

Immigration Law Update: Fall 2008

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M Visas for Vocational Students

The M visa is available to students who wish to pursue a full-time course of study approved by U.S. Citizenship and Immigration Services (USCIS). To qualify for an M-1 visa, the course of study must lead to a specific educational or vocational objective. The student must engage in a full course of study, the definition of which depends on the type of institution.

- Community and junior colleges: A full course of study consists of at least 12 semester hours of instruction per academic term, except in cases where the student requires fewer hours to complete the course of study.
- Other postsecondary schools: A full course of study consists of 12 hours of study per week.
- Vocational and nonacademic programs: A full course of study consists of at least 18 hours of study per week if classroom instruction is the dominant part of the course or 22 hours of study per week if the dominant part of the course is in a laboratory or workshop.
- Vocational and nonacademic high schools: A full course of study consists of the minimum hours the school sets for progress toward graduation.

The student is issued an I-20 form by the school, which is necessary to apply for the M visa at a U.S. consulate. To apply for the visa, a student must present the I-20, passport, visa fee, Form DS-156 Application for a Nonimmigrant Visa and proof of financial support. A prospective student who has not yet decided on a school can request a B-2 prospective student visa and can seek M-1 status from within the United States. Note, however, that if a prospective student does not make his or her intentions clear at the time of entry, USCIS could deny the application.

After receiving the visa, the student may travel to the United States. Upon entry, the student must present his or her passport, visa, proof of financial support and I-20. If admission is granted, USCIS will keep one copy of the I-20 and return a copy to the student.

M-1 students are admitted for a period of one year or for the amount of time needed to complete the course of study. They also have a 30-day grace period in which to depart following completion of the course.

M-1 students are not permitted to change schools after six months unless there are circumstances beyond their control. Before six months are up, students may apply to transfer schools on Form I-539. The student must include the I-20s from both their old and new schools.

Failure to do any of the following will render the student out of status:

- Transfer to a new school without submitting an I-539 form;
- Enrolling in the new school before USCIS approves the transfer, unless 60 days have passed since submission of the application;
- Failure to pursue the full course of study at the approved school without seeking reinstatement.

To obtain an extension of stay, the student must submit Form I-539 to USCIS, along with a copy of the I-20 form. The student must show that he or she has maintained valid M status and will continue to do so if the extension is approved. The extension may be granted for a period of up to one year or the length of time required for completion of the program.

While M-1 students are not authorized to accept any employment, they are allowed to participate in practical training following the completion of their course of study. A request for practical training must be submitted no more than 60 days before the completion of studies and no later than 30 days after completion. An M-1 student may receive one month of training for each four-month period of study; however, the total practical training may not exceed six months.

E-1 and E-2 Visas: Treaty Trader and Investor Status

Treaty trader and treaty investor nonimmigrant status is available for nationals of countries with a treaty of commerce and navigation with the United States. One wishing to go to the United States to carry on trade, principally between the United States and his or her own country, may apply for an E-1 treaty trader visa. Someone going to the United States to develop the operations of an enterprise in which he or she has invested or is investing a substantial amount of capital may apply for an E-2 treaty investor visa. Unlike the L-1 category, E visas can be renewed without limits, and it is not necessary to maintain a business outside the United States.

E-1 treaty traders must submit a letter from their company or employer detailing the nature of the business and the applicant's position. The letter must be on company letterhead with a signature from an authorized company representative and must be addressed to the Visa Office, U.S. Department of State. The letter should demonstrate the applicant's entitlement to E-1 status based on trade between the United States and the country of the applicant's nationality. The letter must also state that the applicant will depart the United States when E-1 status ends.



The following countries have E-1 treaty trader status: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brunei, Canada, Chile, China (Taiwan), Colombia, Costa Rica, Croatia, Denmark, Estonia, Ethiopia, Finland, France, Germany, Greece, Honduras, Iran, Ireland, Israel, Italy, Japan, Jordan, Latvia, Liberia, Luxembourg, Macedonia, Mexico, Netherlands, Norway, Oman, Pakistan, Paraguay, Philippines, Poland, Singapore, Slovenia, South Korea, Spain, Suriname, Sweden, Switzerland, Thailand, Togo, Turkey, United Kingdom and the former Yugoslavia (Kosovo, Montenegro and Serbia).

E-2 treaty investors must submit a copy of the company's most recent financial statement. They must also submit a letter from their company or employer detailing the nature of the investment and the extent of the alien's participation. The letter must be on company letterhead with a signature from an authorized company representative and must be addressed to the Visa Office, U.S. Department of State. The letter must contain a statement that the applicant will depart the United States when E-2 status ends.

With the exceptions of Brunei, Denmark, Greece and Israel, all countries with E-1 trader status also have E-2 investor status. Additional countries with E-2 treaty investor status are Albania, Armenia, Azerbaijan, Bahrain, Bangladesh, Bulgaria, Cameroon, Congo (Brazzaville and Kinshasa), Czech Republic, Ecuador, Egypt, Georgia, Grenada, Jamaica, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, Mongolia, Morocco, Panama, Romania, Senegal, Slovak Republic, Sri Lanka, Trinidad and Tobago, Tunisia and Ukraine.

