

# Immigration

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## Related Services

Asia Practice

Employment, Labor & Benefits

International

Latin America Practice

The lawyers in the Immigration Group are experienced practitioners, many of whom speak frequently at national and international conferences in their areas of expertise as well as volunteer their time for various immigrant organizations. All the individuals currently working in the Immigration Group share a common philosophy of wanting to provide the best, most personal representation available. Members of the Immigration and International groups are fluent in written and spoken English, Spanish, French, German, Chinese, and Vietnamese.

We offer counsel in the following immigrant-related areas: Employment/Business Immigration (Temporary and Permanent), Immigration Audits/Investigations, I – 9 Compliance, Family Immigration, Humanitarian Immigration Relief and Naturalization.

Our Immigration Webinars are designed to educate and explore frequently asked questions, cover best practices and preview upcoming changes to immigration law.

## Employment/Temporary

### B – 1/B – 2 Visitors

B – 1 visas are available for business visitors who are entering the U.S. for a short period and who are not engaged in local employment. B – 2 visas are for non – business visitors for pleasure.

### E – 1/E – 2 Treaty Traders & Investors

Certain countries have treaties with the U.S. regarding trade and/or investment that allow such individuals and their employees to receive visas to engage in business in the U.S.

### H – 1B Specialty Occupations

Professional workers with at least a bachelor's degree in a relevant field (or its equivalent in work experience) may be eligible for an H – 1B visa if the job requires a degree in that field and the employer can demonstrate that it will be paying at least the prevailing wage to the foreign employee. This is a two – step process involving both the Department of Labor and the USCIS.

## H – 2A & H – 2B

Non – professional workers can obtain temporary work permission either for agricultural or non – agricultural labor that is in short supply in the U.S. The work must be temporary or seasonal in nature. The employer must show a shortage of U.S. workers and that the hiring of foreign workers will not adversely impact the wages or working conditions of similarly employed U.S. workers. As such, these categories require a labor certification from the Department of Labor.

## H – 3

An employer may be able to set up a temporary training program to bring over experienced individuals for the purpose of training them further in their field with the intention that they will return to their countries after such training.

## J – 1 Trainees

Occasionally individuals may come to the U.S. under an approved exchange program for the purpose of business training, teaching, providing research, or even serving as camp counselors and au pairs. Depending on the country the individual is from and the program requirements, some J – 1 visa holders will be subject to a requirement that they spend at least two years outside of the U.S. before being permitted to change to another nonimmigrant visa or even adjust status to permanent residence. There are waivers available to remove this requirement which are more or less difficult to obtain depending on a number of variables, including the program sponsor and the country of origin.

## L – 1 Intra – Company Transferees

L – 1 visas are available to executives, managers and employees with specialized knowledge (both professional and non – professional) who are transferring to the U.S. from an overseas affiliate. The foreign and U.S. companies must have the requisite legal affiliation to be eligible. L – 1 executives and managers may qualify for permanent residence in the Employment – Based First – Preference (EB – 1) category and therefore do not need a labor certification.

## O – 1 Extraordinary Ability Workers

O-1 visas are available for individuals with extraordinary ability, including artists, entertainers, athletes, scientists, and business people. The standard for eligibility is higher for all those except artists and entertainers, who need show only "distinguished ability." Most Os in the arts and entertainment field require advisory opinions from applicable labor unions.

## P – 1, P – 2, P – 3 Artists & Athletes

These categories cover artists, entertainers, athletes and coaches. P – 1 is for entertainment groups (not individuals) and individual or group athletes that are internationally recognized. P – 2 is a category for artists and entertainers engaged in established reciprocal exchange programs. P – 3 is for artists, entertainers and coaches who are culturally unique. Most P visas require advisory opinions from a related union indicating that there is no objection to the grant of a visa.

## Q – 1

Q – 1 visas are for a unique classification of individuals participating in international cultural exchange programs. These visas can be very useful for temporary culture or language teachers and certain camp counselors.

## TN Status

The TN category is a special one set up for nationals of Canada and Mexico. This status was originally created under the provisions of the North American Free Trade Agreement, which has since been replaced by the United States – Mexico – Canada Trade Agreement. To qualify, one must be employed in a position which fits a specific TN job classification, and the U.S. employer's job duties must conform to the job classification. TN status can be issued for up to three years and can be renewed.

