review a TN petition within two weeks of filing. Note that this does not mean that the USCIS will decide a case within two weeks, although most cases are decided within this time frame.

1.2.3 TN FAMILY MEMBERS

The spouse and unmarried minor children of a TN applicant may be admitted as TD nonimmigrants. If the spouse and children accompany the TN applicant and apply for a visa at the border, then no separate filing fee is required. If, however, the spouse and children enter the United States after the TN has already been admitted, or are filing from within the United States, a separate filing must be made either at the border or with the USCIS to obtain TD status. Family members of the TN applicant are not authorized to work in the United States unless they have an independent basis for employment authorization. However, the family members may attend school.

1.2.4 TN OCCUPATIONS

Following is a list of occupations for which a Canadian or Mexican citizen can obtain a TN visa. Also included are the credentials needed to qualify for each occupation.

General Occupations

Accountant: baccalaureate or licenciatura degree; or C.P.A., C.A., C.G.A. or C.M.A.

Architect: baccalaureate or licenciatura degree; or state/provincial license

Computer Systems 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 certificate, 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

Industrial Designer: baccalaureate or licenciatura degree; or post-secondary diploma or post-secondary certificate, and three years experience

Interior Designer: baccalaureate or licenciatura degree; or post-secondary diploma or post-secondary certificate, and three years experience

Land Surveyor: baccalaureate or licenciatura degree; or state/provincial/federal license

Landscape Architect: baccalaureate or licenciatura degree

Lawyer (including Notary in the province of Quebec): LL.B., J.D., LL.L., B.C.L. or licenciatura degree (five years); or membership in a state-provincial bar

Librarian: M.L.S. or B.L.S. (for which another baccalaureate or licenciatura degree was a prerequisite)

Management Consultant: baccalaureate or licenciatura degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience in a field of specialty related to the consulting agreement

Mathematician (including Statistician): baccalaureate or licenciatura degree

Range Manager/Range Conservationist: baccalaureate or licenciatura degree

Research Assistant (working in a post-secondary educational institution): baccalaureate or licenciatura degree

Scientific Technician/Technologist (a business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics): 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

Social Worker: baccalaureate or licenciatura degree

Sylviculturist (including Forestry Specialist): baccalaureate or licenciatura degree

Teacher (College, Seminary or University): baccalaureate or licenciatura degree

Technical Publications Writer: baccalaureate or licenciatura degree; or post-secondary diploma or post-secondary certificate, and three years experience

Urban Planner (including Geographer): baccalaureate or licenciatura degree

Vocational Counselor: baccalaureate or licenciatura degree

Medical/Allied Professional Occupations

Dentist: D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental; or state/provincial license

Dietitian: baccalaureate or licenciatura degree; or state/provincial license

Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States) (a business person in this category must be seeking temporary entry to perform in a laboratory, chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease): baccalaureate or licenciatura degree; or post-secondary diploma or post-secondary certificate, and three years experience

Nutritionist: baccalaureate or licenciatura degree

Occupational Therapist: baccalaureate or licenciatura degree; or state/provincial license

Pharmacist: baccalaureate or licenciatura degree; or state/provincial license

Physician (teaching or research only): M.D. or 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

Scientific Occupations

Agriculturist (including 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

Biologist: 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

Geologist: baccalaureate or licenciatura degree

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 licenziatura degree

Pharmacologist: baccalaureate or licenziatura degree

Physicist (including Oceanographer in Canada):

baccalaureate or licenziatura degree

Plant Breeder: baccalaureate or licenziatura degree

Poultry Scientist: baccalaureate or licenziatura degree

Soil Scientist: baccalaureate or licenziatura degree

Zoologist: baccalaureate or licenziatura degree