

Monitoring International Labor Recruitment: A Cross-Visa Exploration of Regulatory Challenges

A resource created by
Centro de los Derechos del Migrante, Inc.

International Labor Recruitment Working Group Meeting



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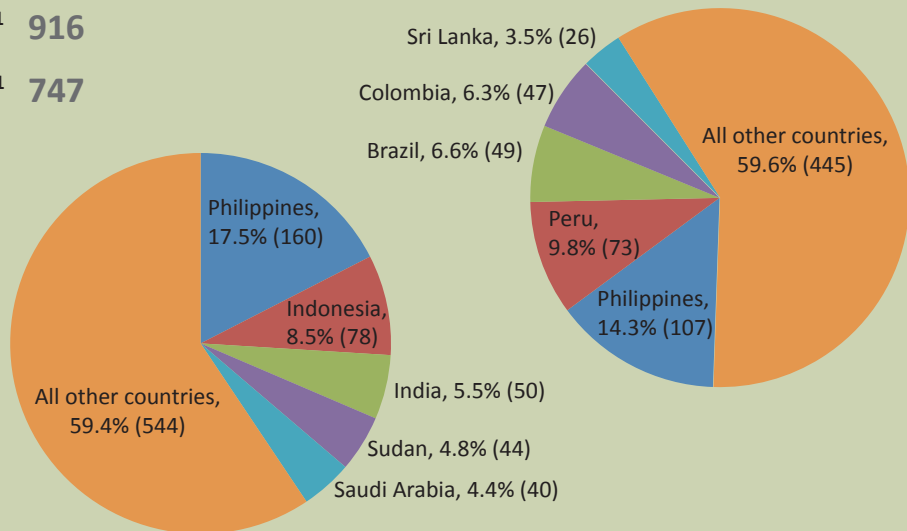
Lastly, we would like to thank all of the organizations that collaborated on this project by sharing data and observations from their research and fieldwork. These organizations include: American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), Alliance for Ethical International Recruitment Practices, American Federation of Teachers (AFT), Economic Policy Institute, Farm Labor Organizing Committee (FLOC), Farmworker Justice, Global Workers Justice Alliance, Migration Policy Institute, New Orleans Workers' Center for Racial Justice, Service Employees International Union (SEIU), Solidarity Center, United Farm Workers, and Verité. Oxfam America, the Public Welfare Foundation, and the New World Foundation also participated in the working group meeting, along with Assistant Professor Jayesh Rathod and Associate Professor Janie Chuang from American University Washington College of Law.

A-3/G-5: Personal employees, attendants and servants of A and G visa holders

Total A-3 visas issued (2010)¹ 916

Total G-5 visas issued (2010)¹ 747

	A-3	G-5
Africa	187	102
Asia	488	247
Europe	61	70
Oceania	4	4
South America	86	254
North & Central America	89	70



Description

The A-3 and G-5 visas allow employees, attendants and servants of A-1 and A-2 visas (diplomats) and G-1, G-2, G-3, and G-4 visas (foreign government representatives or employees of certain international organizations) to enter and work in the United States on a temporary basis.

A-3/G-5 process

The intending employer must notify the Office of the Chief of Protocol (Department of State) of his or her intent to bring a domestic employee on an A-3 or G-5 visa. The A-3 or G-5 visa applicant must demonstrate their entitlement to the visa by submitting a letter of reference from a former employer or other evidence that they are qualified for the position. Before a visa is granted, the consular officer must verify the intending employer's official status in the TOMIS database and confirm that the intending employer notified the Office of the Chief of Protocol of his or her intention to hire a worker on an A-3 or G-5 visa.³

Issues

Employment contracts are routinely violated. Employers sometimes tell employees that the contract was only created to satisfy the visa application requirements, and that the employer never intended to respect it.

The A-3 or G-5 visa holder's legal status in the U.S. is tied to his or her employment with the designated employer. This unequal power relationship can force domestic workers to remain in dangerous situations to avoid deportation. Since many employers of A-3 or G-5 visa holders benefit from diplomatic immunity to local laws, even egregious abuses

Distribution among the top five countries of origin (2010)²

Max initial visa authorization period	2 years (but must not exceed the amount of time allotted to the employee's employer). ⁷
Renewals/Extensions	Yes, in some limited circumstances. May apply to renew the visas, but only at a U.S. embassy or consulate abroad. ⁸
Annual cap	No.
Industries	Domestic work.
Minimum required compensation	Domestic workers are covered under FLSA, meaning that they have the right to prevailing or minimum wage and overtime compensation. Live-in domestic workers are exempt from overtime compensation. ⁹
Right to change employers?	No.
Recruitment fees	Recruitment or placement fees are not explicitly prohibited, but the employer is prohibited from charging the employee for travel expenses or making any deduction from the employee's pay other than a maximum of 20% pay per day for meals. ¹⁰
Complaint process	Employees who feel that their rights have been violated are directed to contact the National Trafficking Resource Center hot line. ¹¹
Public access to information	No public database exists with data about employers or any other actor involved with the A-3 or G-5 visa. However, requests for A-3 and G-5 domestic workers are noted in the employers' files in the TOMIS database. ¹²

can go unpunished.⁴ Wages far below federal minimum wage, movement restriction, and document confiscation are all common abuses.⁵

