UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Office of Business Liaison

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Permissible Business Activities for B-1 Business Visitors

B-1 ELIGIBILITY

B-1 classification applies when a foreign employer[1] requires an alien employee to work temporarily in the United States (US) pursuant to the foreign employer's international transactions. It does not entitle business visitors to enter the US labor market, meaning employment activities that are domestic in nature and/or positions that are generally filled on a competitive basis within the US pool of authorized citizen, lawful permanent resident, and nonimmigrant workers. A US employer may not employ a business visitor in the US. However, a B-1 business visitor may be permitted to perform services on the premises of a US company if pursuant to an international business relationship between that US company and his/her foreign employer.

FACTORS CONSIDERED

An alien is classifiable as a **visitor for business** if he or she overcomes the presumption of intending immigration, qualifies under the provisions of section 101(a)(15)(B) of the Immigration and Nationality Act, and establishes **all** of the following:

- intends to leave the US at the end of the temporary stay
- has permission to enter a foreign country at the end of the temporary stay
- intends to enter the US for a temporary period of time
- seeks admission for the sole purpose of engaging in legitimate activities relating to business, evidenced by specific and realistic plans
- has adequate financial resources to carry out the purpose of the visit to the US, with the understanding that employment in the US will not be necessary
- has compelling ties to the foreign employer
- has a residence abroad that he or she does not intend to abandon
- the function he or she will perform in the US is a **necessary incident to international trade or commerce** (i.e. not limited to "businessmen").

COMPENSATION

B-1 nonimmigrants may not receive salaries or other remuneration from US sources for services rendered in connection with activities in the US. However, a US source may provide these aliens with expense allowances or reimbursement for actual expenses incidental to their temporary stays.

Honoraria: In common parlance, the term honorarium may refer to compensation for services, reimbursement for expenses, or both. Under immigration law, however, honorarium payments[2] to B-1 business visitors are restricted to persons whose actual place of accrual of profits from services rendered is abroad and must not exceed the reasonable cost of incidental expenses, calculated on the basis of the individuals' customary living standard and the relative cost of living in the US.[3]

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[1] The business visitor may be self-employed abroad.

[2] But see "Lecturing and Short-term Academic Activity" below.

[3] Incidental expenses should not exceed the actual reasonable expenses that the business visitors incur in traveling to and from the event, together with living expenses the alien reasonably incurs for meals, lodging, laundry, and other basic services.

B-1 ADMISSION AND EXTENSION OF STAY

A B-1 business visitor will be admitted into the US for a period of time that is fair and reasonably necessary in order to accomplish the stated purpose of the trip. A B-1 principal and B-2 dependents may apply for extensions of stay on Form I-539. Extensions are granted in increments of no more than six months.

BUSINESS VISITOR ACTIVITIES

Functions or circumstances determined to be acceptable as B-1 business activities include but not limited to:

- commercial transactions that do not involve gainful US employment (e.g. merchant taking orders for foreign goods)
- contract negotiation
- installation, service, or repair of commercial or industrial equipment purchased from a company outside the US and/or training of US workers to perform such services. **Note:** the contract of sale must require the seller to provide such services or training and the B-1 visitor must possess specialized knowledge essential to contract performance
- consultation with business associates
- litigation
- participation in scientific, educational, professional or business conventions, conferences, or seminars
- professional entertainers involved in cultural events, paid for and sponsored by a sending country, that will involve public appearance before **non-paying** audiences.[4]
- investors seeking investments that may eventually qualify them for immigrant or E-2 nonimmigrant status
- independent research or professional artistic activity (e. g. music recording, artistic work such as painting, sculpture, or photography) that do not involve income from a US source
- foreign airline employees who meet E visa criteria but are not nationals of a treaty country or of the airline's country of nationality
- planning, constructing, dismantling, maintaining or other employment by foreign employer in connection with exhibits at international fairs and exhibitions
- certain religious and charitable activities (e.g. missionaries and recognized international volunteer efforts)
- certain athletes who:
  - ✓ are professional but intend to receive no salary or payment other than prize money
  - ✓ are individuals or members of a foreign-based team in an internationally recognized sporting activity whose principal place of business is in the foreign country where their salaries typically accrue and seek to enter the US in order to compete
  - ✓ are amateur individuals or members of a foreign-based team who seek to try out with US teams who will pay only their incidental expenses
- servants[5] employed abroad of:
  - ✓ US citizens residing abroad who return or are assigned to the US on a temporary basis
  - ✓ foreign nationals who have been accorded B, E, F, H, I, J, L, M, O, P, R or TN nonimmigrant status for temporary activities in the US

B-2 VISITORS FOR PLEASURE

B-1 dependents are generally admitted as visitors for pleasure under the B-2 classification. Individuals admitted under the B-2 classification are not restricted to tourist activity or social visits. Other permissible activities include, but are not limited to:

- medical treatment
- participation in conferences, conventions, etc. of social or fraternal organizations
- short courses of study incidental to tourist or social activities
- amateur entertainers or athletes in non-profit performances or competitions, without payment (expenses only)

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[4] Other than under this exception, entertainers and associated production personnel are not entitled to B-1 status.
[5] Source of payment to servants who meet these criteria is not relevant.

LECTURING OR SHORT-TERM ACADEMIC ACTIVITY[6]

The American Competitiveness and Worksite Improvement Act (ACWIA) of 1998 generally authorized B classification visitors, performing lecture and seminar services for US non-profit research and higher education institutions, to receive honoraria consisting of compensation for services in addition to reimbursement for expenses. Certain restrictions apply. As of 6/99, however, this legislative provision has not been implemented through published regulations.

