



Training Visa Overview

The appropriate visas will depend on the nature of the training program and the activity to be conducted for each candidate. Typically, there are three visa types which may be appropriate for training in the US: B-1 Business Visitor, J-1 Trainee, and H-3 Trainee. In order to fully assess which visa category would be most appropriate, we would need to assess the details of the case, but here is a brief overview which may provide you with some preliminary information.

B Visa Training Program

B-1: The B-1 Business Visitor visa is appropriate for training that will generally be short term in nature. The nature of the B-1 Business Visitor visa for training purposes requires that a specific itinerary or training schedule be provided as well as an affirmation that the B applicant will NOT engage in productive employment or delivery of work product in the United States and will NOT receive any compensation from a US source. This means that proof of ability to support oneself must be provided at the time of application (proof of employment abroad, pay statements, etc) as well as proof of ties to the home country to demonstrate the intent to return to the home country when the duration of the training is complete.

The B applicant can usually apply for the B visa stamp at the US consulate overseas. Our office can generally prepare the B-1 invitation letter within a few days of receiving all completed information. The issuance of the visa will depend on the processing time of the particular consulate where the application is being made. Even though a B visa may be issued for a certain duration (usually about 6 months), it is possible that an I-94 card may be issued for a shorter duration than the visa stamp if the immigration officer at the port of entry deems that the training can be accomplished in a shorter period of time. If the I-94 card is issued for a shorter time, it is possible that either the B applicant must depart the US on or before the I-94 card expiration date or that an extension of B status be filed with the USCIS with justification as to why additional time is required in B status.

J Visa Training Program

J-1: The J-1 trainee program is appropriate for a training program which can take place at company but is sponsored by a J-1 sponsor for purposes of educational and cultural exchange. We have attached an overview of the J-1 trainee visa option. For the J-1 applicant, we do work with a vendor that prepares the paperwork. As such, the employer and the applicant will be required to complete and submit a J-1 questionnaire in order for the J-1 sponsor to prepare the necessary forms so that the applicant can apply for a J-1 visa at the US consulate. A person can spend up to 18 months in the US in J-1 program. If the candidate has previously held J-1 status, this time counts against the 18 month limitation. It is also important to note that foreign nationals of certain countries may be required to complete a two year foreign

residency requirement after the completion of the J-1 training if they are subject to a skills list that may be required in their home country.

The “Exchange Visitor Program”, which is designated the J-1 classification for visa purposes, was implemented by the government under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (as amended). The purpose of the program is to increase mutual understanding between U.S. citizens and citizens of other countries through temporary educational and cultural exchanges. The main objective of the J-1 “Exchange Visitor Program” is to provide foreign nationals with an opportunity to experience the U.S. and our way of life. Once foreign nationals finish the program, they are expected to return to their home country to utilize the experience and skills they have acquired while in the U.S.

Exchange Visitor program categories are: Au pair, Camp Counselor, College/University Student, Secondary School Student, Government Visitor, International Visitor (reserved for U.S. Department of State use), Foreign Physician, Professor, Research Scholar, Short-term Scholar, Specialist, Summer Work/Travel, Teacher, and Trainee. Many professional and skilled workers who are in the process of studying in their home countries or who have just completed their studies enter the U.S. in the “Trainee” category to learn about the U.S. work and business environment in their field and to also learn English. Each category of exchange has specific requirements and regulations.

Application Process

As indicated, applicants must first meet the J visa or Exchange Visitor Program requirements and be accepted for one of the Exchange Visitor Program categories through a designated sponsoring organization. The Office of Exchange Coordination and Designation in the Bureau of Educational and Cultural Affairs is in charge of the program, and has a website with additional information, <http://exchanges.state.gov/education/jexchanges>. The U.S. Department of State has designated certain public and private entities to act as exchange sponsors, which facilitate the entry of foreign nationals in J visa classification.

All program participants will be required to sign up with the “Student and Exchange Visitor Program” (SEVP). The U.S. Department of Homeland Security utilizes SEVP to track all foreign nationals in F, M and J programs who enter the U.S. The data is maintained in an Internet-based system called the “Student and Exchange Visitor Information System” (SEVIS). All program participants and their dependents will be entered into the system by the program sponsor.