A-3 and G-5 visas may be given to individuals under the age of 18.⁶

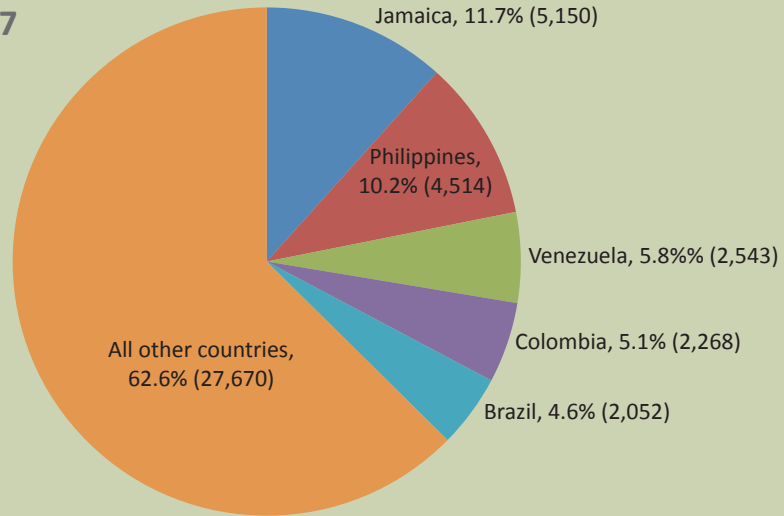
Regulatory framework: A-3/G-5

Regulation	Description	Oversight Agency	Comments
Contract signed by employer and employee ¹³	The contract must be in English and employee's native language. The contract must include the items listed below:	DOS > Consular office	Some employers knowingly break the contract, explaining to the employee that the contract presented during the visa application process was a formality and non-binding. Other employers prevent employees from reading the contract.
Description of duties and hours	A description of work duties and the number of hours per week that the employee will work, including paid holidays, sick days, and vacation.	DOS > Consular office	Employers routinely disregard the description of work duties and hours presented in the contract.
Wage determination	The employee must be paid the greater of either the prevailing wage rate or the state or federal minimum wage.	DOS (based on data from DOL > ETA > OFLC > National Prevailing Wage Center)	Employers regularly pay workers below the designated wage, often telling workers that they stated a higher wage in the contract so that the visa application would be approved.
Employer may not confiscate passport	The employer may not keep the employee's passport.	DOS > Consular office	Document confiscation occurs frequently.
No employment with any other employer	The employee may not accept any other employment while working for the designated employer.	DOS > Consular office	Domestic employees are sometimes illegally "loaned" to non-authorized employers.
No mandatory unpaid overtime	Employer may not require the employee to remain on premises after working hours without compensation.	DOS > Consular office	A-3 and G-5 employees have been forced against their will to work as many as 90 hours per week and are sometimes physically prevented from leaving the work premises.
Employer must demonstrate ability to pay employee	The employer must demonstrate the ability to pay their employee the wage determined in the employment contract.	DOS > Consular office	
Reimbursement of travel expenses	Employer must reimburse travel costs to and from the U.S.	DOS > Consular office	
Overtime pay	Non-live-in employees have the right to overtime compensation.	DOL > WHD	Non-compliance with overtime payment or requirements is rampant.
Free room and board	Under prevailing practice, domestic employees are provided with free room and board.		As written, it is unclear if free room and board is required or simply recommended.
No pay deductions other than meals	A maximum of 20% of pay per day may be deducted for meals.	DOS > Consular office	Employers are not permitted to make deductions for housing or medical expenses but often do.
Medical care ¹⁴	Medical insurance is not required but employer must pay for medical expenses if the employee requires treatment.	DOS > Consular office	Cases have been documented in which employers have refused to pay for medical treatment for their employees.
Payment to employee's bank account	The employer must deposit payment via electronic transfer or check to the employee's bank account.	DOS > Consular office	Employers have thwarted this system by forcing employees to return a portion of their payment in cash.
Suspension of diplomatic missions	The Secretary of State may suspend the issuance of A-3 or G-5 visas to applicants if the Secretary determines that there is credible evidence that the potential employers have abused or exploited nonimmigrants holding an A-3 or G-5 visa.	DOS > Secretary of State	

B-1: Personal or domestic employees

Total visas issued (2010)¹ 44,197

Africa	4,163
Asia	12,159
Europe	7,133
Oceania	310
South America	10,271
North & Central America	10,148



Description

The B-1 visa has two sub-categories: Business Visitor or Personal/Domestic Employee. In the case of this report, we are primarily interested in the B-1 visa when used to support the employment of a Personal or Domestic Employee.¹⁵ Personal or domestic employees qualify for the B-1 visa when they are accompanying either 1) a U.S. citizen employer who resides in a foreign country, 2) a U.S. citizen on temporary assignment in the U.S., or 3) a foreign national employer on select visas.¹⁶ The statistics shown above, however, show information for both sub-categories of the B-1 visa.

B-1 process

The B-1 visa applicant must either prove that they were employed by the employer for at least 6 months prior to the visa petition or show that they have experience as a domestic worker and that the employer normally employs a domestic worker.¹⁷

The employee must present a contract signed by the employee and employer at the time of the interview and present the contract at the port of entry in the U.S.¹⁸

Issues

Like workers with the A-3 and G-5 visas, B-1 visa workers' legal status in the U.S. is tied to their employer; they often continue working in abusive conditions in order to avoid deportation. For live-in domestic workers, this dangerous situation is compounded by the increased control that the employer has over the employee's life and the employee's increased social isolation.¹⁹

Terms of employment indicated in contracts are often not respected, and many domestic workers never receive a copy of their contract

Max initial visa authorization period	6 months (but must not exceed the amount of time allotted to the B-1 visa holder's employer). ²⁰
Renewals/Extensions	No.
Annual cap	No.
Industries	Domestic work.
Minimum required compensation	Domestic workers are covered under FLSA, meaning that they have the right to prevailing or minimum wage and overtime compensation. Live-in domestic workers are exempt from overtime compensation. ²¹
Right to change employers?	No.
Recruitment fees	There are specific prohibitions of recruitment fees, however in most cases the employer is required to pay for round trip airfare to and from the U.S.
Complaint process	Employees who feel that their rights have been violated are directed to contact the National Trafficking Resource Center hot line. ²²
Public access to information	No public database exists with data about employers or any other actor involved in the B-1 visa.

at all. Document confiscation is common.

Furthermore, the requirements for a valid employment contract are not clear and may vary depending on the type of employer, making the process confusing and prone to oversight errors.

