



## Employment-Based Visa Categories in the United States

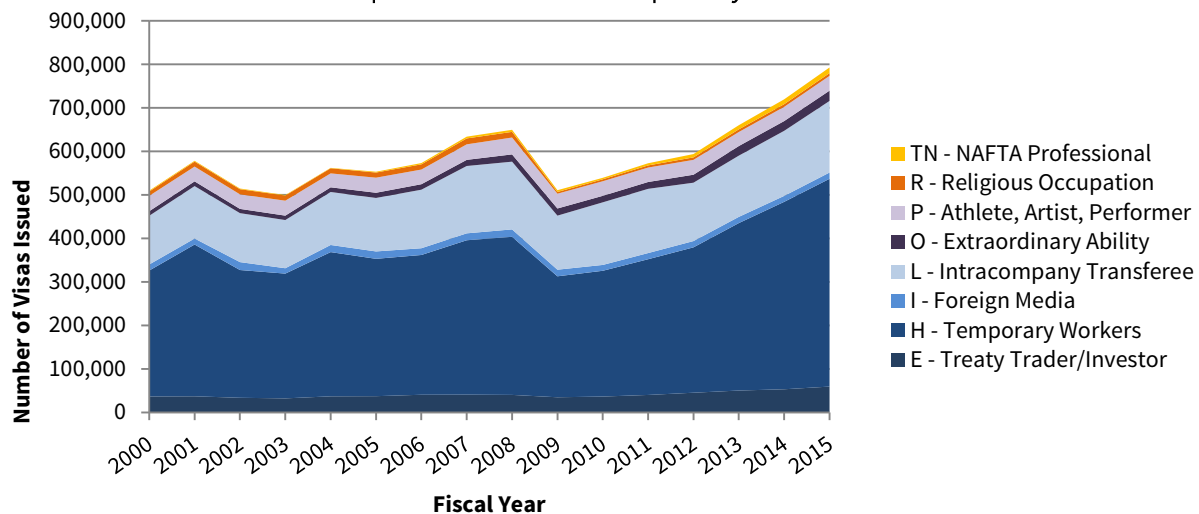
One of the key principles guiding the U.S. immigration system has been admitting foreign workers with skills that are valuable to the U.S. economy. Current U.S. immigration law provides several paths for foreign workers to enter the United States for employment purposes on a temporary or permanent basis. This fact sheet provides basic information about how the employment-based U.S. immigration system works.

### Temporary Employment-Based Visa Classifications

There are many different temporary employment-based visa classifications.<sup>1</sup> Most of the classifications are defined in section 101(a)(15) of the Immigration and Nationality Act (INA), and the visa classifications are referred to by the letter and numeral that denotes their subsection of that law. Temporary employment-based visa classifications permit employers to hire and petition for foreign nationals for specific jobs for limited periods. Most temporary workers must work for the employer that petitioned for them and have limited ability to change jobs.<sup>2</sup> In most cases, they must leave the United States if their status expires or if their employment is terminated.

Overall, the total number of temporary employment-based visas issued has increased since Fiscal Year (FY) 2000, with a slight peak in Fiscal Years 2007-8 and a steady increase since FY 2009 (Figure 1).

Figure 1. Nonimmigrant Visas Issued By Select Classifications FY 2000-2015 Note: Totals include spouses and children of primary beneficiaries.



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Source: U.S. Department of State, "Classes of Nonimmigrants Issued Visas (Including Border Crossing Cards)," Report of the Visa Office, 2000-2015, <https://travel.state.gov/content/visas/en/law-and-policy/statistics.html>.

The visa classifications vary in terms of their eligibility requirements, duration, whether they permit workers to bring dependents, and other factors. Table 1 includes information on several of the most common temporary employment-based visa classifications.