Once applicants are accepted, they will be provided with information and documents necessary to apply for the J visa to enter the United States through a U.S. Consulate abroad. Applicants are required to prepare and complete U.S. Department of State Forms DS-156, DS-157 (if male), DS-158 (Contact Information and Work History), along with their Exchange Visitor Program approval and supporting documentation. All applicants are also required to present SEVIS generated Form DS 2019, which is issued directly to the applicants by designated sponsors. Applicants must pay a SEVIS I-901 Fee to the Department of Homeland Security for each individual program. The fee may be paid either through a special web site, via Western Union, or by mail.

Every applicant will be required to schedule a nonimmigrant visa interview at a U.S. Consulate in her/his home country. At the interview, Consular Officers will determine whether applicants qualify for the visa by examining the following factors in each application: whether applicants’ intent is to remain in the U.S. for a temporary, specific period of time; whether applicants’ demonstrate they have sufficient funds to cover expenses in the United States; whether applicants demonstrate sufficient and compelling social and economic ties in their home country and any other binding ties which will ensure the applicants’ return abroad at the end of the program. At the consular interview, the Consular Officer will also verify the DS 2019 record electronically through the SEVIS system in order to process and approve the J exchange visitor visa application.

Traveling to the U.S.:

Once the J visa is issued in applicants' foreign passports, they must enter the U.S. to commence the program 30 days, or less, in advance of the program's scheduled start date. The U.S. Citizenship and Immigration Services (US CIS) and U.S. Customs and Border Protection (CBP) agents at U.S. ports of entry are authorized to deny applicants' entry into the U.S. if applicants attempt to enter more than 30 days before the program's scheduled start date. The 30-day limitation does not apply to current exchange participants who are returning to continue with their exchange program.

Dependents:

Exchange Visitor Program participants may bring their spouses with them to the U.S. for the duration of the program. Dependents are issued visas in "J-2" classification. Spouses and children of exchange visitors may not enter the United States before the principal visitor enters for the first time.

Spouse and/or children of J visa holders are not authorized to work while in J-2 status. If employment is desired, then dependents must qualify for another visa classification which authorizes employment or file Form I-765 Application for Employment Authorization with the US CIS office in their jurisdiction. Dependents may study in the U.S. while in J-2 classification. That is, they are not required to change status to F-1 visa.

Two-Year Foreign Residency Requirement

Some, not all, J-1, Training Visa Program participants are subject to a two (2) year home requirement. That is, those that are subject to the requirement must return to their country of nationality or last country of residence for two (2) years before they are permitted to apply for another U.S. non-immigrant (work) visa or to apply for permanent residency here. Those who are not subject to the 2-year home requirement may change to another visa classification while here or may adjust their status to legal permanent resident. The Department of State (DOS) establishes who is subject to the 2-year home requirement on the basis of a skills-list as well as country of origin or if the program in which the exchange visitor is/was participating was financed in whole or in part directly or indirectly by the U.S. government or the government of the exchange visitor's nationality or last place of residence. To determine whether the 2-year home requirement would apply based on skills, go to the DOS site: <http://exchanges.state.gov/education/jexchanges/participation/waivers.htm> On that page, upper right side, you will see the link for the PDF document with that "Exchange Visitor Skills List". Exchange visitors may also be subject to the 2-year home requirement if they entered the United States to receive graduate medical education or training.

Those J-1, Training Visa Program participants who are subject to the two-year home-country physical presence requirement, as established by Section 212(e) of the Immigration and Nationality Act, must apply for a waiver of that requirement if they seek to remain in the United States beyond the end date of their programs or if they seek to submit an application to the U.S. Citizenship and Immigration Service (US CIS) for a change in visa status. A waiver may be requested for five statutory bases:

- 1) a claim of Exceptional Hardship to a U.S. citizen or legal permanent resident spouse or child of an exchange visitor if the exchange visitor is required to return to the country of residence;
- 2) a claim that the participant will be persecuted due to race, religion, or political opinions if he/she returns to the country of residence;
- 3) a request from an interested US Government Agency on the participant's behalf;
- 4) a "No Objection Statement" from your government; and 5) a request by a designated State Health Department or its equivalent.

Waivers are difficult to obtain and require a lot of documentation of the basis for eligibility.