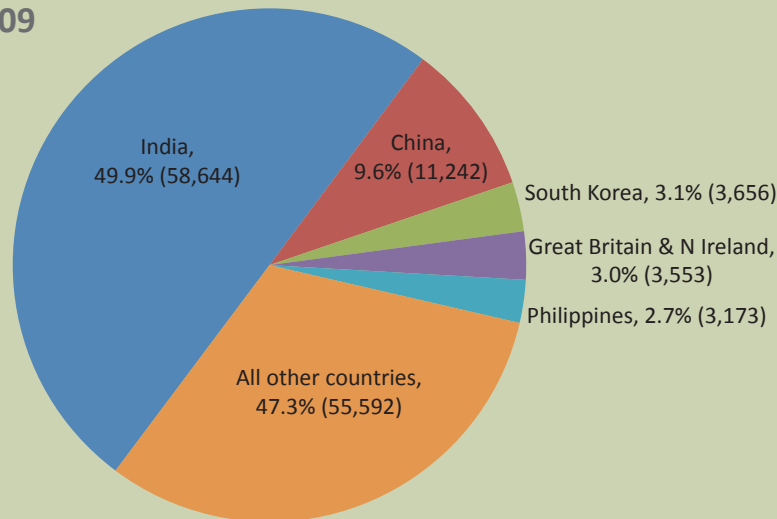
Regulatory framework: B-1

Regulation	Description	Oversight Agency	Comments
Contract signed by employer and employee ²³	The employer must provide the employee with a contract that complies with U.S. law and includes the items listed below:	DOS > Consular office and DHS > Port of entry	Contract specifications are vague and vary depending on the classification of the employer. The contract should be provided at the time of the interview and at the port of entry.
<i>Requirements for the employment contract as specified by the Foreign Affairs Manual (FAM) ²⁴</i>			
Wage determination	Employers must indicate that the employee will be compensated at either the prevailing wage rate or the state or federal minimum wage, whichever is greater.	DOS (based on data from DOL > ETA > OFLC > National Prevailing Wage Center)	Employers regularly pay workers below the designated wage, often telling workers that they stated a higher wage in the contract so that the visa application would be approved even when the employer knew he or she would be paying a lower wage.
Benefits normally required for U.S. domestic workers	The employment contract must reflect any other benefits normally required for U.S. domestic workers.	DOS > Consular office	Required for employees of U.S. citizens only.
Free room and board	Employer must provide employee with free room and board.	DOS > Consular office	Required for employees of U.S. citizens on temporary assignment in the U.S. and employees of foreign nationals only.
Two weeks notice	Employer and employee must provide two weeks notice if they intend to terminate employment.	DOS > Consular office	Required for employees of U.S. citizens only.
No employment with any other employer	Contract must specify that the employee will not work for any employer other than the one listed in the visa petition.	DOS > Consular office	Required for employees of U.S. citizens on temporary assignment in the U.S. and employees of foreign nationals only.
Round trip transportation	Employer must provide round trip transportation free of charge.	DOS > Consular office	Required for employees of U.S. citizens on temporary assignment in the U.S. and employees of foreign nationals only.
<i>Requirements for the employment contract as specified in the pamphlet that must be provided to domestic worker visa applicants (Trafficking Victims Protection Act).²⁵ The FAM makes no reference to the inclusion of these clauses in the employment contract. The informational pamphlet distributed visa applications under the TVPA specifies these clauses as obligatory components of the employment contract for domestic employees generally. However, since consular offices are not directed to require them by the FAM, it is unclear if their inclusion is enforced.</i>			
Employer may not confiscate passport, contract or property	A statement by the employer that they will not hold the employee's passport, contract or property.	Unclear	
Description of duties and hours	A description of the employee's duties, weekly work hours, paid holiday, sick days, and vacation time.	Unclear	
Employer will abide by U.S. law	An agreement by the employer to comply with all laws in the United States.	Unclear	
Pay schedule	In addition to the wage determination, the contract must state the frequency with which the employee will be paid.	Unclear	

H-1B: Speciality occupations

Total visas issued (2010)¹ 117,409

Africa	2,381
Asia	87,435
Europe	16,941
Oceania	756
South America	5,645
North & Central America	4,231



Description

The H-1B visa allows individuals with advanced training in specialized occupations to work temporarily in the U.S.

H-1B process

The application process consists of three steps: (1) the employer submits a Labor Condition Application to the U.S. Department of Labor for certification; (2) the employer submits a completed I-129 form (petition for a nonimmigrant worker) to USCIS; (3) the prospective workers apply for an H-1B visa with the Department of State at an embassy or consulate. Once DHS has approved an I-129 form submitted by a petitioning employer, the consular offices are normally directed to approve the employee visa.²⁶ Unlike most nonimmigrant visas, the H-1B visa allows applicants to apply with the intent of obtaining permanent residency status in the U.S.²⁷

These occupations generally require the completion of a bachelor's degree or its equivalent in education, training, or experience. Applicants are sometimes required to have been previously licensed in their intended area of work before being issued an H-1B visa.²⁸

Employers who are considered dependent on H-1B employees (employers for whom at least 15% of their workforce are H-1B workers) must document additional efforts to recruit U.S. workers.

Issues

Worker applicants for the H-1B visa program usually incur a number of fees to obtain the visa. When these are taken into account, wages often fall under the legally required amount.²⁹ There are currently no regulations to protect workers from paying fees, and the fees required of employers for visa application are

Max initial visa authorization period	3 or 5 years but must not exceed the validity period of the labor certification. ³¹
Renewals/Extensions	Yes, up to 6 or 10 years. Certain visa holders may be eligible for unlimited extension. ³²
Annual cap	Yes, the annual cap on H-1B visas is 65,000 (though some workers are exempt). ³³
Industries	Architecture, engineering, mathematics, physical sciences, social sciences, biotechnology, medicine and health, education, law, accounting, business specialties, theology, and the arts.
Minimum required compensation	Employees must be paid the greater of (1) the wage paid to similarly qualified workers or (2) the prevailing wage for the position in the geographic area. ³⁴
Right to change employers?	Yes.
Recruitment fees	There is no prohibition on recruitment fees.
Complaint process	H-1B visa holders are advised to report non-compliance with H-1B labor standards to the local Wage and Hour Division office. ³⁵
Public access to information	Data on foreign labor certification is available publicly for past fiscal years. This includes information about employers, their visa petitions, and their agents or attorneys. ³⁶ The Wage and Hour Division also publishes a list of willful violators and debarred employers. ³⁷

commonly passed along to employees.³⁰

Although there are protections for workers who act as whistleblowers, in practice workers often face great risks to expose illegal or unethical practices.

