



McCandlish Holton  
A PROFESSIONAL CORPORATION

## Temporary (Nonimmigrant) Visas

### 1. Visa Waiver

Citizens of certain countries may enter the U.S. as visitors *without a visa* under the *Visa Waiver Program (VWP)*. Nationals of the following countries do not need visas to visit the U.S.A. for ninety (90) days or less for limited business or tourist purposes:

Andorra	France	Luxembourg	Singapore
Australia	Germany	Monaco	Slovenia
Austria	Iceland	Netherlands	Spain
Belgium	Ireland	New Zealand	Sweden
Brunei	Italy	Norway	Switzerland
Denmark	Japan	Portugal	United Kingdom
Finland	Liechtenstein	San Marino	

Each year several million travelers use this “no visa” program. The visitor simply shows his round trip ticket and fills out the Waiver Application on the airplane. Effective June 26, 2005, Visa Waiver Program travelers from all qualifying countries will require a machine-readable passport in order to enter on the visa waiver. Without one, travelers will need a visa to enter.

***Limitations: No Visa Waiver visitor can perform local productive employment or receive a salary from a U.S. source.*** Visitors can perform certain work-related services similar to a B-1 visa holder, discussed below. Visitors who work must remain on the payroll of a foreign employer, although they can be advanced expenses by a U.S. affiliate.

***Extend Stay/Change Status: As a general rule, no extensions or changes to another visa category are allowed in the U.S.*** and the visitor must return abroad (not to Canada or Mexico) before reentering the U.S. again for 90 days on the Visa Waiver or in another visa category.

### 2. B-1 Business Visitor Visa

The B-1 visa is designed for temporary business activities which promote international trade, commerce or investment. Examples: the B-1 visa holder can train, consult with business associates, take orders, participate in meetings, negotiate contracts, or look for sites for investments.

**Duration:** B-1 visas are generally issued for a year or more (sometimes up to ten years). Entries are generally limited to six months.

**Extended Stay/Change Status:** A B-1 visitor can apply to extend his/her stay beyond six months without limit. However, the visitor must continue to demonstrate nonimmigrant intent.

A B-1 visa holder may change to another status. However, if an application for change is made within 30 days of entry, CIS presumes that the B entry was fraudulent, and was made with the intent to stay.

**Limitations:** Business visitors on a B-1 visa cannot be paid a salary by a U.S. company and cannot engage in local skilled or unskilled labor (productive employment). (There is a limited exception to this rule for honoraria at academic institutions, discussed below).

### ***Permissible B-1 Visa Activities***

The regulations explicitly bar B-1 visa holders from performing skilled or unskilled labor. However, the CIS and State Department have approved use of the B-1 visa for some ***limited types of work*** where the activities are temporary in nature but are not covered by any other visa category. Engaging in unlawful work in the U.S. can result in serious consequences for both the employer and the individual employee (including fines, deportation of the employee and inability of the employee to re-enter the U.S.).

The following are activities which are permitted using a B visa:

- § Attend a meeting of the board of directors or perform other functions resulting from membership on the board of directors of the U.S. corporation.
- § Undertake training for a limited duration. To do so, the employee must continue to receive a salary from the foreign employer and receive no salary or other remuneration from a United States source other than an expense allowance or other reimbursement for expenses (including room and board). The consular officer must be satisfied that the intended stay in the U.S. is temporary and is indeed training and not productive employment. Foreign nationals, often students, who seek to gain practical experience should consider more appropriate nonimmigrant classifications, such as a F, H, or J visa.
- § Observe the conduct of business or other professional or vocational activity.
- § Participate in scientific, educational, professional or business conventions, conferences, or seminars.
- § Install or maintain equipment produced abroad, or train workers on the equipment, if installation, maintenance and training was part of the contract of sale with the B-1 visitor's foreign employer.

### ***Honoraria for University Academic Activity***

Generally, a B-1 visa holder cannot receive compensation from a U.S. source. However, a B-1 visitor for "usual academic activity" can be paid honoraria and associated expenses for a period of no more than nine days at any single institution of higher learning or affiliated non-profit research entity, and may not accept honoraria from more than five institutions within a six-month period.