E-1 and E-2 applicants must submit

- Forms DS-156 and DS-156E;
- Form DS-157, for male applicants between the ages of 16 and 45 years;
- One 2" x 2" photograph;
- A passport valid at least 6 months beyond the intended period of stay; and
- The visa fee.

Applicants must also submit documents demonstrating that their investment or trade between the United States and treaty country is substantial, including

- Incorporation of the business in the United States;
- Ownership of the company; *Capitalization of the business;
- *Business plan;
- Information on business activities, such as marketing documentation, sales contracts, customer lists, etc.;
- Property leasehold or ownership;
- Financial statements and tax returns for the U.S. business;



- Information on the business and finances of the foreign operation, if the company has business abroad; and
- Information on the proposed U.S. position and background information on the employee.

EB-1 Status for International Managers and Executives

The First Preference Employment-Based Immigrant (EB-1) category includes three groups:

1. Aliens of extraordinary ability;
2. Outstanding professors and researchers; and
3. Multinational managers and executives.

The last group within this category is reserved for executives and managers of multinational companies. Because there is no need for a labor certification, this is a popular green card strategy for business executives. To qualify as an EB-1 executive or manager, the alien must have worked for the petitioner for at least one year of the previous three in an executive or managerial capacity. Also, the alien must be coming to the United States to work in an executive or managerial capacity.

If the alien is already in the United States, the required one year of employment in the past three will be determined by looking at the three years prior to the alien's transfer to the United States. The U.S. business must have been established for at least one year before filing the petition.

EB-1 Executive

For a person to be considered an executive, the applicant must meet the following requirements:

- Manage an organization or major component;
- Have authority to make policy and establish goals;
- Have discretionary decision-making authority; and
- Be subject to only general supervision from higher executives, the board of directors or stockholders.

The overall size of the organization is a factor in determining executive capacity. The larger the organization, the more reasonable it will be to require the international transfer.

EB-1 Manager

For a person to be considered a manager, the applicant must meet the following requirements:

- Manage an organization or department;
- Supervise and control other managers or professional-level personnel;
- Have authority to make personnel decisions; and
- Have discretion to make decisions about operations.

As with executives, the size of the business is an important factor.

If this category sounds familiar, it is because it is very similar to the L-1 nonimmigrant category, but with a few differences. EB-1s are only available to managers and executives, not to workers with specialized knowledge. Also, unlike L-1s, the U.S. branch of the business must have been in operation for one year before petitioning for an immigrant manager or executive.

IGA Waivers for Physicians

A foreign medical graduate (FMG) who receives graduate medical education on a J-1 visa is automatically subject to the two-year home residency requirement. This two-year period must be spent in the alien's home country or last country of permanent residence. FMGs who receive a waiver of this requirement are allowed to remain in the United States. While there are several types of waivers, the most commonly used by FMGs are those based on a request from an interested U.S. government agency (IGA).

Appalachian Regional Commission (ARC)

The ARC is a joint federal-state program that recommends waivers for primary care physicians only. The waiver request must be sponsored by a state within the ARC: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia or West Virginia. To qualify, the place of employment must be located in a Health Professional Shortage Area, the physician must agree to work a minimum of 40 hours a week for three years and the employment contract cannot include any restrictive clauses.

Delta Regional Authority (DRA)

The DRA serves a 240 county/parish area comprising parts of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri and Tennessee. The program is available to both primary and specialty care physicians. Physicians seeking a waiver must commit to providing medical care for three years or more, and for at least 40 hours per week in a Health Professional Shortage Area or Medically Underserved Area/Population. There is a fee of \$3,000 to apply for this waiver program. Department of Health and Human Services (HHS)

HHS has two distinct programs. The first is the research waiver, which requires the physician to be involved in a program of national public interest and to be essential to the program's continuance. Because of the requirement that the physician be involved in a program, most physicians will need to be engaged in a research project to qualify.

The second HHS program is available to primary care physicians working in underserved areas. Primary care training must be completed within a year of applying, which prevents those pursuing a specialty from using this program.



Veterans Administration (VA)

The VA facility employing the FMG makes the initial waiver request to a regional VA director. The request must include efforts to recruit U.S. workers and should also include a letter from the facility director describing the proposed employment and how employment of the physician will help the facility address patient care needs.

Conrad State 30 Program

The Conrad State 30 program allows states to sponsor up to 30 FMGs for a waiver each year. While each state can regulate the program as it sees fit, some elements are the same for each state. The employment location must be in a Health Professional Shortage Area or Medically Underserved Area/Population, and the contract must require the physician to work 40 hours a week for three years. Some states will sponsor specialists, but the majority of positions in each state are reserved for those who will practice primary care only.

Also, each state is allowed to use five waivers ("Flex Five") per year to sponsor physicians who will be employed outside federally designated shortage areas if they can demonstrate that they will be serving the residents of shortage areas.

**If you have any questions regarding the topics covered in these articles or have other questions related to immigration law, please contact Mark Mathison or Casey Nolan.*

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