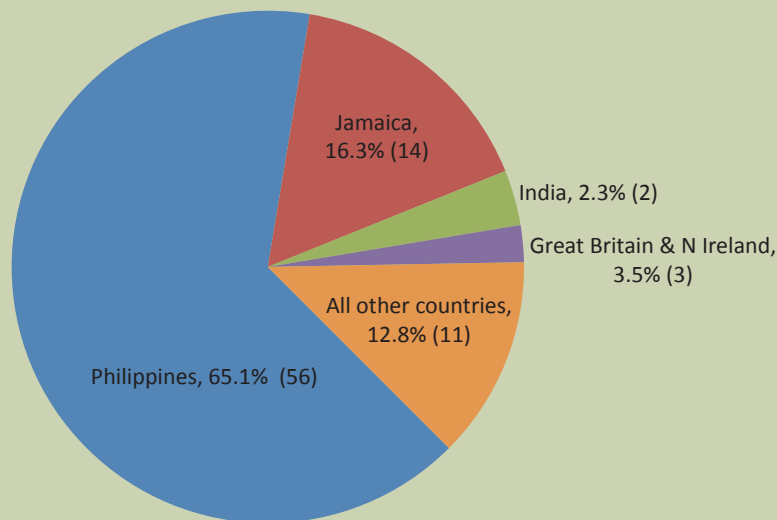
Regulatory framework: H-1B

Regulation	Description	Oversight Agency	Comments
Labor Condition Application (LCA) ³⁸	The employer must apply for and receive DOL certification of an Labor Condition Application (LCA). The LCA must include the following attestations:	DOL > ETA > OFLC	
Wage guarantee	The employer must pay the H-1B worker the greater of (1) the wage paid to similarly qualified workers or (2) the prevailing wage for the position in the geographic area.	DOL > ETA > OFLC / DOL > WHD	Employers force workers to pay fees that are the responsibility of the employer.
No adverse affect on wages or working conditions	The employer will provide working conditions that will not adversely affect other similarly employed workers.	DOL > ETA > OFLC	
No strike/lockout	At the time of the labor condition application there is no strike or lockout at the employer's place of business.	DOL > ETA > OFLC	
Public notification ³⁹	The employer must notify the union that it has filed an LCA and must post the LCA for public inspection.	DOL > ETA > OFLC	
Petition for Nonimmigrant worker (I-129 Form)	Once the LCA has been approved, the petitioning employer must submit the I-129 Form to USCIS.	DHS > USCIS	
Job is a "Specialty Occupation" ⁴⁰	Generally, the job must normally require a bachelor's degree or higher, or its equivalent.	DHS > USCIS	
Worker is qualified for the job ⁴¹	The worker must have earned the relevant bachelor's degree or higher, or have equivalent experience.	DHS > USCIS	
Employer pays all application fees ⁴²	The employer may not deduct or charge employees for fees associated with the visa application process.	DOS > Consular office / DOL > WHD	
Employer pays worker's return travel if terminated prematurely ⁴³	If the employer terminates the H-1B worker during her authorized stay, the employer must pay for the reasonable costs of the worker's return travel.	DHS > USCIS	
Ability to change employers ⁴⁴	The new employer must file a new form I-129 with DHS and get a new Labor Condition Application approved by DOL.	DHS > USCIS / DOL > ETA > OFLC	Workers must have H-1B status at they time they change employers; if they are terminated for whistleblower activity, they risk being out of status while trying to change to a new employer.
Whistleblower protections for H-1B and U.S. workers ⁴⁵	If the employer retaliates against a complaining worker, the employer may be fined up to \$5,000 and disqualified from filing H-1B petitions for two years.	DOL > WHD	Workers are threatened with deportation if they complain about working conditions.
Debarment of non-compliant employers ⁴⁶	USCIS may bar employers who violate the attestations from sponsoring future visa petitions. Duration of debarment is recommended by the DOL.	USCIS / DOL	

H-1C: Registered nurses in shortage areas

Total visas issued (2010)¹ 86

Africa	2
Asia	60
Europe	4
Oceania	-
South America	1
North & Central America	18



Distribution among the top four countries of origin (2010)²

Description

The H-1C visa expired in December of 2009, so the numbers above reflect nurses who still had valid visas from previous years. The House of Representatives passed bill H.R. 1933 on August 1, 2011, which would reauthorize the H-1C visa program.⁴⁷ It is probable that the Senate will also pass the bill in the near future.

The H-1C visa allows registered nurses to work in shortage areas in the United States for three years, with a possible extension for one additional three year period.⁴⁸

The information presented in this section reflects the visa program as proposed in bill H.R. 1933.

H-1C process

Under the H-1C visa program only hospitals that can demonstrate nursing shortages may apply to sponsor foreign nurses.⁴⁹ Eligible hospitals file attestations with the Department of Labor’s Office of Foreign Labor Certification.⁵⁰ Once approved, the hospital can then support nonimmigrant worker petitions filed with the Department of Homeland Security’s U.S. Citizenship and Immigration Services.

