

NAFTA and Visa Status

Applicability

This document applies only to engaging the services of nonresident aliens as independent contractors. For information on employing nonresident aliens, refer to the noncitizen employment procedures in the Personnel Administration section of the RF Web site.

Complying with Immigration Laws

Operating locations risk exposing themselves to debarment from existing and future government contracts if they do not comply with the Immigration and Naturalization Services (INS) regulations regarding visa and NAFTA status.

Executive Order 12989, passed in February 1996, precludes organizations that violate immigration laws from obtaining or participating in U.S. government contracts. Any organization, or unit of the organization, under a government contract that knowingly violates the order by employing unauthorized resident or nonresident aliens is subject to debarment. For example, compensation payments to B-1 or B-2 visa holders constitutes a violation of E.O. 12989.

Identifying Status of Nonresident Aliens

Operating locations must check a nonresident alien's visa or NAFTA status to see if he or she can be paid for contracted services. A description of NAFTA status follows this block. The Summary of Visa and NAFTA Status and Employability section of this document defines the employability of a person depending on visa type or NAFTA status.

In some instances the visa requirement may be waived. Refer to the Visa Waiver Program section of this of this document for more information.

NAFTA Status

Background

The United States, Canada, and Mexico entered into the North American Free Trade Agreement (NAFTA) on January 1, 1994. NAFTA provides for expedited admission of business persons from any of the three countries into one of the other countries.

Categories

NAFTA covers the following categories of business persons from Canada and Mexico seeking entry into the United States:

- temporary business visitors
- TN professionals

- E traders and investors
- intracompany transferees

Generally only the B-1 temporary business visitor and TN professional categories apply to nonresident aliens providing services for the Research Foundation. These two categories are described in the sections that follow.

B-1 Temporary Business Visitors

The description of and employability requirements for Canadian and Mexican B-1 Temporary Business Visitors are the same as B-1 Visa holders. Refer to Summary of Visa and NAFTA Status and Employability at the end of this document.

Immigration Documents

Canadians: Canadian citizens will not have a visa or an Arrival Departure Record (I-94). The operating location should therefore indicate the person's status on the "Request for Alien Information" form.

Mexicans: If the person does not have a visa, he or she must have a Mexican Border Crossing Card (Form I-186 or I-586).

TN Professionals

TN professionals are business persons allowed temporary entry to the U.S. to engage in business activities at a professional level. Business Activities at a professional level consist of those undertakings that require that the person has at least a baccalaureate degree or appropriate credentials demonstrating professional status in order to successfully complete the undertaking. These activities must also be prearranged business activities for a U.S. entity. It does not authorize the establishment of a business or practice in the U.S. in which the professional will be self-employed.

Requirements for Canadians and Mexicans are different and are described in the sections that follow:

Requirements for Canadian TN Professionals

Planning Ahead

Operating location responsibility: When operating locations are planning to bring a Canadian citizen into the U.S. as a TN Professional, the location should provide the person with documentation of the payment arrangement for the U.S. activity and a statement that the purpose of entry is temporary.

Canadian citizen responsibility: The Canadian citizen is responsible for bringing the documentation supplied by the operating location and the following items to be presented at the border when entering the U.S.:

- Proof of Canadian citizenship
- Evidence that the intended U.S. activity is listed in the [NAFTA Professional List](#).
- Evidence that the alien has the necessary credentials to be considered a professional in one of the professional fields in the [NAFTA Professional List](#).
- Proof of a license to practice the profession if one is required in the state of intended employment.
- Filing fee.

Note: Fields listed in the [NAFTA Professional List](#) (e.g., biochemist, scientific technician) all require a Bachelor's degree or higher, or an alternate degree equivalent (from a foreign country).

Admission to U.S.

Canadian professionals seeking admission to the U.S. in the TN category must present their case for admission at the port of entry. NAFTA officers designated by the INS may ask for the documentation listed above.

Requirements for Mexican TN Professionals

Mexican citizens must be entering the U.S. for an intended activity listed in the [NAFTA Professional List](#) and they must hold a TN visa. The process for obtaining a TN visa is the same as that of obtaining an H-1B visa. For more information, refer to H-1B Visa Holder Employment (, https://www.rfsuny.org/media/RFSUNY/Procedures/per_h1b-visa-holder-employment_pro.pdf).

Compensating TN Professionals TN professionals can only be compensated for services provided to the organization that are listed on the TN visa application (for Mexicans) or the original supporting documentation outlining the arrangement for remuneration for the U.S. activity (for Canadians).

Visa Waiver Program The federal government authorized the Visa Waiver Pilot Program (VWPP), under which citizens of participating countries can visit the United States for up to 90 days for business or pleasure without obtaining a visa. This program is designed to promote international travel and tourism and reduce personnel cost incurred by the U.S. government.