## Employment/Permanent

Employment – based immigration is divided into the following five preference categories:

### EB – 1 Foreign Nationals of Extraordinary Ability, Outstanding Professors & Researchers, & Multinational Executives & Managers

All of the above individuals are eligible for permanent residence without having to obtain a labor certification. The applications for the first two groups of individuals require substantial documentation establishing their national and/or international renown and expertise. Multinational executives and managers are only able to apply if they have worked for at least one year for companies with the appropriate ownership relationships and affiliations.

### EB – 2 Workers with Advanced Degrees or Exceptional Ability

Individuals in this category normally must have a job offer and an approved labor certification. The labor certification process is comprehensive and involves demonstrating that the foreign worker will not be taking a job away from a U.S. worker. If individuals in this category can show that their entry is in the U.S. national interest, both the labor certification and job offer requirements can be waived.

## EB – 3 Skilled Workers & Professionals

Individuals in this category typically must have a job offer and approved labor certification. While there is also an EB-3 unskilled labor category, it is so backlogged that it really makes no sense to proceed with a labor certification for an unskilled laborer.

## EB – 4 Special Immigrants

Ministers and other religious workers are eligible for permanent residence in this classification provided they have worked for the past two years in that same occupation for the same religious denomination.

## EB – 5 Investors

10,000 visas per year have been set aside for investors. Historically, they have been eligible for lawful permanent residence for making a \$1,000,000 investment in a new commercial enterprise that creates 10 jobs or a \$500,000 investment in a "targeted employment area" (rural area or one experiencing high unemployment). The investment amounts increased significantly on November 21, 2019, but were successfully challenged in court, so USCIS is applying the EB – 5 regulations in effect before that date. However, the E – 5 Immigrant Investor Regional Center Program, which had only temporary approval, expired on June 30, 2021, so currently only individual investors in non – regional center projects are eligible.

## Consular Processing

Through contacts developed out of our Mexico and China offices, as well as our affiliates throughout the world, we are able to advise our clients on consular visa processing issues, which have become progressively more complex in recent years. Obtaining H – 1B or – 1 approvals from CIS is only the first step for foreign workers entering the U.S. from abroad. Being able to provide critical and timely information on visa processing is a vital service that many smaller practitioners cannot provide.

## Global Immigration

Through our close membership in the 19 – firm Alliance of Business Immigration Lawyers ([www.abil.com](http://www.abil.com)) we have developed a private consortium of immigration attorneys in forty – six countries world – wide. Much more than a network, we work hand in hand with these attorneys in a cooperative effort to obtain visas for our multi – national corporate clients' employees coming from or to any part of the world. We meet and collaborate with these foreign – licensed attorneys on a regular basis, making them a part of our immigration team in bringing favorable results to our clients. A select group of attorneys from this alliance have been invited to join ABIL Global, which is a team of attorneys we collaborate with even more closely and whom we give preferred provider status. For more information, visit <https://www.abil.com>.

[com/abil – lawyers/](#).

## Compliance for U.S. Employers

As most of us are by now very well aware, all employers in the U.S. are required to have their employees fill out I – 9 forms indicating eligibility to work. These documents should be carefully filled out and maintained by the employer in case the USCIS ever decides to audit the employer's records. There are severe penalties for both technical and willful I – 9 violations, so it is essential that employers thoroughly understand the I – 9 process, especially as there are many different types of documents that can be provided by foreign nationals to establish work eligibility. It should be noted that even if employers do not hire a single foreign worker, they can be fined for serious technical I – 9 violations. Further, employers have to take care that they do not discriminate against individuals on the basis of their nationality by asking for documentation that is not required. Employers have to walk a fine line between avoiding penalties for failure to properly document all of their hires and penalties for discrimination against foreign nationals.

## Other Regulatory Compliance

We have assisted our corporate clients in navigating audits by the Department of Labor and the USCIS. Employers can be assessed serious fines and penalties for failure to comply with immigration regulations, and we carefully ensure that companies' compliance files (for H – 1B's and labor certifications) are in good order should an audit ever occur.

## Experience

### Artists, Entertainers & Athletes

This is a unique area of immigration law with special visa types which require unique strategies. Depending on circumstances, these individuals may be eligible for a variety of temporary visas, including B – 1, H – 1B, J – 1, O – 1, P – 1, P – 2, P – 3, or Q – 1. (Described under Employment/Temporary) Permanent options for such individuals range from Employment – Based First Preference for Extraordinary Ability, Employment – Based Second Preference and traditional Labor Certifications.