Hospitals that do not qualify for the H-1C visa program can use the H-1B program to recruit foreign nurses. Unlike the H-1B visa program, the H-1C visa program does not require that worker applicants have bachelor’s degrees nor that they work in a position that requires a bachelor’s degree.⁵¹

Issues

Hospitals are required to pay application fees, but there is no regulation that prohibits employers from passing those costs on to the employee. There is no regulation of recruit-

Max initial visa authorization period	3 years. ⁵²
Renewals/Extensions	Possible extension for one additional 3 year period. ⁵³
Annual cap	Yes, the proposed annual cap on H-1C visas is 300. ⁵⁴
Industries	Nursing.
Minimum required compensation	The employer must guarantee the employee a wage rate and work schedule commensurate with that received by similarly employed nurses in the facility.
Right to change employers?	No.
Recruitment fees	The current proposals for the reauthorization of the H-1C visa program do not include language prohibiting recruitment or placement fees, nor do they prohibit employers from passing on filing fees to their employees. ⁵⁵
Complaint process	Employees may file complaints with their local Wage and Hour Division office. ⁵⁶
Public access to information	Bill H.R. 1933 proposes a publicly available database similar to those currently available for H-2A, H-2B, and H-1B visas. ⁵⁷

ment fees charged to prospective workers.

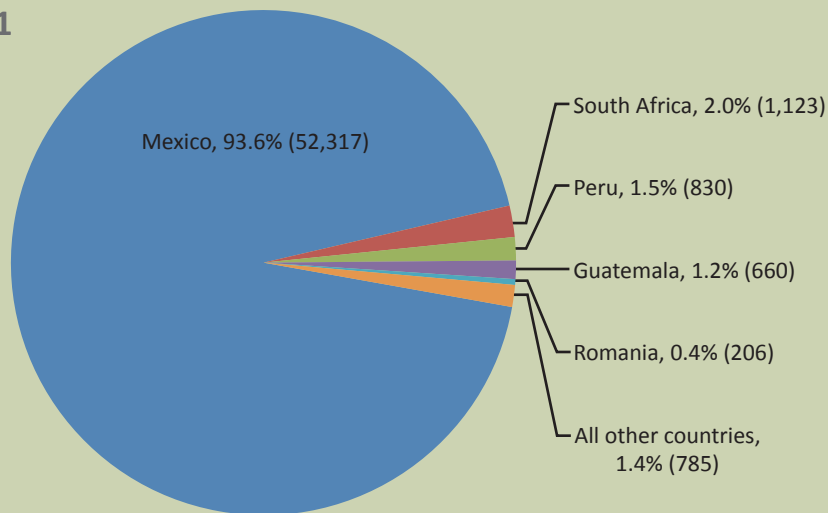
Regulatory framework: H-1C

Regulation	Description	Oversight Agency	Comments
Employer must be qualifying hospital ⁵⁸	The employing hospital must be located in a “Health Care Shortage Area” and meet quotas for Medicaid and Medicare patients, among other requirements.	The ETA has the power to designate hospitals as eligible, and the OFLC certifies that hospital applicants are so designated.	
Public notification ⁵⁹	The employer must notify the union that it has filed an LCA and must post the LCA for public inspection.	DOL > ETA > OFLC	
Worker applicant must be qualified ⁶⁰	The applicant must have obtained a full and unrestricted license to practice in the country where the nursing education was obtained or have been educated in the U.S.	DHS > USCIS	
Worker applicant must have legal authorization to work ⁶¹	Applicant must have either passed the Commission on Graduates for Foreign Nursing Schools exam or have prior authorization to legally practice in the place of proposed employment.	DHS > USCIS	
Recruitment of U.S. nurses ⁶²	Must show that the hospital has taken timely and significant steps to retain sufficient registered nurses who are U.S. citizens or immigrants who are authorized to perform nursing services.	DOL > ETA > OFLC	
No adverse affect on wages or working conditions ⁶³	The employment of the H-1C worker will not adversely affect the wages and working conditions of registered nurses similarly employed.	DOL > ETA > OFLC	
Wage and hour guarantee ⁶⁴	H-1C workers will be paid the same wage rate for registered nurses similarly employed by the facility. Hours shall be commensurate with those of workers similarly employed in the facility.	DOL > ETA > OFLC	
Sole authorized work site ⁶⁵	The employer is prohibited from transferring the worker to a work site other than the work site approved in the visa petition.	DOL	
Penalties or debarment of non-compliant hospitals ⁶⁶	If a hospital is found non-compliant with the requirements of the H-1C visa program, the hospital may be fined or barred from using the program in the future.	DOL > Secretary of Labor	
Freedom of association ⁶⁷	Employer shall not interfere with the H-1C worker’s right to join or organize a union.	DOL	
No labor dispute ⁶⁸	Applicant hospitals may not be involved in an active strike, lockout or labor dispute and may not fire nursing staff for a specified period.	DOL > ETA > OFLC	

H-2A: Seasonal agricultural workers

Total visas issued (2010)¹ 55,921

Africa	1,134
Asia	42
Europe	325
Oceania	166
South America	931
North & Central America	53,323



Distribution among the top five countries of origin (2010)²

Description

The H-2A visa program allows U.S. employers to bring workers to the United States to fill temporary or seasonal agricultural jobs for which U.S. workers are unavailable.

H-2A process

The U.S. employer must submit an agricultural job order with the State Workforce Agency to recruit U.S. workers. The employer then submits a temporary labor certification application to the Office of Foreign Labor Certification within the ETA in the DOL. Finally, the employer must fulfill other requirements for recruiting U.S. workers, including contacting certain former employees from the last work season and advertising the job in the newspaper.

After the employer receives the temporary labor certification, the employer must file that certification and the I-129 Petition for Nonimmigrant Worker requesting H-2A workers with USCIS.

Employers usually use a foreign labor recruiter to identify and recruit workers for H-2A jobs. After the USCIS approves the labor petition, foreign workers can apply for an H-2A visa with a US Consulate or Embassy.

Issues

Workers with H-2A visas often begin their employment in debt from loans they took out to pay for passport fees, visa fees, travel fees, and unlawful recruitment fees. Once in debt, workers are heavily reliant on the wages promised to them in their home countries and are therefore reluctant to report contract violations or abuses.