**Table 1: Characteristics of Common Temporary Employment-Based Visa Classifications**

	H-1B	H-2A	H-2B	L-1A & L-1B
Who is eligible?	Certain foreign professionals in “specialty occupations.” <sup>3</sup>	Temporary agricultural workers from certain designated countries. <sup>4</sup>	“Seasonal” non-agricultural temporary workers. <sup>5</sup>	Certain foreign workers employed by certain entities abroad that are related to U.S. employers, whose services are being sought by their employers in the United States. <sup>6</sup>
Are there any numerical annual limits?	65,000 per year, plus 20,000 more for foreign professionals with a U.S. master’s or higher degree. <sup>7</sup>	No annual limit. <sup>8</sup>	66,000 per year. <sup>9</sup>	No annual limit.
Duration	Initially admitted for a period of up to three years; may be extended for up to six years total. <sup>10</sup>	Initially admitted for period of approved employment; may be renewed for qualifying employment in increments of one year each for a maximum stay of three years. <sup>11</sup>	Initially admitted for a period of up to one year; may be renewed twice for a total of up to three years. <sup>12</sup>	Initially admitted for a period of up to three years; may be extended for up to five (L-1B) or seven (L-1A) years. <sup>13</sup>
Employer requirements	The employer must attest that employment of the H-1B worker will not adversely affect the wages and working conditions of similarly employed U.S. workers. <sup>14</sup> Employers must comply with wage requirements. <sup>15</sup>	The employer must attest that no qualified U.S. workers who can fill the position are available. <sup>16</sup> Employers must comply with recruitment, wage, benefits, housing, transportation, and other requirements. <sup>17</sup>	The employer must attest that no qualified U.S. workers who can fill the position are available. <sup>18</sup> Employers must comply with wage, housing, transportation, and other requirements. <sup>19</sup>	No requirements regarding adverse effects, wages, housing, etc.
May the foreign workers bring their spouses and children under 21?	Yes, spouses and children under 21 may enter on an H-4 visa, and certain spouses are allowed to work. <sup>20</sup>	Yes, spouses and children under 21 may enter on an H-4 visa but may not work. <sup>21</sup>	Yes, spouses and children under 21 may enter on an H-4 visa but may not work. <sup>22</sup>	Yes, spouses and children under 21 may enter on an L-2 visa, and spouses are allowed to work. <sup>23</sup>

Employers must pay filing fees and may need to pay additional fees in order to petition for foreign workers. Table 2 provides information on the various fees associated with key visa classifications. Processing employers’ petitions can take several months. Most employers may file a Request for Premium Processing Service (Form I-907) and pay a filing fee of \$1,225<sup>24</sup> for petition processing within fifteen days of U.S. Citizenship and Immigration Services (USCIS) receiving the petition.<sup>25</sup> The election of the premium processing service does not provide the petitioner with any advantage with regard to categories with annual numerical limits.

**Table 2: Required Fees for Common Temporary Employment-Based Visa Classifications**

H-1B	H-2A	H-2B	L-1A & L-1B
<p>\$460 filing fee. Employers may be required to pay an additional anti-fraud fee of \$500. Employers with at least 50 employees, more than half of whom are in H-1B or L-1 status, may be required to pay an additional fee of \$4,000. Certain employers must pay an additional fee of \$750 or \$1,500 to fund programs to address skill shortages in the U.S. workforce.</p>	<p>\$460 filing fee.</p>	<p>\$460 filing fee plus \$150 anti-fraud fee.</p>	<p>\$460 filing fee. Employers may be required to pay an additional anti-fraud fee of \$500. Employers who have at least 50 employees, more than half of whom are in H-1B or L-1 status, may be required to pay an additional fee of \$4,500.</p>
<p>Source: USCIS, “Instructions for Petition for Nonimmigrant Worker,” January 17, 2017, 25-26, <a href="https://www.uscis.gov/sites/default/files/files/form/i-129instr.pdf">https://www.uscis.gov/sites/default/files/files/form/i-129instr.pdf</a>; USCIS, “New Law Increases H-1B and L-1 Petition Fees,” last updated January 12, 2016, <a href="https://www.uscis.gov/news/alerts/new-law-increases-h-1b-and-l-1-petition-fees">https://www.uscis.gov/news/alerts/new-law-increases-h-1b-and-l-1-petition-fees</a>.</p>			

## Permanent Employment-Based Immigration

Lawful permanent residency allows a foreign national to work and live lawfully and permanently in the United States. Lawful permanent residents (LPRs) are eligible to apply for nearly all jobs (*i.e.*, jobs not legitimately restricted to U.S. citizens) and can remain in the country even if they are unemployed. Immigrants who acquired lawful permanent resident status through employment may apply for U.S. citizenship after five years.<sup>26</sup>

The adjustment of status to permanent residency based on employment generally involves a three-step process:

