



SheppardMullin

VISA CHECKLIST FOR EMPLOYERS, ENTREPRENEURS AND INVESTORS

Hiring the right talent can maximize the success of your company, and sometimes hiring a foreign national on a work visa is essential. We have prepared this overview of U.S. visas to help you and your company better understand the array of visas and their requirements.

At Sheppard Mullin, we stand ready to assist you in these immigration matters. Please contact your Sheppard Mullin attorney for assistance.

Visa versus I-94

- A visa and I-94 are different. It is good to know what each one does.
- The visa is in a passport and issued by the U.S. Consulate abroad
- The visa doesn't control a period of stay in the U.S.
- The visa expiration date is the last day to enter the U.S.
- The I-94 expiration date controls the last day to stay in the U.S. or file a change of status or extension of status with U.S. Citizenship and Immigration Services (USCIS)
- The I-94 is issued at the Port of Entry by U.S. Customs and Border Protection (CBP) or by USCIS for a change of status or extension of status
- One can print the I-94 online from CBP

ESTA Visa Waiver

- Must first pre-register online with ESTA (Electronic System for Travel Authorization)
- Can enter the U.S. for 90 days without a visa for meetings, conferences, training and tourism
- Must be paid by overseas company and can't work in the U.S.
- Cannot change status in the U.S.
- Limited to residents of select countries

Comment: If staying the full 90 days, don't return too soon; CBP doesn't like back-to-back entries

Comment: Best to have an invitation letter from the U.S. company and employment abroad to show the person won't work

B-1 / B-2 Visitor Visa

- Can visit for up to 6 months, and must have a valid business purpose
- Must apply at U.S. Consulate abroad
- Must be paid by overseas company and demonstrate ties to home country

Comment: If eligible for ESTA Visa Waiver, should not apply for a B-1/B-2 unless special circumstances exist

Comment: B-2 is for tourism

F-1 Student Visa

- Must apply to U.S. college and receive an I-20
- Then apply for F-1 visa at U.S. Consulate
- While in school may apply for Curricular Practical Training (CPT)
- Can receive 1 year work permit after graduation for full time work – Optional Practical Training (OPT)

Comment: F-1 students who were Science, Technology, Engineering and Math (STEM) majors can get a 24month extension of their OPT work permit (for 36 months total); employer must complete a training plan and use the E-verify online system for additional I-9 verification at time of hiring

Comment: STEM majors will have additional chances to be selected in the H-1B lottery given the additional OPT time.

J-1 Exchange Visa

- The J-1 visa is designed to develop education and cultural skills and then share them with one's home country
- J-1 Interns can stay up to 12 months. Must be in college.
- J-1 Trainees can stay up to 18 months. Must be college graduate with 1 year of experience or have 5 years of related experience
- J-1 Scholars can stay up to 5 years
- A government approved organization acts as the J-1 sponsor to facilitate the application process and issue the DS 2019
- U.S. company is the host and provides worksite location and training

Comment: Some J-1 visa holders must return to their home country for 2 years after program completion prior to switching to an H-1B, L-1, or green card unless they get a J-1 waiver. This is known as the two-year foreign residency requirement or 212E.

L-1 Intra-Company Transferee

- The L-1 visa is used to transfer a key employee from the overseas company to a U.S. affiliate
- L-1A is for an executive or high level manager – 7 years maximum for L-1A
- L-1B is for a specialized knowledge worker whose skills and knowledge about company products or operations cannot be easily found in the U.S. – 5 year maximum for L-1B
- Must have worked for the overseas affiliate for at least 1 year during the last 3 years
- If the U.S. company is less than 1 year old, then initial visa limited to 1 year

Comment: L-2 Spouse is work authorized incident to status. Doesn't need work permit

Comment: L-1A can usually apply for permanent residency after one year

H-1B Professional Occupations

- First time H-1B visa filings are subject to an annual quota of 85,000 visas, and the quota is very quickly used up each year. In 2022, almost a half million registrations were filed with USCIS by employers
- The H-1B lottery is held in March, and if selected, the start date would be October 1. H-1B transfers are exempt from this.
- The H-1B visa is designed to provide work authorization for certain college degreed professionals
- Must have college degree in a field related to the job offer
- Position must include the practical application of theoretical knowledge, also known as a "specialty occupation"
- Common H-1B occupations include software developers, engineers, scientists, analysts, etc.
- Employer must pay the higher of the U.S. Department of Labor prevailing wage or actual wage paid to U.S. workers
- Can only work for sponsoring employer, but can transfer employment with the filing of a new H-1B visa petition
- Visa is good for 3 years and renewable for 3 additional years, 6 years maximum
- Can extend beyond year 6 if employer has sponsored the person for permanent residency

Comment: Exemptions from the annual quota include an H-1B extension with the same company, a transfer to another company, and petitions filed by universities, nonprofit organizations affiliated with a university and non-profit research organizations

Comment: H-4 spouse cannot work unless the principal spouse is sponsored for a green card and has an approved I-140 immigrant petition

O-1 Extraordinary Ability

- The O-1 visa was designed to provide work authorization to an individual who has demonstrated extraordinary ability in their field
- Must be well known as being at the top of their field in the U.S. or abroad
- Valid for 3 years and renewable without limits

Comment: Frequently used by top executives, scientists, and performing artists.