Many of the protections in place to protect workers on the H-2A visa are under-enforced. It is very common for workers never to receive

Max initial visa authorization period	1 year.
Renewals/Extensions	May be renewed in increments of up to 12 months, but total time in the U.S. may not exceed 3 years. ⁶⁹
Annual cap	No.
Industries	Agriculture and livestock.
Minimum required compensation	The wage determination in the H-2A program is based on the highest of either the prevailing wage, the Adverse Effect Wage Rate, and the state and Federal minimum wage rates. ⁷⁰
Right to change employers?	No.
Recruitment fees	Employers, foreign labor contractors and recruiters (and their agents) are prohibited from charging workers any fees.
Complaint process	Workers are directed to contact local WHD offices with complaints. ⁷¹
Public access to information	Data on Foreign Labor Certification is publicly available for past fiscal years and for petitions considered in the past 30 days. This includes information about employers, their visa petitions, and their agents or attorneys.

the reimbursements for visa and travel expenses owed to them by their employer, and actual wages often fall far below the wage designated in the work order.

Although H-2A visa holders must be seasonal workers by definition, they are excluded from the Migrant and Seasonal Agricultural Workers Protection Act. They are also generally ineligible for overtime compensation.

Other abuses, such as discrimination, document confiscation, restriction of movement, verbal abuse, threats, and blacklisting, are also common.

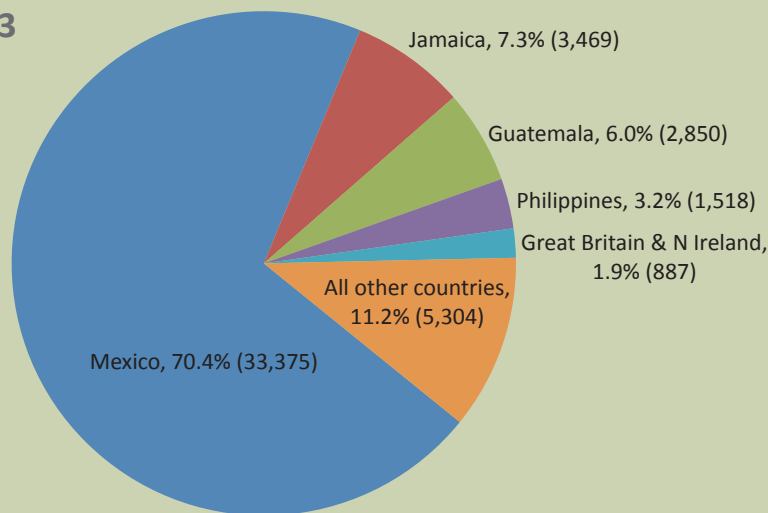
Regulatory framework: H-2A

Regulation	Description	Oversight Agency	Comments
Worker's home country is approved to participate ⁷²	The worker's home country must appear on the list of approved countries.	Secretary of Homeland Security & Secretary of State	
Labor certification	The employer receives certification by submitting ETA Form 9142 and the following materials.	DOL > ETA > OFLC	
Report on recruitment of U.S. workers ⁷³	Employers must show that they have actively recruited U.S. workers.	DOL > ETA > OFLC	Employers often engage in deceitful activities to make the job offer unappealing or untenable to U.S. workers.
No adverse affects on U.S. wages or working conditions ⁷⁴	Employers must demonstrate that the employment of foreign workers on H-2A visas will not adversely affect the wages or working condition for U.S. workers.	DOL > ETA > OFLC	
No labor dispute ⁷⁵	No strike, lock-out or labor dispute at the worksite for which the employer is requesting H-2A workers.	DOL > ETA > OFLC	
Wage determination ⁷⁶	The highest of the AEWR, the prevailing, or the Federal or State minimum wage.	DOL > ETA > OFLC > National Prevailing Wage Center; USDA	The Adverse Effect Wage Rate (AEWR) is the annual weighted average hourly wage rate for agricultural workers, by region, as published by the USDA.
Workers may not be charged recruitment fees ⁷⁸	Workers cannot be forced to pay recruitment fees by their employer or by recruiters.	DOL > ETA > OFLC	Three separate agencies can receive complaints from workers about recruitment fees: Job Services Complaint Service, the ETA, and the WHD.
Fifty percent rule ⁷⁹	Employers must offer employment to qualified U.S. workers who solicit employment during the first half of the contract period.	DOL > ETA	
Worker must receive copy of employment contract ⁸⁰	The worker must receive a copy of the work contract by the time of the consulate appointment.	DOS > consular office	
3/4 guarantee ⁸¹	The employee must receive or be paid for at least 3/4 of the hours offered in the work order.	DOL > WHD	
Free housing and meals (or access to cooking facilities) ⁸²	Employers must provide free housing and either provide meals or access to cooking facilities.	DOL > WHD	In many cases housing units are over-crowded, unclean, and under-serviced. Some do not contain equipped kitchens and units often lack any privacy.
Workers' compensation insurance ⁸³	The employer must provide workers' compensation insurance coverage in compliance with State law.	DOL > WHD	
Employer must reimburse travel costs to U.S. ⁸⁴	The employer must reimburse the employee for all travel costs to the U.S.	DOL > WHD	Travel costs must be reimbursed in the first work-week they lower pay below the minimum wage. All costs must be reimbursed when the If the employee completes 50% of the contract.
Employer pays return travel ⁸⁵	Employer must pay for return travel if worker completes contract or is dismissed by the employer.	DOL > WHD	
Employer reports absent and/or missing employees ⁸⁶	Report workers who fail to show for work, are prematurely terminated, or complete work early.	DHS > USCIS	
Protections against retaliation ⁸⁷	Employer may not retaliate against workers who take action to protect their legal rights.	DOL > WHD	
Public disclosure of Labor Certification ⁸⁸	Certification data is publicly available for past fiscal years and for petitions considered in the past 30 days	DOL > ETA	
Sanctions for non-compliant H-2A employers ⁸⁹	Supervision, sanctions, or debarment of H-2A employers with a history of non-compliance.	DOL > WHD and DOL > ETA	WHD investigates and enforces terms and conditions of employment. ETA enforces other aspects of the laws and regulations.