***STRATEGY TIP:*** *You should consult with your immigration attorney to verify the adequacy of your documentation showing the purpose of B-1 transfers before sending your employees to the U.S. Consulate to apply for the visa. If the employee already*

*has a B-1/B-2 visa in his passport, he still needs a letter to facilitate his entry into the United States.*

### **3. B-2 Tourist Visa**

This is similar to a B-1, but allows entry strictly for tourist purposes. No business activities are allowed.

### **4. H-1B Visas**

Using an H-1B visa, U.S. employers are permitted to hire foreign professional employees (for example, professors, researchers or technical personnel) who have *at least a four (4) year college degree*, if they will work in a position requiring a college degree.

H-1B visas are available to persons with (1) a 4 year Baccalaureate Degree *or the foreign equivalent*; or (2) persons who can show by expert affidavits *that their combination of education and qualifying experience* is the equivalent of at least a U.S. four year B.A. or B.S. degree in the field.

**Duration:** An H-1B visa is valid initially for up to three (3) years and can be extended an additional three (3) years for a total of six years, regardless of the number of employers during that time. Extensions beyond six years are available in limited circumstances.

**Limitations:** There are many technical requirements, including *payment of a prevailing wage* and the *filing of a Labor Condition Application*, for successful processing of an H-1B. Failure to comply with all of the H-1B regulations can result in the employer being disqualified for one year from hiring any additional H-1B specialty occupation workers, as well as other fines and penalties.

#### ***Special Issues for H-1B:***

§ ***Credentials Evaluation:*** Foreign degrees must be evaluated to determine if they are the equivalent of the U.S. degree. There are credentials evaluation services throughout the United States who can provide these evaluations. In addition, under CIS regulations, three years of work experience can substitute for one year of bachelor's degree level college education. If the employer relies on a combination of education and work experience to show bachelor's degree equivalency, expert affidavits may be required to support the petition.

§ ***Prevailing Wage:*** The employer must pay the higher of the "prevailing wage" for the position as determined by United States Department of Labor ("DOL"), or the actual wage—that is, the wage paid to similarly employed U.S. workers. The DOL now has special rules for universities, recognizing the differing salary scales for universities versus private companies. A prevailing wage determination can be obtained from the State Employment Security Agency or from authoritative surveys.

§ ***Labor Condition Application ("LCA"):*** This document attests to the DOL that the employer will pay the prevailing wage and that hiring the H-1B worker will not adversely affect the wages and working conditions of U.S. workers. The LCA must be certified by the DOL, and included in the H-1B package. The LCA process is now streamlined with the use of electronic filings. LCAs can be obtained in a matter of seconds. **NOTE:** The LCA is not the same as Labor Certification for green card purposes. For an LCA in connection with an H-1B, there is no need to advertise the job or to test the labor market for U.S. workers.

- § **Posting:** A notice must be posted for ten days in two different places at the location of employment announcing that you are hiring an H-1B worker.
- § **Public Access File:** A Public Access File must be maintained for each H-1B employee, containing several documents, including the posting notice, proof of posting, the prevailing wage determination, the certified LCA, a receipt from the employee showing that s/he received a copy of the LCA, a statement of the actual wage rate, a short memorandum describing how the employer determined the salary and a summary of available benefits
- § **Filing Fees:** CIS' normal filing fee for private employers is \$ 185, plus a \$1,500 "training fee", plus a "fraud prevention" fee of \$ 500. (NOTE: University employers, certain non-profit research entities, and primary/secondary schools do not pay the "training fee". Employers with 25 or fewer employees pay only at \$750 "training fee"). Premium processing (15 day processing) carries an additional \$1,000 filing fee to CIS.
- § **Transferring Employees to Other Locations:** If an H-1B employee is transferred for more than a very limited duration, the employer must have an LCA from DOL for the new location. If the employer transfers the employee before getting the LCA, the employer may need to file an amended H-1B petition with CIS.
- § **Change in Job Duties:** A material change in job duties may require a new H-1B filing. Any change in job duties should be reviewed by an attorney or immigration advisor.
- § **Family:** The spouse and children of H-1B employees receive H-4 visas and cannot work under that category.
- § **Dual Intent:** An H-1B visa holder may lawfully have the intent to remain permanently in the United States. This will be helpful for maintaining status while pursuing a permanent resident application.
- § **H-1B Quota:** CIS issues 65,000 new H-1B approvals each year (CIS year – October 1 through September 30). Exceptions to the cap: University jobs; H-1B extension with same employer; H-1B transfer to new employer. Graduates with U.S. advanced degrees have special allocation of 20,000 H-1Bs above the 65,000.