Program Duration & Period of Authorized Stay After Program Completion

The initial admission of an exchange visitor, spouse and children may not exceed the period specified on Form DS-2019, plus a period of 30 days for the purpose of travel or tourism after the program is completed. The Exchange Visitor Program maximum validity period is generally 18 months, but some programs are shorter. Extensions beyond the maximum program duration are allowed in some program categories for exceptional or unusual circumstances, with approval from the U.S. Department of State (DOS). To obtain approval for such extensions, the program sponsor must submit a written request that justifies the petition and provides supporting documentation to the DOS on behalf of the J-1 visa holder. A filing fee of \$198 is also required, payable to the "U.S. Department of State".

The 30-day grace or travel status period is intended to be a period following the end of the exchange visitor's program and is to be used for domestic travel and/or to prepare for and depart from the U.S., and for no other purpose. A spouse or child (J-2 visa holder) may not be admitted for longer than the principal exchange visitor (J-1 visa holder).

Changes of Status

Any change of visa category must be clearly consistent with and closely related to the J-1 visa holder's original exchange objective, and necessary due to unusual or exceptional circumstances. J-1 visa holders should contact the designated sponsoring organization with which they originally applied for more information. The application is similar to that of a request for extension and requires a nonrefundable filing fee of \$198 made payable to the "U.S. Department of State". If the DOS grants the request, a new Form DS-2019 will be issued to reflect the change. If the request is denied, the Exchange Visitor participant will be expected to return home no later than 30 days from the date of the DOS notice or the original program's end date indicated on the Form DS-2019, whichever is later.

In order to being this process, we will send out questionnaire. Once all completed questionnaires are forwarded to our office, our office will prepare the application forms for your's signature within one week. Upon receipt of the signed forms, we will forward the materials to our J-1 vendor who normally provides the necessary forms within one to one and half weeks from the time of receipt (may vary depending upon whether additional information is required). Once the forms are prepared and provided to the applicant, the applicant would apply for the J-1 visa stamp at a US consulate. The issuance of the visa will depend on the processing time of the particular consulate where the application is being made.

H-3 Visa Training Program

H-3: The H-3 training program is appropriate for longer term training and is sponsored by the US Organization in the US. We have attached an overview of the H-3 training program. The H-3 requires a much more detailed and documented training program which includes syllabus for classroom instruction, training schedules for on the job training, etc. The H-3 requires a demonstration that the proposed training is not available in the alien's own country, that the trainee will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed, that the trainee will not engage in productive employment unless such employment is incidental and necessary to the training; and that the training will benefit the beneficiary in pursuing a career outside the U.S.

The H-3 is a training visa, similar to the J-1 visa, but differs in the following aspectst:

- 1) Petitions must document that the proposed training is not available in foreign national's home country. The petition must include the reason why the applicant cannot obtain the training in his home country.

- 2) The Petition must document or evidence that the foreign national will not be placed in a position in which a citizen or Legal Permanent Resident is regularly employed.
- 3) The position/training must include in-classroom training and may also include supervised on-the-job training.
- 4) No productive employment is allowed, unless incidental to the training. I.e., the program must not result in productive employment, beyond that incidental & necessary to training program. Nor can the program be designed to recruit and train foreign nationals for the ultimate staffing of operations in the U.S.
- 5) The petition must show the training will benefit the foreign national in pursuing a career overseas (i.e., not in the U.S.).
- 6) The program must have a fixed schedule, specific goals/objectives and documented means of evaluation.
- 7) The Training program must be compatible with the company's business activities.
- 8) The foreign national must not already possess substantial training and expertise in the proposed field of training.
- 9) The training must be in a field likely to be utilized outside of the U.S.
- 10) The petition must establish that the company has the physical plant and sufficiently trained manpower to provide the training specified, and the reason the training program is a benefit to the company as well as to the foreign national.
- 11) The petition must disclose the source and amount of remuneration to be paid to the foreign national trainee.

The H-3 visa is initially granted for the length of the training program, but no more than 2 years. After the two year training period, no extension, change of status or readmission in H or L status will be granted unless the foreign national has resided and is physically outside of the U.S. for six (6) months. The only exception is where an H-3 visa holder was present in the U.S. for less than six months, or where the training was seasonal/intermittent.

The H-3 requires that an H-3 petition be filed for the trainee with the USCIS. Current USCIS processing time for these types of petitions is about 4 months from the time of USCIS receipt. However, premium processing is available. Upon approval, H-3 approval notices will be issued by the USCIS. The trainee will then need to apply for an H-3 visa stamp at the US consulate overseas. The issuance of the visa will depend on the processing time of the particular consulate where the application is being made.