Under current regulations and without regard for the ACWIA exceptions, an alien professional who seeks to lecture or provide short-term academic, cultural, etc. services at a US institution must be admitted in H-1B, H-2B, or O-1 status in order to be paid for such activities. B-1 status is acceptable for such services as long as compensation is limited to reimbursement of incidental expenses that make the business visitors whole for participating in the function or event. B-2 status will support such activities in cases where business visitors give brief, impromptu presentations as an incidental part of their US visit but are not subsidized, in whole or in part, by the US institutions.

VOLUNTEER ACTIVITIES

Generally, volunteers do not meet the regulatory definition of employee. Volunteer work may be acceptable in nonimmigrant visitor status if the services are undertaken without expectation of compensation or privileges. However, the fact that an employee is unpaid will not cure unlawful employment if the "volunteer" is otherwise indistinguishable from a regular paid employee. Additional factors to consider in a given case may include the benefit derived from the volunteer services by the US organization and/or whether a lawfully authorized US worker would have been hired but for the volunteer services.

TRAINING IN B-1 STATUS

Individuals who would otherwise qualify for the H-3 classification may be eligible for B-1 classification if they receive no salary or other remuneration (i.e. payments beyond expenses). Alien trainees who seek merely to observe the conduct of business or other professional or vocational[7] may qualify for B-1 classification or B-2 classification if the US business does not pay or reimburse expenses. The foreign employer[8] must continue to be the principal employer and pay wages, salary, or other compensation from a source abroad.

On-the-job training prohibited: Hands-on training, designed to provide on-the-job experience, is not deemed to fall within the B-1 (or B-2) classification. Even if the foreign employer pays salary and expenses, B-1 classification is inappropriate if the hands-on services performed by the trainee will benefit the US-based company and/or the US-based company would have had to hire an employee but for the services of the alien "trainee".

ENTERTAINERS[9]

Regardless of the amount or source of compensation or whether the services will involve public appearance, entertainers are inadmissible to the US under the B-1 classification.

Exceptions: Aliens otherwise classifiable as H-1b nonimmigrants are admissible under the B-1 classification if participating in cultural programs sponsored by the home country government. Canadian or Mexican nationals participating at US border areas in long-established religious festivals/ceremonies or binational civic celebrations also qualify.

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[6] See footnote 1.

[7] Includes foreign medical doctors, who are not required to have passed the Foreign Medical Graduate Examination.

[8] Foreign affiliates of US companies are acceptable.

[9] Includes performing artists and production personnel.

BUSINESS VISITOR ACTIVITIES UNDER NAFTA[10]

General

NAFTA did not change the regulations regarding admission of B-1 business visitors. Although NAFTA does not provide separate B-1 rules, however, it facilitates the temporary entry of Canadian and Mexican citizens on a reciprocal basis. Appendix 1603.A.1 to NAFTA Annex 1603 lists the following categories of business visitor activities:

Research and Design
Growth, Manufacture, and Production
Marketing
General Service
Distribution
Sales
After-sales Service

Although the list of permissible business visitor activities overlaps the list of activities in which any business visitor may engage, there are some significant differences. Under NAFTA, after-sales service contracts are permissible for the life of the warranty or service agreement, i.e. not limited to one year from the date of the service contract. In addition, self-employed persons (e.g. consultants) may enter the US as business visitors as long as they are not paid from US sources, have principal places of business and earn profits abroad, and their work products are primarily created abroad.

TN-eligible Canadian or Mexican citizens whose professions appear on NAFTA Appendix 1603.D.1 may be admitted under the B-1 classification as long as they receive no salary or remuneration from a US source, their principal place of employment and earning of business profits remains outside the US, and their US business activities are international in scope. NAFTA **does not permit** Canadian and Mexican professionals to work in the US as business visitors by remaining on the payroll of their foreign employers. To become part of the US labor market, they must be admitted in nonimmigrant classification (e.g. TN) that permits employment in the US.

Period of Stay

Canadian or Mexican business visitors who present the required documentation will generally be admitted for the requested period of stay up to a maximum of one year.

Canadian Business Visitors

No visa or Form I-94 Arrival Departure Record is necessary for Canadians (I-94's may be issued upon request). Upon entry into the US, Canadian business visitors must present proof of Canadian citizenship, description of the business purposes of their trips, and evidence that their business purposes conform both to NAFTA Appendix 1603.A.1 and to general B-1 visitor restrictions relating to compensation, principal place of business, international scope of work, etc. Canadian nationals who enter the US for acceptable business visitor purposes three or more times per year may be eligible for the INSpass[11] and PORTpass programs that facilitate entry.

Mexican Business Visitors

Mexicans require B-1 consular visas from a US consulate or Border Crossing Cards. In addition, upon entry into the US, Mexican business visitors must present descriptions of the business purposes of their trips and evidence that these business purposes conform both to NAFTA Schedule 1 and to general B-1 visitor restrictions relating to compensation, principal place of business, international scope of work, etc.

Note about Border Crossing Card limitations: Border Crossing Cardholders are restricted to visits of 72 hours or less within 25 miles of the border. Mexican business visitors with Border Crossing Cards or nonimmigrant visas, who seek to stay longer than 72 hours and travel within any of the 50 states, must obtain I-94 Arrival-Departure Records stamped at points of entry. The Form I-94 replaces the Mexican Border Visitors' Permit (Form I-444), which was required through March 31, 1997, for business travel of up to 30 days within the five southern border states (CA, NV, AZ, NM, TX).

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[10] See also Employer Bulletin entitled "Employing Mexican and Canadian Professionals Under NAFTA," available from this office.

[11] See Employer Bulletin on the INSpass program, available from this office.