1. First, employers seeking to petition on behalf of foreign workers are commonly required to obtain certification from the Department of Labor (DOL),<sup>27</sup> establishing that there are no U.S. workers available, willing, and qualified to fill the position at a wage that is equal to or greater than the prevailing wage generally paid for that occupation in the geographic area where the position is located.<sup>28</sup>
2. Second, the employer is required to petition USCIS for the foreign worker.<sup>29</sup> Immigrants can petition for themselves under limited circumstances.<sup>30</sup>
3. Third, a foreign worker who is already in the United States in a temporary visa classification may apply for “adjustment of status” to permanent residence upon the approval of the employer’s petition, if there is a visa number available.<sup>31</sup> If these conditions have been met and the individual is outside the United States, or is in the United States but chooses to apply for an immigrant visa at a U.S. Embassy or Consulate abroad, the individual files an immigrant visa application, which is processed by a U.S. consular officer.<sup>32</sup>

Most foreign nationals who obtain permanent residency are already in the United States. In FY 2014, 86 percent of employment-based LPRs adjusted to LPR status and 14 percent arrived from abroad.<sup>33</sup>

The overall numerical limit for permanent employment-based immigrants is 140,000 per year.<sup>34</sup> This number includes the immigrants plus their eligible spouses and minor children, meaning the actual number of employment-based immigrants is less than 140,000 each Fiscal Year. The 140,000 visas are divided into five preference categories, detailed in Table 3.

Table 3: Permanent Employment-Based Preference System

Preference Category	Eligibility	Yearly Numerical Limit
1: Priority Workers	“Persons of extraordinary ability” in the arts, science, education, business, or athletics; outstanding professors and researchers; multinational managers and executives.	40,000* or 28.6%
2: Professionals with Advanced Degrees or Exceptional Ability	Members of the professions holding advanced degrees, or persons of exceptional abilities in the arts, science, or business.	40,000** or 28.6%
3: Skilled Workers, Professionals, and Unskilled Workers	Skilled workers with at least two years of training or experience, professionals with college degrees, or “other” workers for unskilled labor that is not temporary or seasonal.	40,000*** or 28.6%  “Other” unskilled laborers restricted to 5,000
4: Certain Special Immigrants	Certain “special immigrants” including religious workers, employees of U.S. foreign service posts, translators, former U.S. government employees, and other classes of noncitizens.	10,000 or 7.1%
5: Immigrant Investors	Persons who will invest \$500,000 to \$1 million in a job-creating enterprise that employs at least 10 full-time U.S. workers.	10,000 or 7.1%
Total Employment-Based Immigrants		140,000 for principals and their dependents
*Plus any unused visas from the 4th and 5th preferences		
**Plus any unused visas from the 1st preference		
***Plus any unused visas the 1st and 2nd preference		
Source: William A. Kandel, <i>Permanent Legal Migration to the United States</i> (CRS Report No. R42866) (Washington, DC: Congressional Research Service, 2014), 4, <a href="https://www.fas.org/sgp/crs/homesec/R42866.pdf">https://www.fas.org/sgp/crs/homesec/R42866.pdf</a> .		

## Numerical limits and Per-Country Limits

In addition to the annual numerical limit on the number of employment-based immigrant visas, each country is limited to seven percent of the worldwide level of U.S. immigrant admissions, otherwise known as per-country limits.<sup>35</sup> Because of numerical and per-country limits, and because in some preference categories there are more petitions each year than visas available, some individuals must wait a significant period of time to apply for adjustment of status (in the U.S.) or an immigrant visa (abroad) even after the employer's petition is approved by USCIS.

As of September 2016, most preference categories were current for most countries, meaning that visas are available as petitions are received. However, for some employment-based preference categories, there are backlogs for petitions for individuals born in certain countries with high annual levels, such as India, China, Mexico, and the Philippines.<sup>36</sup>