Visitors entering the U.S. for business purposes receive a "WB" (Visa Waiver Business) status, which has the same requirements as a B-1 visa. Persons entering the U.S. for pleasure receive a "WT" (Visa Waiver Tourist) status, which has the same requirements as a B-2 visa. Refer to "Summary of Visa and NAFTA Status and Employability" in this document for descriptions of each visa type and NAFTA status.

Note: For more information on participating countries in the VWPP, operating locations can contact the Office of Employee Services.

Process

Under this program, this person does not secure a visa, but instead applies for entry at the U.S. port of entry by providing a completed INS Form I-94W, "Nonimmigrant Visa Waiver Arrival/Departure Form." The form is normally handed out on commercial airlines.

At the port of entry to the U.S. the immigration officer will make a notation on the form of either "WT" (Visa Waiver Business), depending on the person's primary reason for coming to the U.S. The I-94W will also indicate the period of authorized stay. This form is the person's immigration document supporting his or her status while in the U.S.

Suggested Visa Category to Pay Short Term Visitors Since the restrictions on B-1 or WB and B-2 or WT status are such that persons in these categories cannot be compensated for services rendered, in INS suggests that when an organization wants to pay a person plus expense (e.g., a guest lecturer), that the organization seek classification in the J-1 visa category. This category is used for various types of visitors to enter the U.S. government-approved "Exchange Visitor Programs" for the purpose of gaining experience, studying, or doing research in their respective fields.

Applying the Category to Independent Contractors

A foreign guest lecturer or other type of service provider would be considered a J-1 short-term scholar. The short-term scholar can lecture, observe, consult, or participate in seminars, workshops, conferences, study tours, professional meetings, or similar types of educational and professional activities. These scholars are permitted to receive direct compensation (e.g., an honorarium or other payment) and payment for travel expenses from the sponsoring entity.

Responsibilities

Since the visa application must be made *before* the person enters the U.S., it is important that the operating location personnel responsible for inviting the person to the U.S. and the designated school official (DSO) responsible for helping people obtain visas work

together to determine the best approach to take in this type of situation.

Reference

Refer to the following documents on noncitizen employment in the Employees: Personnel Administration area of the Employee Performance Support System (EPSS):

- [J-1 Visa Category: Students](#)
- [J-1 Visa Category: Professors and Research Scholars](#)
- [J-1 Visa Holder Employment](#)

Summary of Visa and NAFTA Status and Employability

The following table outlines employability* rules for each type of Visa:

* "Employability" means whether an employee or independent contractor can be hired or reimbursed for business purposes.

Summary of Visa Types and Employability of Visa Holders			
Visa Type	Description of Visa Holder	Employability	Reference
A-1	Ambassador, public minister, career diplomat, or consular officer, and members of immediate family	A foreign government official may be employed only by the foreign government. Members of the immediate family residing with the official may apply for permission to be employed but there are strict limitations on approval. Note: A-1 visa holders may enroll in school full or part time while maintaining their status.	—
A-2	Other foreign government official and members of immediate family	A foreign government official may be employed only by the foreign government. Members of the immediate family residing with the official may apply for permission to be employed but there are strict limitations on approval. Note: A-2 visa holders may enroll in school full or part time while maintaining their status.	—
	Attendant, servant, or personal employee of noncitizen holding an A-	The principal A-3 visa holder may be employed only by the foreign government official. The immediate family	

A-3	1 or A-2 visa, and members of immediate family	members holding A-3 visas are not employable. Note: A-3 visa holders may enroll in school full or part time while maintaining their status.	—
B-1	Temporary visitor for business	May accept an honorarium payment and payment for associated incidental expenses to consult with business associates, participate in scientific, educational, professional, or business conventions, conferences, or seminars, or undertake independent research. Admitted for a period of time which is fair and reasonable for completion of the purpose of the trip, not to exceed one year.	—
B-2	Temporary visitor for pleasure, medical treatment, or prospective student/exchange visitor (with notation on visa)	Not employable; may not receive reimbursement for expenses. If admitted as a prospective student or exchange visitor, student will need a valid F or J visa to study or work. Admitted for a standard period of 6 months.	—
C-1	Noncitizen in transit through US	Not employable.	—
C-2	Noncitizen in transit to the United Nations headquarters district under section 11 (3), (4), or (5) of the headquarters agreement	Not employable, except that a foreign government official may be employed only by the foreign government.	—
C-3	The following persons in transit: foreign government official, members of immediate family, and attendant, servant, or personal employee of foreign government official	Not employable, except that a foreign government official may be employed only by the foreign government.	—
D	Crew (sea or air)	Employable only in a crew capacity on the vessel or aircraft of arrival or on a vessel or aircraft of the same transportation company.	—