### Foreign Students

Most foreign students are in the U.S. on an F – 1 visa which allows them to reside in the U.S. for the duration of their study program as long as they are maintaining a full course of study and are not working unlawfully. There are various types of practical training permits that foreign students may be eligible for, but as a general rule, they are not allowed to work except on campus or with this special permission. Some students are also in the U.S. on J – 1 visas, which are for scholars, teachers and others. While J programs and program sponsors vary widely, students in J

status are similar to F – 1 students in that they are ineligible for outside employment. Spouses of J – 1s (J – 2s) are eligible for work authorization from USCIS, but spouses of F – 1s are not. Many individuals in J status are subject to a requirement that they return to their country of origin for two years before being eligible for a change of status or adjustment of status to lawful permanent residence. While waivers are sometimes available, students should carefully consider their long term plans before agreeing to J – 1 status over F – 1 status.

## Family Immigration

Family immigration is divided into immediate relatives and preference relatives. Immediate relatives include spouses, children under age 21 and parents of U.S. citizens. These individuals are immediately eligible for permanent residence in the U.S., although the application process can typically take quite a while. Preference relatives are divided into the following categories: First preference—unmarried adult children of U.S. citizens; second preference—spouses and children of U.S. permanent residence; third preference—married children of U.S. citizens; and fourth preference—brothers and sisters of U.S. citizens. These are the only family relationships which allow immigration to the U.S. USCIS has very specific definitions of what constitutes "children" (including stepchildren and adopted children) and "parents." Family relationships are typically proven with birth certificates, marriage certificates and other legal documentation. The USCIS scrutinizes family relationships closely to ensure that relationships were not entered into merely for the purpose of obtaining immigration benefits.

## Naturalization

Individuals who have resided in the U.S. as lawful permanent residence for 5 years (or in the case of spouses of U.S. citizens, 3 years) are eligible to apply for naturalization as U.S. citizens. These individuals must also establish that they have been physically present in the U.S. for at least half of the time during the past 5 years, and that they have not been outside the country for more than one year at any given time without obtaining a waiver. The naturalization process requires that individuals be of good moral character, not be removable from the U.S. for any reason, including past criminal activity, and can pass a test in U.S. government and written and spoken English skills. There are certain exceptions regarding these testing requirements for individuals of a certain age or with certain disabilities. Once interviewed and approved, individuals will be sworn in as U.S. citizens and asked to take an oath of allegiance. Acquiring U.S. citizenship in the U.S. through naturalization does not automatically revoke one's native citizenship provided that dual citizenship is allowed by that country.

## Refugees & Asylees

Refugees and asylees are individuals who have been granted protection by the U.S. government on account of having established a well – founded fear of persecution by their foreign government on account of their:

- Political opinion
- Nationality
- Ethnicity
- Religious beliefs
- Membership in a particular social group

Social group membership includes such areas as gender and sexual preference persecution. The main difference between refugees and asylees is that refugees establish this well – founded fear while outside the U.S., typically in a refugee camp, and are then relocated to the U.S. to reside here. Asylees are individuals who have come to the U.S. with visas or as illegal entrants and then file for asylum. Their application must establish their well – founded fear of persecution on account of one of the five grounds. The asylum and refugee process is not an easy one; simply because a country is war torn or in extreme turmoil does not mean its citizens are eligible to reside in the U.S. as refugees or asylees. Proving a well – founded fear of persecution is a very difficult process that is best done with legal counsel. Individuals with strong claims can sometimes qualify for assistance from a human rights organization that helps prepare applications on a pro bono basis. One such organization is the Minnesota Advocates for Human Rights, located at [www.theadvocatesforhumanrights.org/](http://www.theadvocatesforhumanrights.org/).

## Deportation & Removal

Fredrikson's immigration services include comprehensive representation in the area of deportation and removal. Our attorneys are highly regarded in this area with many years of experience. As a result of recent changes in the law, many more individuals are now subject to deportation and removal, even for committing the most minor offenses. We are capable of handling these matters both in Immigration Court and U.S. Federal Court.

## Lottery

Once a year, most typically around October, the U.S. State Department runs a visa lottery for individuals from certain countries that are under – represented in U.S. immigration. Simple applications must be filed within a narrow window of time and approximately 9 or 10 months later the winners are announced. Even though these applications are very simple, it should be noted that many are rejected for failure to follow exact directions. The visa lottery winners are eligible for lawful permanent residence in the U.S. and must adjust to that status or obtain a visa from a consulate abroad by the end of the next fiscal year. As the State Department issues considerably more approvals than it can grant, it is essential that individuals who win the lottery take immediate steps to make their applications. Otherwise, they may end up in the unfortunate position of being denied because the quota has been reached.