## Endnotes

1. Currently there are over twenty-two different types of temporary employment classifications. See USCIS, “Temporary (Nonimmigrant) Workers,” accessed June 1, 2016, <https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers>.
2. Some nonimmigrant visa classifications permit foreign workers to work in the United States without an employer having first filed a petition on the foreign worker’s behalf. These include such nonimmigrant classifications as the E-1, E-2, E-3, and TN classifications. See USCIS, “Temporary (Nonimmigrant) Workers,” accessed June 12, 2016, <https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers>.
3. 8 U.S.C. §§ 1101(a)(15)(H)(i)(b), 1184(i).
4. 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1188. See also Andorra Bruno, *Agricultural Guest Workers* (CRS Report No. R43161) (Washington, DC: Congressional Research Service, 2013), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43161.pdf>. See also USCIS, “H-2A Temporary Agricultural Workers,” accessed June 1, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers>.
5. USCIS, “H-2B Temporary Non-Agricultural Workers,” accessed July 11, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers>.
6. 8 U.S.C. § 1101(a)(15)(L); see also USCIS, “L-1A Intracompany Transferee Executive or Manager,” accessed September 8, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager>; USCIS, “L-1B Intracompany Transferee Specialized Knowledge,” accessed September 8, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/l-1b-intracompany-transferee-specialized-knowledge>.
7. 8 U.S.C. § 1184(g)(1)(A), (g)(5)(C). USCIS also must separately allocate H-1B1 visa numbers under the U.S.-Chile and U.S.-Singapore free trade agreements and subtract that allocation from the 65,000 H-1B annual limit. 8 U.S.C. § 1184(g)(8). Not all H-1B visa numbers are subject to the 65,000 numerical limit. 8 U.S.C. § 1184(g)(5). H-1B workers in the Commonwealth of the Northern Mariana Islands and Guam also are exempt from this limit if the intended employer files the petition before December 31, 2019. USCIS, “H-1B Fiscal Year 2017 Cap Season,” accessed June 1, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-fiscal-year-fy-2017-cap-season>.
8. 8 U.S.C. § 1188. See also Andorra Bruno, *Agricultural Guest Workers* (CRS Report No. R43161) (Washington, DC: Congressional Research Service, 2013), 2, <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43161.pdf>.
9. 8 U.S.C. § 1184(g)(1)(B). 33,000 of the H-2B visas are allocated for the first half of the fiscal year (October–March) and 33,000 for the second half (April–September). 8 U.S.C. § 1184(g)(10). See USCIS, “H-2B Temporary Non-Agricultural Workers,” accessed June 1, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers>.
10. 8 U.S.C. § 1184(g)(4); 8 C.F.R. § 214.2(h)(15)(ii)(B)(1). Extensions beyond the sixth year are available if certain requirements are met when the H-1B worker is in the process of becoming a permanent resident (for a green card). See § 106 of the American Competitiveness in the Twenty-First Century Act (P.L. 106-313, as amended by P.L. 107-273).
11. 8 C.F.R. §§ 214.2(h)(5)(viii)(B), (h)(15)(ii)(C); USCIS, “H-2A Temporary Agricultural Workers,” accessed June 1, 2016, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=889f0b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=889f0b89284a3210VgnVCM100000b92ca60aRCRD>.
12. 8 C.F.R. §§ 214.2(h)(6)(ii)(B), (h)(15)(ii)(C); USCIS, “H-2B Temporary Non-Agricultural Workers,” accessed June 1, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers>.
13. 8 U.S.C. § 1184(c)(2)(D); 8 C.F.R. §§ 214.2(l)(11)-(12). USCIS, “L-1A Intracompany Transferee Executive or Manager,” accessed June 1, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager>. See also USCIS, “L-1B Intracompany Transferee Specialized Knowledge,” accessed August 15, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/l-1b-intracompany-transferee-specialized-knowledge>.
14. 8 U.S.C. § 1182(n)(1)(A)(i)-(ii).
15. 8 U.S.C. § 1182(n)(1)(A)(i). Employers must pay the foreign worker the higher of the prevailing wage level for the occupational classification in the area, or the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment. See also U.S. Department of Labor, “Fact Sheet #62G: Must an H-1B worker be paid a guaranteed wage?,” accessed June 16, 2016, <https://www.dol.gov/whd/regs/compliance/FactSheet62/whdfs62G.pdf>.
16. 8 U.S.C. § 1188(a). USCIS, “H-2A Temporary Agricultural Workers,” accessed June 1, 2016, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=889f0b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=889f0b89284a3210VgnVCM100000b92ca60aRCRD>.
17. 8 U.S.C. § 1188(a). To demonstrate that no U.S. workers are available, the employer must, at a minimum, (1) advertise the position in a newspaper on two separate days, (2) contact any U.S. workers from the previous year and solicit their return, and (3) conduct additional

recruitment. The employer is required to provide or pay for housing, meals or facilities that allow the foreign worker to prepare meals, and transportation. The employer must also provide tools, equipment, and supplies. Upon the completion of 50 percent of the work contract, the employer is required to reimburse the worker for travel expenses, including meals, and lodging expenses where it is necessary. See U.S. Department of Labor, “Employer Guide to Participation in the H-2A Temporary Agricultural Program,” accessed June 15, 2016, [https://www.foreignlaborcert.doleta.gov/pdf/H-2A\\_Employer\\_Handbook.pdf](https://www.foreignlaborcert.doleta.gov/pdf/H-2A_Employer_Handbook.pdf).