## 5. TN for Canadians and Mexicans:

A number of special procedures apply only to *Canadians* and *Mexicans* under NAFTA. This important treaty, which liberalized trade by creating a North American Common Market, also eliminated many barriers to the transfer of personnel in certain designated jobs

**General Rules:** NAFTA created a new visa category, the Treaty NAFTA (or "TN Visa") for Canadian and Mexican citizens seeking temporary entry for business or professional activities. The TN is valid for one year and requires that the TN holder work as an employee or under contract for a U.S. employer. Unlike the H-1B visa (6-year maximum), the TN can be renewed indefinitely. That is, a TN visa is valid for one year, with the potential for unlimited yearly extensions.

**TN Procedure:** There is *no application form* for TN status, unless the person is already in the United States. Canadians apply for entry under the TN category directly to a **CIS officer at the border** or at the preclearance stations at an international airport in Canada or Mexico. Depending on the port of entry, the approval process should take no more than a couple of hours. Mexicans must apply directly at a U.S. Consulate in Mexico to obtain a TN visa. Applicants are admitted upon proof of citizenship and of qualifications meeting the criteria of the TN visa. Typical

documentation includes educational credentials, an offer of employment or contract from a U.S. employer and proof of Canadian or Mexican citizenship.

***Special Rules for Canadians:***

- § Canadian citizens do not need to carry with them a valid Canadian passport when entering the U.S. Proof of Canadian citizenship is sufficient (i.e., birth certificate). However, a ***passport is advisable*** to help obtain a U.S. social security card and driver's license after arriving in the U.S.
- § In addition, Canadian citizens do not need to obtain a visa from the U.S. Consulate to enter the U.S.

***Typical TN Occupations:*** Some of the more common occupations on NAFTA's list of TN occupations are: architect, computer systems analyst, librarian, dentist, physical therapist, medical technologist, scientific technician, statistician, registered nurse, veterinarian, horticulturist, teacher and social worker. The following are additional university-related positions eligible for TN:

College or University Teacher	Biologist	Pharmacologist
Research Associate (University)	Chemist	Physicist
Librarian	Dairy Scientist	Plant Breeder
Medical Laboratory Technologist	Entomologist	Poultry Scientist
Veterinarian	Epidemiologist	Scientific Technician/Technologist
Animal Scientist	Geneticist	Soil Scientist
Biochemist	Geochemist	Zoologist
	Geologist	
	Geophysicist	
	Meteorologist	

***STRATEGY TIP:*** A very useful TN occupation is management consultant. This occupation does not require a college degree if the applicant can demonstrate equivalent professional experience, as shown by five years experience as a management consultant or five years experience in a field of specialty related to the consulting agreement. Other important categories are Computer Systems Analyst and Scientific Technician/Technologist.

***MORE STRATEGY TIPS:*** Circumstances where an applicant may wish to obtain a TN instead of an H-1B are:

- § If the applicant is currently on an H-1B which is due to expire, since CIS regulations allow an H-1B visa holder to change to a TN without the one-year departure from the United States normally required with an expired H-1B.
- § No more H-1B visas are available for a given fiscal year. (NOTE: Universities are exempt from the H-1B cap).
- § Ease of entry, since TN can be obtained in one day.

***Special TN Rules for Canadians and Mexicans:***

- § For nearly all TN professional occupations (other than computer systems analyst and management consultant), *experience cannot be substituted for education* in meeting the TN educational requirements.
- § Some occupations, such as architect, lawyer, and physician, may also *include licensing requirements*.
- § The *spouse and children* of the TN receive TD status and cannot work under that category in the U.S.
- § *Canadian Landed Immigrants* are not eligible for the benefits of TN status.