E-2 Non-Immigrant Investor

- The E-2 visa allows non-immigrant investors, their managers, and essential employees to work in the
- U.S. based on a qualifying investment
- Requires an E-2 treaty between U.S. and home country
- Must be a citizen of the country with an E-2 Treaty. Managers and employees must have same nationality as investor
- U.S. company must be at least 50% owned by foreign nationals or company with nationality from the treaty country
- Investment must be substantial – at least \$250K but varies based on the needs of the company
- U.S. business must be up and running or close to opening its doors
- Must have a business plan to hire U.S. workers over time. No exact quota
- For most countries, the visa is valid for 3 to 5 years at a time based on reciprocity
- CBP will provide an I-94 at the port of entry for 2 years at a time
- No visa quota and no limits on renewals
- Spouse work authorized incident to status

H-1B1 Singapore/Chile Free Trade Agreements

- Citizens of Singapore and Chile can obtain work authorization with a U.S. employer
- Criteria same as H-1B specialty occupation, college degree, etc.
- Admission for 1 year at a time
- No limit on renewals
- Annual quota never reached
- H-1B1 spouse not eligible for work permit

E-3 Australia Free Trade Agreement

- Allows Australian citizens to obtain work authorization with U.S. employer
- Criteria is the same as H-1B specialty occupations, college degree, etc.
- Apply at U.S. Consulate in Australia or with USCIS. Premium processing available
- Visa is valid for 2 years. No limit on renewals
- Spouse will be work authorized incident to status

TN Visa – USMCA Agreement with Canada and Mexico

- Citizens of Canada & Mexico can obtain work authorization with U.S. company
- Based previously on the NAFTA Agreement. Now called U.S. Mexico Canada Agreement (USMCA)
- Occupation must be on the USMCA list. Common occupations are engineers, scientists, medical professionals, computer systems analysts, & management consultants.
- Canadian citizens apply at U.S. border or with USCIS. Admission is for 3 years
- Mexican citizens apply at U.S. Consulate in Mexico. Visa valid for up to 4 years.
- No limit on extensions
- TD spouse cannot work

P-1 Visa for Entertainment and Athletic Groups

- P-1A is for athletes or athletic groups that have international recognition. Athletes can play with major league teams. P-1A visa for athletes: can request up to 5 years, with a 10 year maximum. Family members come as P-4's.
- P-1B is for a foreign entertainment group that is coming to the U.S. to perform. Must have international recognition and a substantial record of achievement.
- P-1B visa is good for the duration of the concert series with a 1 year maximum. Can file extensions. Family members come as P-4's.
- For both P-1A and P-1B, can bring essential support personnel as well (P-1S)
- The P-2 is for performances as part of a reciprocal exchange program. The P-3 visa is for performing in a culturally unique program.

Permanent Residency (Green Card)

- There are various ways to obtain a green card in the U.S.
- Non-immigrants typically transition to permanent residency through company sponsorship with a PERM labor certification application filed with DOL. The employer has to prove a shortage of U.S. workers for the position.
- No PERM filing is required for I-140's based on extraordinary ability, outstanding professors and researchers, multinational executives and National Interest Waivers (NIW's), and Scheduled A filings for nurses and physical therapists.
- Certain categories are subject to annual quotas based upon the education and/or experience required for the position, country of birth of the applicant, and the filing date
- Spouse and single children under age 21 also get permanent residency at the same time
- Permanent residents can apply for U.S. citizenship after 5 years, or 3 years if married to a U.S. citizen

Comment: Permanent residents must live at least 6 months per year in the U.S. and will be subject to tax on their worldwide income.

EB-5 Immigrant Investor Program for Permanent Residency

- The EB-5 program was designed to provide permanent residency to investors who make a substantial investment and create 10 full-time U.S. jobs
- As of 03/15/2022, applicants can invest \$800K in a rural area, or \$1.05 million in a metropolitan area.
- Applicants can invest in an approved Regional Center rather than their own company and let the Regional Center create indirect jobs in the economy
- Company must have been created after November 1990
- Investor must prove lawful source of funds. Investor receives 2 year conditional green card and then file to make it permanent

In terms of quotas, 20% of the EB-5 visa numbers are reserved for qualified immigrants who invest in a rural area; 10% reserved for qualified immigrants who invest in a high unemployment area; and 2% reserved for qualified immigrants who invest in infrastructure projects. The remaining 68% are unreserved and are allotted for all other qualified immigrants.



We understand that your goals are to have counsel seamlessly manage your immigration needs, control costs, help you hire and retain top talent, and ensure full compliance with U.S. immigration laws. We are committed to helping you achieve these goals.

Our visa services cover all aspects of visas and immigration including:

- **Non Immigrant Visas:** B-1 visitors, E-2 investors, E-3 professionals, F-1 students, H-1B professionals, J-1 interns and trainees, L-1 intra-company transfers, O-1 extraordinary ability, TN visas, and many others.
- **Permanent Residency:** Applications for permanent resident status (“green cards”) including PERM Labor Certifications to prove a shortage of U.S. workers to the U.S. Department of Labor and I-140 immigrant petitions based on extraordinary ability, outstanding professors and researchers, and multinational managers, as well as Schedule A filings for nurses and physical therapists.
- **Investors:** E-2 and EB-5 investors.
- **Government Agency Work:** Administrative matters before DHS including USCIS, CBP, and ICE, as well as DOL, DOJ, and the U.S. Department of State.
- **I-9 and E-Verify Policies and Systems:** I-9 compliance issues, I-9 verification procedures, ICE audits, and government enforcement proceedings.
- **General Advice and Counsel:** Compliance, eligibility analysis, hiring, and related issues.

Please contact your Sheppard Mullin attorney to find out more about the Sheppard Mullin edge.



VISA CHECKLIST FOR ENTREPRENEURS, EMPLOYERS AND INVESTORS

Brussels | Century City | Chicago | Dallas | Houston | London | Los Angeles | New York | Orange County
San Diego (Downtown) | San Diego (Del Mar) | San Francisco | Seoul | Shanghai | Silicon Valley | Washington, D.C.

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