18. USCIS, “H-2B Temporary Non-Agricultural Workers,” accessed June 1, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers>.
19. The employer may also have to provide tools, equipment, and supplies. The employer may be required to pay for the foreign worker’s lodging expenses. Upon the completion of 50 percent of the work contract, the employer is required to reimburse the worker for travel expenses, including meals, and lodging expenses where it is necessary. Department of Labor, “Office of Foreign Labor Certification 2015 H-2B Interim Final Rule (IFR) Job Order Content Checklist,” accessed June 15, 2016, [https://www.foreignlaborcert.doleta.gov/pdf/H-2B\\_Job\\_Order\\_Checklist.pdf](https://www.foreignlaborcert.doleta.gov/pdf/H-2B_Job_Order_Checklist.pdf); see also 20 C.F.R. § 655.20.
20. USCIS, “DHS Extends Eligibility for Employment Authorization to Certain H-4 Dependent Spouses of H-1B Nonimmigrants Seeking Employment-Based Lawful Permanent Residence,” accessed June 1, 2016, <https://www.uscis.gov/news/dhs-extends-eligibility-employment-authorization-certain-h-4-dependent-spouses-h-1b-nonimmigrants-seeking-employment-based-lawful-permanent-residence>.
21. USCIS, “H-2A Temporary Agricultural Workers,” accessed June 1, 2016, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=889f0b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=889f0b89284a3210VgnVCM100000b92ca60aRCRD>.
22. USCIS, “H-2B Temporary Non-Agricultural Workers,” accessed June 1, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers>.
23. USCIS, “L-1A Intracompany Transferee Executive or Manager,” accessed June 1, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager>; See also USCIS, “L-1B Intracompany Transferee Specialized Knowledge,” accessed August 15, 2016, <https://www.uscis.gov/working-united-states/temporary-workers/l-1b-intracompany-transferee-specialized-knowledge>.
24. USCIS, “I-907, Request for Premium Processing Service,” accessed June 1, 2016, <https://www.uscis.gov/i-907>.
25. USCIS, “How Do I Use the Premium Processing Service?” accessed June 1, 2016, <https://www.uscis.gov/forms/how-do-i-use-premium-processing-service>.
26. Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (CRS Report No. RL32235) (Washington, DC: Congressional Research Service, 2010), 5, <https://www.fas.org/sgp/crs/homesecc/RL32235.pdf> (citing 8 U.S.C. § 1151). A worker may be able to apply earlier than 5 years if he or she qualifies under a different naturalization provision.
27. See 8 U.S.C. § 1153(b)(3)(C).
28. See 8 U.S.C. § 1182(a)(5)(A).
29. See 8 C.F.R. § 204.5(a). If a labor certification is required, the petition must be filed within 180 days of the certification. 20 C.F.R. § 656.30(b).
30. Persons of extraordinary ability and persons of exceptional ability seeking a national interest waiver may self-petition. 8 C.F.R. §§ 204.5(h)(1); 204.5(k)(1).
31. Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (CRS Report No. RL32235) (Washington, DC: Congressional Research Service, 2012), 1, <https://www.fas.org/sgp/crs/homesecc/RL32235.pdf>.
32. *Ibid.*
33. Carla N. Argueta, *Numerical Limits on Permanent Employment-Based Immigration: Analysis of the Per-country Ceilings* (CRS Report No. R42048) (Washington, DC: Congressional Research Service, 2016), 6, <https://www.fas.org/sgp/crs/homesecc/R42048.pdf>.
34. 8 U.S.C. § 1151(d); U.S. Department of State, “Employment-Based Immigrant Visa,” accessed June 1, 2016, <https://travel.state.gov/content/visas/en/immigrate/employment.html>.
35. Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (CRS Report No. RL32235) (Washington, DC: Congressional Research Service, 2012), 5, <https://www.fas.org/sgp/crs/homesecc/RL32235.pdf>, (citing 8 U.S.C. § 1152).
36. U.S. Department of State Bureau of Consular Affairs, “Immigrant Numbers for September 2016,” accessed September 14, 2016, 4, [https://travel.state.gov/content/dam/visas/Bulletins/visabulletin\\_September2016.pdf](https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_September2016.pdf).