## 6. L-1 Visas: Temporary (Nonimmigrant) International Corporate Transfers

Where a foreign company has a related U.S. company (branch, parent, subsidiary or affiliate), U.S. immigration law allows *temporary* transfers (no longer than 5 or 7 years) of (1) managers, (2) executives and (3) persons with specialized knowledge to the related U.S. company under the *L-1 visa* category.

### *Requirements:*

- § *To qualify as an L-1A manager or executive*, the employee must show that the employee has day-to-day decision-making authority and supervises other personnel of the company or manages an important function of the business.
- § *To qualify as an L-1B employee with specialized knowledge*, the employee must show that s/he has specialized proprietary knowledge of the company's "product, service, research, equipment, techniques, management or other interests" as it applies to international sales and markets.
- § *New office L-1 visas* can be issued for small companies lacking the capital to qualify under E-2 Visa Treaty Investor Regulations (see discussion below regarding E-2 visas).

***Nationality of Employee:*** Unlike E-visas, the employee need not be of the same nationality as the foreign company. However, the employee must have worked for the overseas parent at least one full year within the 3 years preceding their first entry into the United States.

***Duration:*** L-1 visas are issued for an initial period of 1-3 years. The maximum time limit of L-1A visas for managers and executives is seven (7) years. L-1B visas (for specialized knowledge employees) can be renewed in two-year increments for a maximum of five (5) years.

***CIS regulations require that decisions on L-1 visas be made in thirty (30) days or less.*** Individual petitions are filed in the U.S. by the U.S. subsidiary or branch office. Approval is cabled to the U.S. Consulate in the employee's home country for your employees to pick up their visas.

***"Blanket Petitions"*** can also be filed for large organizations or those having transferred at least ten (10) employees under the L-1 program during the previous year. Blanket Petitions further streamline the process by allowing the company to issue its own certificate of eligibility which the employee takes directly to the U.S. Consulate, *allowing L-1A and L-1B visas to be issued in two weeks or less.*

***Spouse Employment:*** Spouses of L-1 visa holders can obtain work authorization in the U.S.

***STRATEGY TIPS:*** *Foreign firms with new or existing U.S. operations have several basic options for transferring managerial and executive employees planning to work in the U.S.: L-1A visas, H-1B visas, E visas, and the Multinational Manager/Executive Green Card. You should consult an*

*immigration attorney to see which of these basic choices best fits your international personnel needs. Joint ventures also allow use of L-1As, L-1Bs, E visas and Multinational Green Cards. To qualify, your foreign company must usually own 50% or more of the U.S. entity.*

**Dual Intent:** Like the H-1B, L visa holders can permissibly have the intent to remain permanently in the U.S., which means that they can apply for a green card without jeopardizing the L-1 status.

## **7. E-1 Treaty Trader & E-2 Treaty Investor Visas**

Citizens of certain countries may gain entry to the United States for trade or investment using E-2 Treaty Investor and E-1 Treaty Trader visas. Because these visas can be renewed in five-year increments for 10, 20 or even 30 years or longer, they remain excellent options for many foreign businessmen:

The **E-2 Treaty Investor Visa** allows you to: (1) move your entire business to the United States, or (2) start a new business in the U.S. if you are not now in business, or (3) establish or expand a U.S. branch, affiliate or subsidiary of your foreign company, or (4) if you are a foreign owned business, to transfer to the U.S. personnel of the same nationality as the company.

**Same Nationality:** An E-2 applicant must be of the same nationality as the foreign company or investor, and the nationality must be one of the treaty countries.

**No Minimum Investment:** There is no minimum required investment for an E-2 investor visa. In the case of small businesses, as a general guideline, an owner investor can usually obtain E-2 status if he will (1) actively manage the small business; (2) put at risk, including borrowed funds secured for personal assets, a substantial investment in capital and/or equipment;<sup>1</sup> and (3) plan to employ at least several U.S. workers. The amount of the investment varies depending upon the nature of each investment. U.S. State Department guidelines suggest that the smaller the business, the greater percentage of its value must be invested to qualify. ***The key is that the business cannot be “marginal,”*** that is, designed just to provide a living for the owner and his family.

**Eligible Countries:** The E-2 visa is available to citizens of the following countries under U.S. bilateral treaties or treaties of commerce and navigation:

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<sup>1</sup> Some consulting or service businesses have qualified with even smaller investments, in the range of \$25,000 to \$50,000.

