

The ABC's of Immigration: B-1/B-2 Visas
by Greg Siskind

The most common nonimmigrant visa is the B visa. There are two types of B visas: B-1 visas for business visitors, and B-2 visas for visitors for pleasure.

How can I qualify for the B-1 Business Visitor Category?

The B-1 Business Visitor category is available to persons who can demonstrate that they 1) have no intention of abandoning their residence abroad and 2) they are visiting the US temporarily for business. Entry is, theoretically, granted for up to a year, but most B-1 admissions are approved for just the period necessary to conduct business and are normally permitted to stay no longer than 3 months.

What limitations are associated with business visitors?

Business visitors are quite limited in the activities in which they are permitted to engage. B-1 visa holders must not be engaging in productive employment in the US either for a US employer or on an independent basis. Any work done in the US must be performed on behalf of a foreign employer and paid for by the foreign employer. The work should also be related to international commerce or trade. The US consular officer reviewing the case will consider several factors when deciding whether to issue a visa including 1) whether a US worker could be hired to perform the work, 2) whether the work product is predominantly created in the US, and 3) whether the work is controlled mainly by a US company. If the answer to any of these questions is "yes" then the B-1 visa is likely to be denied. An exception may be made in the "B-1 in lieu of H-1B" scenario where a worker would qualify for H-1B status except that the employer is not located in the US. But note that many consulates will not consider B-1 in lieu of H-1B filings.

The following are some activities normally considered appropriate for the B-1 visa:

- o employees of a US company's foreign office coming to the US to consult with the US company
- o an employee of a foreign company coming to the US to handle sales transactions and purchases and to negotiate and service contracts
- o coming to the US to conduct business or market research
- o coming to the US to interview for a professional position in order to gain experience help in finding a position in one's home country
- o attending business conferences, seminars, or conventions
- o an investor coming to set up an investment in the US or to open a US office
- o personal or domestic servants who can show they are not abandoning a residence abroad, have worked for the employer for a year and the employer is not residing in the US permanently
- o airline employees who are paid in the US but an E visa is not available because no treaty exists between the US and the airline's country
- o professional athletes who are not paid a salary in the US and are coming to participate in a tournament

- o a member of a board of a US company coming to a board meeting
- o coming to the US to handle preliminary activities in creating a business (opening bank accounts, leasing space, incorporating, etc.)

How can I qualify for the B-2 Pleasure Visitor Category?

Of the more than 20 million nonimmigrants admitted annually to the US, more than three fourths come as tourists. The appropriate visa category for a tourist is the B-2 visa (a B-2 visa actually covers tourists, visits to relatives or friends, visits for health reasons, participation in conferences, participation in incidental or short courses of study and participation in amateur arts and entertainment events). Prospective students can also obtain a B-2 visa, but they often will be denied the change to student status in the US unless they announced their intention to do so to the INS inspector at the border and/or informed the consular officer at the time of the B-2 application.

The process for obtaining the B-2 visa can be quite simple or very difficult depending on the national origin of the applicant, the age and marital status of the applicant, and the applicant's ties to the US and his/her home country.

What limitations are associated with the B-2 Pleasure Visitor Category?

Tourists are normally given a six-month visa which can be extended in some circumstances for an additional six months. Unlike some other nonimmigrant visas, application is made at a US consulate and no INS approval is necessary. Also, the applicant's spouse and children must independently qualify for the B-2.

In order to qualify for a tourist visa, an individual must meet a few broad requirements necessary to show nonimmigrant intent:

- o The alien is coming to the US for a specific period of time
- o The alien will not be engaging in work and will engage solely in legitimate activities relating to pleasure
- o The alien will maintain a foreign residence that he or she has no intention of abandoning during the period of his or her stay in the US

For a tourist to show nonimmigrant intent and demonstrate compliance with the above tests, the key issues are financial arrangements for the trip, specificity of trip plans, ties to the alien's home country and ties to the US.

More specifically, consular officers are instructed to consider the following factors:

- o whether the arrangements for defraying expenses during the visit and return passage are adequate to obviate the need for obtaining employment in order to provide the funds to return home;
- o if relatives or friends are sponsoring, whether the ties between the alien and the supporter are compelling enough to make the offer credible;
- o whether the alien has specific and realistic plans for the visit (not just vague and uncertain intentions) for the entire period of the contemplated visit;

- o the period of time planned for the visit is consistent with the purpose of the trip and the alien has established with reasonable certainty that departure from the US will take place when the visit is over;
- o the applicant's proposed length of stay is consistent with the timeframe limitation offered by the hosting relative or friend (an alien's stated intention to remain in the US for the maximum period allowable by US authorities will be looked upon negatively);
- o whether the applicant can show reasonably good and permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations which indicate a strong inducement to return abroad.

Generally speaking, an applicant's chances for getting a visa will be improved if the planned trip is short, the itinerary is clearly listed, the applicant can easily prove he or she has the money to pay for the trip and the applicant has a job at home and can show that the time away has been approved by the employer. Retirees will have a better chance if they can show strong family and economic ties to the home country and finances to support the trip. Of course, in all cases the home country makes a big difference. The lower the visa overstay rate for nationals of a particular country, the better the chances overall that the application will be approved.

How do I apply for a B-1 or B-2 Visa?

