

E-3 Visa Holder Employment

Purpose

This document describes the E-3 visa classifications and details the procedure that must be followed to employ an E-3 visa holder.

Background

The E-3 visa classification is used for nationals of Australia coming to the United States (U.S.) to perform services in a specialty occupation.

For a noncitizen to obtain an E-3 visa, the prospective employer must first submit a Labor Condition Application (LCA) to the Department of Labor (DOL). The noncitizen can then apply for a visa directly at a U.S. consulate or embassy as long as he/she has a pre-arranged job offer in the United States.

Who Qualifies

The E-3 category is appropriate for faculty members, researchers, and many other kinds of temporary workers from Australia at the *professional* level. This category may not be used for graduate students.

The Research Foundation (RF) uses this category to temporarily employ noncitizens who qualify as persons in “specialty occupations.” The Immigration Act of 1990 defines a “specialty occupation” as an occupation that requires:

- theoretical and practical application of a body of highly specialized knowledge, and
- attainment of a bachelor’s degree or higher (or its equivalent) in the specific specialty.

Labor Condition Application (LCA)

Employers are required to complete an LCA (Form ETA 9035) to ensure that the employment of an E-3 visa holder does not adversely affect the wages and working conditions of U.S. workers, as required by the Immigration Act of 1990. For more information, refer to the document, "[Labor Condition Application \(LCA\) for H-1B and E-3 Nonimmigrants](#)."

Note: The LCA was originally intended for applications for H-1B visas and does not currently contain a check box for E-3 classification. For E-3 visa applications, the petitioner must clearly note “E-3 – Australia – to be processed” on the top of the form.

Applying for a New E-3 Visa

The noncitizen must present the original or copy of the Labor Condition Application (LCA)

signed by the prospective employer and approved by the Department of Labor directly to the consular officer at the time of visa application. No petition to the Department of Homeland Security is required.

In addition to the approved LCA, an applicant must demonstrate that:

- he or she has a legitimate offer of employment in the United States.
- the position he or she is filling is a position that qualifies as specialty occupation employment.
- he or she is an Australian citizen.
- he or she has the necessary academic or other qualifying credentials (i.e., certified copy of U.S. baccalaureate or higher degree, certified copy of foreign equivalent degree, or evidence that the applicant possesses education and experience that is equivalent to a U.S. degree).
- his or her stay in the U.S. will be temporary.

Applying for a Change in Status or E-3 Extension

Noncitizens already in the United States may request a change of status to E-3 or extend their E-3 status by filing form I-129 (Petition for a Nonimmigrant Worker) directly with the Vermont Service Center. Form I 129 is downloadable in [PDF format](#) from the U.S. Citizenship and Immigration Services (USCIS) [Immigration Forms page](#). [Download instructions](#) are also available. A fee is required for submitting the petition. This form is also available from the [Forms By Mail](#) link on the [USCIS Web site](#).

In addition to Form I-129, the applicant must show:

- proof of Australian nationality.
- a letter from the employer in the U.S. describing the occupation, anticipated length of stay, and salary arrangements.
- evidence that he or she has the necessary academic or other qualifying credentials (i.e., certified copy of U.S. baccalaureate or higher degree, certified copy of foreign equivalent degree, or evidence that the applicant possesses education and experience that is equivalent to a U.S. degree).
- evidence that he or she meets any licensing requirements.
- evidence that the prospective employer has filed for an E-3 Labor Condition Application.

Duration of Stay

E-3 visas are valid for up to two years, and can be renewed indefinitely.

Additional Regulations

Temporary Employment

Employment in this category must be temporary. The position to be filled by the noncitizen can be permanent in nature, but the employer's intention must be to employ the noncitizen temporarily in that position.

The RF as Sponsor

E-3 status requires a sponsoring U.S. employer. A noncitizen cannot gain E-3 status on his or her own. An E-3 visa holder may be employed only by the employer that petitioned for the status. Therefore, the RF may employ an E-3 visa holder only when the RF is the petitioner.

Spouse or Dependent

The spouse or child of a person holding an E-3 visa is eligible to apply for an "employment authorization document" that an employer can use to verify the spouse's employment eligibility. Spousal employment may be in a position other than a specialty occupation.

Helpful Links

For additional information, refer to the following web sites:

- [Labor Condition Application \(LCA\) for H-1B and E-3 Nonimmigrants](#)
- [Guidance for Determination of the "Actual Wage"](#)
- Wage information from the [DOL Web site](#)
- Labor Condition Application (Form ETA 9035) is available from the Department of Labor Web site. No fee is required. Instructions for the application are also downloadable from the DOL site.

Change History

- **February 7, 2006**- Added "Applying for a Change in Status or E-3 Extension" section.
- **November 21, 2005**- New document.

Feedback

Was this document clear and easy to follow? Please send your feedback to webfeedback@rfsuny.org.

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