Albania	Croatia	Kyrgyzstan	Singapore
Argentina	Czech Republic	Latvia	Slovak Republic
Armenia	Ecuador	Liberia	Slovenia
Australia	Egypt	Lithuania	Spain
Austria	Estonia	Luxembourg	Sri Lanka
Azerbaijan	Ethiopia	Macedonia	Suriname
Bahrain	Finland	Mexico	Sweden
Bangladesh	France	Moldova	Switzerland
Belgium	Georgia	Mongolia	Taiwan
Bolivia	Germany	Morocco	Thailand
Bosnia & Herzegovina	Grenada	Netherlands	Togo
Bulgaria	Honduras	Norway	Trinidad & Tobago
Cameroon	Iran	Oman	Tunisia
Canada	Ireland	Pakistan	Turkey
Chile	Italy	Panama	Ukraine
Colombia	Jamaica	Paraguay	United Kingdom
Congo (Brazzaville and Kinshaha)	Japan	Philippines	Yugoslavia
Costa Rica	Jordan	Poland	
	Kazakhstan	Romania	
	Korea (South)	Senegal	

**Other Requirements:** To qualify for an E-2 visa, the applicant must be entering the U.S. to perform either (a) managerial or executive functions, or (b) functions requiring essential skills. Examples of essential skills functions may include:

- § A French technician for a French company coming to the U.S. to maintain specialized equipment for a U.S. subsidiary.
- § A German accounting specialist coming to a U.S. branch of a German company to ensure that the books and records are maintained according to German accounting standards.
- § A technical translator for a Japanese company coming to the U.S. to translate technical documents regularly sent from the Japanese parent company.

**Duration:** The E-2 visa is usually issued for an initial period of 2-5 years. There is no limit to the number of renewals.

**Family:** The spouse and children of an E-2 investor or employee also receive E-2 visas. They can also obtain work authorization in the United States under that category.

**STRATEGY TIPS:** *The E-2 visa is not limited to businesses involved in international trade. Purely local businesses such as retail sales, construction, service industries, or manufacturing can qualify.*

*For larger companies, the E-2 should be a first choice for quickly transferring key managers, executives and persons with essential skills to your U.S. operations. Note: the employee and company must have the same nationality and must be from one of*

*the qualifying treaty investor countries. Nationality of the foreign firm is usually determined by the citizenship of at least fifty- percent (50%) of its stockholders.*

*No college degree is required to obtain an E-2 visa.*

**E-1 Treaty Trader Visas.** There is a companion visa to the E-2, *the E-1 Treaty Trader*. To qualify, the following requirements must be met:

- (1) The trader's U.S. office must engage in **substantial trade** with the foreign country of its shareholders. "Substantial trade" is not measured just in dollars. Frequent and continuous trade in goods or services of small dollar value may also qualify for E-1 visa treatment.
- (2) At least 50% of the trade must be between the U.S. business applying for the E-1 visa and the foreign country of which the employee is a citizen.
- (3) The U.S. business must be at least 50% owned by persons holding the same nationality as the visa applicant.

**Eligible Countries:** Only citizens of the following countries with bilateral treaties with the United States qualify for E-1 visas:

Argentina	Costa Rica	Ireland	Netherlands	Switzerland
Australia	Croatia	Israel	Norway	Taiwan
Austria	Denmark	Italy	Oman	Thailand
Belgium	Estonia	Japan	Pakistan	Togo
Bolivia	Ethiopia	Jordan	Paraguay	Turkey
Bosnia & Herzegovina	Finland	Korea (South)	Philippines	United Kingdom
Brunei	France	Latvia	Singapore	Yugoslavia
Canada	Germany	Liberia	Slovenia	
Chile	Greece	Luxembourg	Spain	
Columbia	Honduras	Macedonia	Suriname	
	Iran	Mexico	Sweden	

**Types of Trade:**

- § Export and import firms can qualify, as do manufacturing companies purchasing most of their equipment and parts from their parent firms.
- § **The trade does not need to be in goods.** Technical know-how, blueprints, accounting advice or software engineering services, just to name a few, can qualify as trade in services for E-1 visa purposes.