E-1	Treaty trader, spouse, and children	The trader or investor is employable only by the treaty-qualifying company through which the person attained his or her status. Dependents are not employable.	—
E-2	Treaty investor, spouse, and children	The trader or investor is employable only by the treaty-qualifying company through which the person attained his or her status. Dependents are not employable.	—
E-3	Temporary worker in a specialty occupation from Australia	Employable only by the employer named on the visa petition. Spouses and dependents are employable with an employment authorization document (EAD) card.	—
F-1	Student in academic or language program	Employable, with restrictions.	F-1 Student Visa Category F-1 Student Visa Holder Employment
F-2	Spouse or child of F-1	Employable only with a change to appropriate visa category.	F-1 Student Visa Category F-1 Student Visa Holder Employment
G-1	Principal resident representative of recognized foreign member government to international organization, and members of immediate family	Noncitizens in G-1, G-2, G-3, or G-4 status or their dependents may be employed only by the foreign government entity or the international organization.	—
G-2	Other representatives of recognized foreign member government to international organization, and members of immediate family	Noncitizens in G-1, G-2, G-3, or G-4 status or their dependents may be employed only by the foreign government entity or the international organization.	—
G-3	Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family	Noncitizens in G-1, G-2, G-3, or G-4 status or their dependents may be employed only by the foreign government entity or the international organization.	—
	International organization officer or	Noncitizens in G-1, G-2, G-3, or G-4 status or their dependents may be	

G-4	employee and members of immediate family	employed only by the foreign government entity or the international organization.	—
G-5	Attendant, servant, or personal employee of person with G-1, G-2, G-3, or G-4 visa, and members of immediate family	Employable only by the official or representative of the international organization.	—
H-1A	Temporary worker performing professional nursing services	Employable only by the employer named on the visa petition.	—
H-1B	Temporary worker in a specialty occupation	Employable only by the employer named on the visa petition.	H Visa Overview H-1B Nonimmigrant Labor Condition Application (LCA) Guidance for Determination of the "Actual Wage" Recordkeeping Requirements for Labor Condition Applications H-1B Petition for a Nonimmigrant Worker H-1B Visa Holder Employment (, https://www.rfsuny.org/media/RFSUNY/Procedures/per_h1b-visa-holder-employment_pro.pdf)
H-1B1	Temporary worker in a specialty occupation from Singapore or Chile	Employable only by the employer named on the visa petition.	—
H-2A	Temporary agricultural worker	Employable only by the employer named on the visa petition.	—
H-2B	Temporary worker performing nonagricultural services unavailable in the U.S.	Employable only by the employer named on the visa petition.	—
H-3	Trainee	Employable only by the employer named on the visa petition.	—
H-4	Spouse or child of person holding H-1, H-2, or H-3 visa	Not employable.	—
I	Representative of foreign information media and representative's spouse and children	Representative may be employed only by the sponsoring news agency or bureau. Dependents are not employable.	—
J-1	Exchange visitor	Employable, with restrictions.	J-1 Visa Category: Students J-1 Visa Category: Professors and Research Scholars J-1 Visa Holder Employment
	Spouse or child of	Employable, with	J-1 Visa Category: Students

J-2	exchange visitor	restrictions.	J-1 Visa Category: Professors and Research Scholars J-1 Visa Holder Employment
K-1	Fiancée or fiancé of U.S. citizen	Employable by any employer in any capacity; requires an INS employment authorization document.	—
K-2	Minor child of fiancée or fiancé of U.S. citizen	Employable by any employer in any capacity; requires an INS employment authorization document.	—
L-1	Intracompany transferee	Employable only by the U.S. entity for which the status was obtained.	—
L-2	Spouse or child of person holding L-1 visa	Employable; requires INS employment authorization document.	—
M-1	Student in vocational or other recognized nonacademic institution	May not accept employment or engage in business except for "practical training," and then only with INS approval.	—
M-2	Spouse or child of student in vocational or other recognized nonacademic institution	Not employable.	—
N-8	Parent of noncitizen child accorded special immigrant status	Employable; requires INS employment authorization document.	—
N-9	Child of a noncitizen parent accorded special immigrant status	Employable; requires INS employment authorization document.	—
O-1	Workers of "extraordinary" ability in the sciences, the arts, education, business, or athletics	Employable only by the specific employer approved by INS in the original petition.	—
O-2	Alien who accompanies and assists holders of O-1 visas	Not employable.	—
O-3	Spouse/child of holders of O-1 and O-2 visas	Not employable.	—
P-1	"Internationally recognized" entertainers and athletes	Not employable.	—
P-2	"Reciprocal exchange" artists and entertainers	Not employable.	—

P-3	"Culturally unique" artists and entertainers	Not employable.	—
P-4	Family members of holders of P-1, P-2, and P-3 visas	Not employable.	—
Q	Cultural exchange visitors	Employable only by specific employers approved by the INS.	—
R	Religious workers	Not employable.	—
TN	Temporary NAFTA professional worker from Canada and Mexico	Employable only by the employer named on the petition. Employment must be pre-arranged and be in one of the NAFTA specified occupations.	NAFTA and Visa Status and NAFTA Professional List

Change History

Date	Change History
January 5, 2010	Updated/Corrected summary table

Contact Information: Office of Administration and Human Resources (518) 434-7080

Feedback

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