The application for a B-1 or B-2 visa is made at a US consulate. Each consulate has its own procedures for applying for visas and applicants should always closely read the instructions posted at the web site for the consulate. Links to most US consulates abroad can be found at travel.state.gov. An applicant will normally apply at the closest consular post in their home country. Some consular posts in other countries also accept applications from third country nationals. Most of the time, the application must be made in person, though some consulates allow the application to be made by mail, a travel agent, or drop box. Under new State Department guidelines, almost all applicants must now be interviewed in person. This change means that it can sometimes take several weeks to get an appointment at a busy consulate.

An application for a B-1 business visitor visa should normally be accompanied by a detailed letter explaining the reasons for the trip, the itinerary for the trip and, if the trip is on behalf of a foreign firm, the fact that the company is paying all of the expenses to be incurred during the trip. The application should also be accompanied by extensive supporting documentation showing the activities that will take place during the trip, travel documentation and information on the B-1 visitor's employer.

With respect to financial arrangements, the alien should possess the following:

- o a round-trip plane ticket and evidence of sufficient funds to cover the duration and purpose of the trip and
- o if the alien appears only marginally able to pay for the trip, an affidavit of support on INS Form I-134 from the person who the alien is visiting in the US should be provided.

With regard to specificity of the trip arrangements, the alien should show such items as confirmed hotel reservations, car rentals, internal travel arrangements such as domestic flights or tourist packages, and/or a letter of invitation from a US source.

With respect to ties abroad, the alien could demonstrate steady employment, substantial business or property interests abroad and close family ties. A real property lease or ownership is helpful as well. These items are particularly important if the alien has close ties with the US such as close family members here. The scrutiny in this category is particularly tight for persons from "high-risk" countries - aliens from countries with a high rate of visa refusal and a low rate of compliance - who are single, young and well educated.

At the consulate, the applicant should present the visa application paperwork (normally downloadable at the web site of the consulate which should be linked at travel.state.gov, passport, photos, the application fee and supporting documentation. The visa application forms include the DS-156 non-immigrant visa application and male applicants between 16 and 45 years of age from certain Arab and Muslim countries are also expected to submit form DS-157.

What should I know about security measures associated with a B visa?

Shortly after the September 11th attacks, the State Department began requiring that all male nonimmigrant visa applicants between the ages of 16 and 45 from Arab or Muslim countries be subject to increased security checks. They are now subject to an additional 20-day waiting period during which the State Department will check their names against an FBI database. While no official list has been published, it appears that the following countries are subject to this new security procedure: Afghanistan, Algeria, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen.

In most cases, successful applicants for a B-1 or B-2 visa will be given a multiple entry visa stamp that is valid for ten years. The stamp will often say "B-1/B-2," indicating the person can use the visa to enter to conduct activities falling under either classification. Note that a multiple entry, multiyear visa DOES NOT mean that a person can stay in the US for as long as the visa is valid. Rather, the US has a "two ticket" system to entering. The visa is your first ticket and allows you to seek admission at a US point of entry (an airport in the US, a land crossing port, or a US seaport). The INS inspector at the point of entry will issue a second "ticket," the white I-94 card authorizing the visitor to stay in the US for a specified period of time (normally less than six months). Thus, the 10-year visa would allow a person to seek admission multiple times over the 10 years. But an inspector will determine the length of time authorized for each visit.

How do I change my status from a B visa?

It is sometimes possible to change from a B-1 or B-2 visa to another visa once in the US. Readers are cautioned, however, that the INS could deny a change of status request if they believe the person entered with the intention of switching to another visa. This is particularly true for changes to student visas and when someone applies for a change very soon after entering the US. Change requests made within 30 days are particularly suspect unless a good explanation for the change of heart can be provided or the intention to apply for a change was disclosed in advance to a consular officer or INS inspector.

Do I qualify for the Visa Waiver Pilot Program?

Nationals of some countries are allowed to participate in the Visa Waiver Program (VWP)

which allows visits for up to 90 days without having to obtain the B-2 visa. The waiver countries are the following:

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

All Canadian citizens are also exempt from getting a visa under a different law.

While being able to travel without a visa is convenient for many, it is important to be aware of a few key restrictions on people entering under the VWPP. First, unlike a normal B-2 visas under which a visitor will be authorized to stay for six months, VWPP entrants can only stay for 90 days. Second, it is not possible to apply for an extension of stay or a change of status to another non-immigrant or immigrant classification. Finally, a VWPP entrant can normally not apply for a new visa at a US consulate in Mexico or Canada and reenter the US.

Can journalists use the B-1/B-2 visa program?

In most cases, the answer to this question is no and a journalist should plan on getting an I visa to enter the US rather than entering in visitor status. While immigration officers were lax in the past in requiring the I visa for journalists, there have recently been a number of high profile entry denials for journalists seeking to use visitor visas or visa waiver privileges.

The State Department never permits journalists to use the Visa Waiver Program to enter to perform work as a journalist, but a B-1 visa may be obtained in limited circumstances including

- o media representatives who are going to the U.S. to attend conferences or meetings as a participant and will not report about the meeting, either while in the U.S. or upon their return, and
- o employees purchasing U.S. media equipment or broadcast rights or taking orders for foreign media equipment or broadcast rights.

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