**E-1 Examples:**

- § A Virginia lumber firm which is owned by Israelis and exports at least 51% of its timber products from the U.S.A. to Israel can obtain E-1 visas for its key traders and managers who are Israeli nationals.
- § A French employee of the Israeli lumber firm cannot qualify for an E-1 visa because he must have the same nationality as its owners. (Note: Other visas may be available to the French employee).

§ A Virginia electronics firm owned by Germans which buys most of its parts from Holland for sale in the U.S.A. cannot qualify for an E-1 because the majority of its trade is not with the country of its shareholders (Germany). (Note: Again, other visa options may be available.)

**Duration:** The E-1 can usually be obtained in less than thirty (30) days from most U.S. Consulates, will be *valid for two to five years and can be renewed indefinitely*.

**Family:** The immediate family members of the holder of an E-1 visa can come to the U.S. Once here, they can apply for work authorization in the United States.

**STRATEGY TIPS:** *Proper use of E visas requires mastery of a number of technical rules and usually requires expert assistance. Documentation requirements for E-1 and E-2 visas can vary from U.S. consulate to U.S. consulate and can change without notice.*

*Joint ventures with established U.S. companies can be used to qualify foreign firms and their employees for E visas as long as the foreign venture partner can exercise veto control over key business decisions.*

*A small, family-owned business engaging in frequent trade with the country of its foreign owners may qualify for an E-1 even if no U.S. workers are employed.*

## 8. O Visas

O visas are temporary visas available for aliens of extraordinary ability in the fields of science, education, business or athletics. O visas require employer sponsorship. An O visa is an excellent alternative to the H-1B for university professors and researchers. This summary focuses on aliens of extraordinary ability in the fields of science, education and business.

**Requirements:** Extraordinary ability must be demonstrated through sustained national and international acclaim and recognition for achievements in the field through evidence of the following:

§ Receipt of a major internationally-recognized award, such as the Nobel Prize; or

§ At least **three** of the following forms of documentation:

§ Documentation of receipt of nationally or internationally recognized prizes or awards for excellence in the field;

§ Documentation of membership in associations in the field which require outstanding achievements of their members, as judged by recognized national and international experts and their disciplines;

§ Published material in professional and major trade publications or major media about the alien, relating to his/her work in the field. Must include the title, date, and author of such published material;

§ Evidence of participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification sought;

§ Evidence of original scientific, scholarly or business-related contributions of major significance in the field;

- § Evidence of authorship of scholarly articles in the field, in professional journals or other major media;
  - § Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have distinguished reputation; and
  - § Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- § If the above evidence does not readily apply to the occupation, then the employer can submit other comparable evidence to submit.

O visas also require a letter evidencing consultation with an appropriate “peer group” (such as a prominent association in the field of endeavor) stating that the peer group has no objection to issuance of the O visa. Some professions and specialties have no such peer group, in which case the employer can submit a letter attesting that no such peer group exists.

***Length of Stay:*** An O visa is valid for three years with available extensions.

***Spouse and Children:*** Can accompany the principal beneficiary as O-3 visa holders, but cannot work in that status.

***Dual Intent:*** Filing of an immigrant visa will not in itself prevent entry or re-entry on an O or extension of O visa. However, this is not technically dual intent because the employee still must have an intent to return to the home country.

## **9. Hiring Foreign Students and Foreign Graduates of U.S. Universities**

**F-1 Students** – Foreign students are permitted to attend U.S. colleges or universities as long as they show (1) they have the resources to support themselves and cover all tuition and expenses; and (2) they have an intent to return to their home country. Foreign students will need a completed Form I-20 (issued by a university) to obtain valid F-1 status. F-1 students may be eligible for several different types of employment opportunities and very specific rules apply to each.

***On-Campus Employment:*** If the F-1 student is maintaining a valid F-1 status, the student may work on campus no more than 20 hours per week while school is in session, but may be full time when school is not in session.

***Off-Campus Employment:*** An F-1 student may request off-campus employment work authorization based upon severe economic hardship caused by unforeseen circumstances beyond the student’s control.