H-2B: Seasonal non-agricultural workers

Total visas issued (2010)¹ 47,403

Africa	1,154
Asia	2,546
Europe	1,830
Oceania	303
South America	412
North & Central America	41,158



Distribution among the top five countries of origin (2010)²

Description

The H-2B visa program allows U.S. employers to bring workers to the United States to fill temporary or seasonal non-agricultural jobs for which U.S. workers are unavailable.

On February 21, 2012, a new rule on the H-2B program was published in the Public Register with an effective date of April 23, 2012. The content of this section reflects this new rule.

H-2B process

The U.S. employer must submit a job order with the State Workforce Agency to recruit U.S. workers. The employer then submits a temporary labor certification application to the Office of Foreign Labor Certification within the ETA in the DOL. Finally, the employer must fulfill other requirements for recruiting U.S. workers, including contacting former employees and advertising the job in the newspaper.

After the employer receives the temporary labor certification, the employer must file the certification and an I-129 Petition for Nonimmigrant Worker requesting H-2B workers with USCIS. After the USCIS approves the labor petition, foreign workers are recruited and apply for a H-2B visa with the U.S. Consulate or Embassy, where they receive individual interviews before the visa is issued.

Issues

Workers with H-2B visas suffer many of the same abuses documented under the H-2A program. Recruitment, passport, and visa fees combined with travel costs paid by the worker in her or his home country often means that she or he arrives in the U.S. with considerable debt. Workers, fearing deportation, often do not speak out about abuses.

Other abuses, such as discrimination, docu-

Max initial visa authorization period	1 year. ⁹⁰
Renewals/Extensions	May be renewed in increments of up to 12 months, but total time in the U.S. may not exceed 3 years. ⁹¹
Annual cap	Yes. The annual cap is 66,000 visas issued per year, excluding certain exempted workers. ⁹²
Industries	Landscaping, forestry, seafood, meat/poultry packing, carnivals, construction, carpentry, housekeeping, restaurant work, and more.
Minimum required compensation	The employer must pay both H-2B workers and similarly employed U.S. workers the prevailing wage determined by the ETA. This wage will change depending on industry and location. ⁹³
Right to change employers?	No.
Recruitment fees	<i>Under the new rule published on February 21, 2012, which has an effective date of April 23, 2012:</i> No other fees for recruitment may be passed onto the worker. ⁹⁴ Worker may have to pay for passport fees. ⁹⁵
Complaint process	Workers may file complaints under general worker protection laws with a local WHD office. ⁹⁶
Public access to information	Data on Foreign Labor Certification certification is available publicly for past fiscal years. This includes information about employers, their visa petitions, and their agents or attorneys. ⁹⁷ The new rule proposes additional and more timely data disclosure. ⁹⁸

ment confiscation, restriction of movement, verbal abuse, threats, blacklisting, and wage theft are also not uncommon.

Since the H-2A program has historically held employers to higher standards, employers have been known to reclassify agricultural work to fit the H-2B requirements. The new regulations will give some of the protections currently offered to H-2A workers to H-2B workers as well, such as the ¼ guarantee and required reimbursements for visa and transportation costs.

Regulatory framework: H-2B

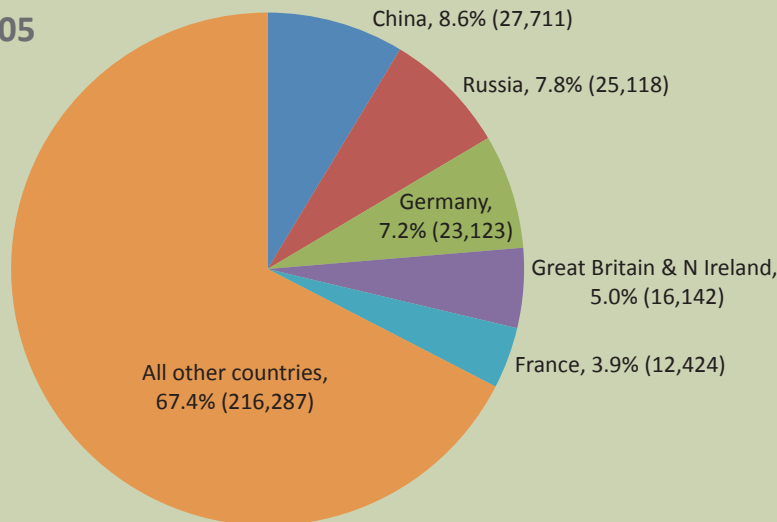
Regulation	Description	Oversight Agency	Comments
Worker's home country is approved to participate ⁹⁹	The worker's home country must appear on the list of approved countries.	Secretary of Homeland Security & Secretary of State	
Labor certification	The employer receives certification by submitting ETA Form 9142 and the following materials.	DOL > ETA > OFLC > Chicago National Processing Center	
Report on recruitment of U.S. workers* ¹⁰⁰	Employers must show that they have actively recruited U.S. workers.	DOL > ETA > OFLC > Chicago National Processing Center	Employers often advertise for the position far in advance of the work and they are only required to post the job for 15 days.
Statement of temporary need ¹⁰¹	The job description must indicate that the work is non-agricultural and temporary or seasonal.	DOL > ETA > OFLC > Chicago National Processing Center	
No adverse effects on U.S. wages or working conditions ¹⁰²	Employers must demonstrate that the employment of foreign workers on H-2B visas will not adversely affect the wages or working condition of U.S. workers.	DOL > ETA > OFLC > Chicago National Processing Center	A federal judge found that the DOL's current wage methodology has had an adverse effect on the wages of US workers. The DOL issued a new rule to calculate prevailing wages but Congress delayed the effective date of this rule until October 1, 2012.
No labor dispute ¹⁰³	No strike or lockout in any of the employer's worksites within the area of intended employment.	DOL > ETA > OFLC > Chicago National Processing Center	
Wage determination ¹⁰⁴	The wage must be the higher of either the prevailing wage rate or the State or Federal minimum wage.	DOL > ETA > OFLC > National Prevailing Wage Center	The Adverse Effect Wage Rate is not taken into account under the H-2B program. Certain industries are exempt from minimum wage laws, resulting in a prevailing wage lower than the Federal minimum.
Worker may not be charged recruitment fees* ¹⁰⁵	Workers cannot be forced to pay recruitment fees by their employer or by recruiters.	DHS > USCIS	Three separate departments can receive complaints from workers about recruitment fees: Job Services Complaint Service, the ETA and the WHD.
Worker must receive copy of employment contract* ¹⁰⁶	The worker must receive a copy of the work contract by the time of the consulate appointment.	DHS > USCIS	
3/4 guarantee* ¹⁰⁷	The employee must receive or be paid for at least 3/4 of the hours offered in the work order.	DOL > WHD	
Employer must reimburse visa and travel costs to U.S.* ¹⁰⁸	The employer must reimburse the worker for all travel costs (to work site) and visa costs.	DOL > WHD	Travel costs must be reimbursed once the worker completes 50% of the work contract and visa costs in the first work week.
Employer pays return travel* ¹⁰⁹	Employer must pay for return travel if employee completes contract period or is dismissed by the employer.	DOL > WHD	
Employer reports absent and/or missing employees ¹¹⁰	Report workers who fail to show for work, are prematurely terminated, or complete work early.	DHS > USCIS	
Protections against retaliation* ¹¹¹	Employer may not retaliate against workers who take action to protect their legal rights.	DOL > WHD	
Sanctions for non-compliant H-2B employers ¹¹²	Supervision, sanctions or debarment of H-2B employers with a history of non-compliance.	DOL > ETA > OFLC	
Legal Aid Restriction ¹¹³	Legal aid programs that receive federal funds cannot represent H-2B workers (except pine workers).	Congress > Legal Services Corporation	In 1996 Congress prohibited certain non-U.S. citizens from receiving LSC-funded assistance. H-2A workers continue to be eligible.