***Curricular Practical Training:*** Another work option for hiring F-1 students is Curricular Practical Training. CPT is work authorized by the foreign student advisors and shown to be an integral part of an established curriculum. A student is not eligible for CPT unless the student is legally enrolled on a full-time basis for at least nine months, although this can be waived in certain instances for graduate students. If a student accumulates more than twelve months of CPT, the student is ineligible for Optional Practical Training.

***Optional Practical Training:*** The last and most common method of employment authorization for F-1 students is optional practical training. Students who have graduated can be hired for a period of up to ***one year***. All that is required is authorization from the university’s Foreign Student Advisor, and receipt of a work authorization card from CIS. This process should be started at least 90 days

prior to graduation and CANNOT be obtained if filed after graduation. The student cannot commence work until the EAD is received. An application or receipt notice is not sufficient.

**STRATEGY TIP:** *F-1 Optional Practical Training is an excellent way to recruit top foreign graduates of U.S. colleges and universities with a minimum of delays and paperwork.*

**Family:** The F-2 spouse of an F-1 cannot work under any circumstance.

## **J Visas**

The visa is based on cultural exchanges between the United States and a foreign country and is a comprehensive visa covering several different categories: (1) students; (2) trainees; (3) teachers; (4) professors; (5) international visitors; (6) alien physicians; (7) government visitors; (8) researchers; (9) short term scholars; (10) specialist; (11) camp counselors; and (12) au pairs. Most of these categories permit full-time work authorization for varying time units. Selected categories are discussed below:

- § **Students:** Like F-1 students, J-1 students are permitted to work on campus or off campus if there is an urgent, unforeseen need. The employment is limited to 20 hours per week while school is in session or full time when school is not in session. For **Academic Training**, J-1s are eligible for up to 18 months of academic training (36 months if post-doctoral research). Unlike F-1s, they do not require CIS employment authorization. Rather, they only need a letter of authorization from the foreign student advisor that the employment is related to the degree
- § **Professors and Research Scholars:** These positions cannot be tenure-track and the J-1 cannot have been in the U.S. on a J visa for all or part of 12 months immediately preceding date of program commencement, with a few minor exceptions. The time limit is three years, with a possibility for a six-month extension for good cause.
- § **Short-Term Scholars:** Coming to the U.S. for a period of six months to lecture, observe, consult and participate in seminars, workshops, conferences, study tours, professional meetings or other educational activities.

**Family:** J-2 family members of J-1s may obtain work authorization if they can show that income is not needed to support J-1 alien

**STRATEGY TIP:** *Some J-1 visa holders may be required to return to their country of last residence for two years after expiration of their J-1 visa. You should consult your university, foreign student office or immigration law advisor to see if you are subject to this important restriction or if there are other visa options available to avoid the restriction.*

## **H-1B Visas**

Once a student obtains a bachelors degree (or higher), the student is eligible for an H-1B visa. This option is discussed earlier in this handbook.

### **10. Trainee Visa Options For Up To 24 Months**

U.S. and foreign companies often wish to provide training on new or existing technologies to foreign workers. Several visas exist which allow for **the training of foreign employees who do not**

*have college degrees or specialized knowledge* or cannot otherwise enter under H-1B, L-1B or E visas:

- § A J-1 trainee visa can be obtained through an international exchange program authorized by the Department of State. This category allows the trainee to work for a U.S. firm and engage in productive employment as part of her training for up to 18 months. Unlike many of the other visa options, the *spouse of the J-1 trainee can be granted work authorization*.
- § *An H-3 training visa* requires a detailed training curriculum set up by the employer. This visa allows the trainee to engage in productive employment only if it is incidental to the training. *The H-3 is valid with extensions for up to two years*. Specialized immigration law advice is usually needed to establish and obtain approval for an H-3 training program. Spouse and children (under 21) can enter with an H-4 but cannot work.
- § *A B-1 visa* can be used for short term training of less than one year. The trainee must be an employee of a foreign company. The employee must be compensated (except for expenses) by the foreign firm. *Spouses and children* of B-1 trainees can accompany the trainee but cannot work in the United States.
- § *F-1 student visa* allows for Curricular Practical Training (CPT) if the training part of the student's degree program. Optional Practical Training (OPT) is available for up to 12 months during an academic program or 12 months post-graduation. Use of CPT for 12 months or more will void eligibility for OPT.