* indicates regulation that was introduced or improved in the new H-2B rule, which has an effective date of April 23, 2012

J-1: Exchange visitor program

Total visas issued (2010)¹ 320,805

Africa	8,692
Asia	84,891
Europe	178,031
Oceania	6,819
South America	29,404
North & Central America	12,908



Distribution among the top five countries of origin (2010)²

Description

The J-1 visa allows foreigners to enter the country on a temporary basis to participate in work- or study-based exchange programs. Programs should encourage cultural exchange and learning. The time limit varies by program type,¹¹⁴ but may vary from several months to multiple years.

J-1 process

The prospective exchange visitor must first be sponsored by a designated sponsoring organization. The prospective exchange visitor then applies, through a U.S. consulate or embassy, for a J-1 visa. The applicant must prove they are not an intending immigrant.

Issues

The J-1 visa has limited oversight, creating opportunities for abuse. The program is administered by the U.S. Department of State but defers most responsibilities to private sponsors.

Sponsors are allowed to charge fees for their services, creating situations in which exchange visitors arrive in the U.S. with debt and are compelled to continue working in abusive situations to pay off their loans. J-1 visa-holders are also responsible for paying their own travel costs and are required to have health care insurance.

The J-1 visa program has been used by employers to hire young foreigners at a very low cost, displacing American workers. A recent scandal over the student workers employed at a Pennsylvania Hershey’s factory made national news.¹¹⁵ Many students claimed they were tricked into the job, being told it was an internship or a cultural experience when it was neither. Hershey made deductions for fees associated with the program and housing. Combined with other out-of-pocket expenses

Max initial visa authorization period	4 months to 7 years, depending on visa program. ¹¹⁷
Renewals/Extensions	Yes, except for exchange visitors on the Summer Work Travel Program. In most cases the extension may not pass the permissible period of participation for the specified program category but some exceptions can be made.
Annual cap	No.
Industries	May range from professional industries (higher education, research, medicine, primary/secondary education) to low wage industries such as restaurants, amusement parks and dairy farms. ¹¹⁹
Minimum required compensation	Workers on J-1 visas are protected by the Fair Labor Standards Act (FLSA). Some J-1 visa holders may be protected by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), such as interns or trainees working in agriculture.
Right to change employers?	The J-1 visa holder’s ability to change employers depends on the program in which they are participating--some allow a change of employer and others do not.
Recruitment fees	Designated sponsors may be for-profit organizations and charge fees for their services.
Complaint process	Workers may file complaints under general worker protection laws with a local WHD office.
Public access to information	Sponsors must keep up-to-date information about all of their program participants in SEVIS, but only authorized individuals may log-in to the database. ¹²⁰

paid by the students, the students say the experience was a definite net loss.¹¹⁶

Regulatory framework: J-1

Regulation	Description	Oversight Agency	Comments
Visa applicant must be supported by a designated sponsor ¹²¹	These may be government agencies or U.S.-based non government organizations. They may be for-profit organizations.	DOS	
Exchange program must be authorized ¹²²	The DOS has the sole discretion to authorize a proposed exchange program, as it complies with the approved list of exchange program categories.	DOS	
Sponsors must be publicly listed ¹²³			
Opportunities for cultural exchange and learning ¹²⁴	Sponsors must provide opportunities for cultural exchange and learning.	DOS	
Pre-arrival information ¹²⁵	Sponsors must provide visa recipients with pre-arrival information.	DOS	
Orientation ¹²⁶	Sponsors shall offer appropriate orientation for all exchange visitors.	DOS	
Program monitoring ¹²⁷	Sponsors shall monitor the exchange visitors participating in their programs.	DOS	
Notification of early completion or termination ¹²⁸	Sponsor is responsible for notifying DOS if an exchange visitor completes the program early or is terminated.	DOS	
Health care insurance ¹²⁹	Sponsor must require all exchange visitors to have health insurance during their stay, though the sponsor is not required to pay for this service.	DOS	
Compensation for work ¹³⁰	Employment with compensation is only allowed for exchange visitors who are participating in a program in which the sponsor has designated an employer.	DOS	
Annual report ¹³¹	Sponsors must submit an annual report to the Department of State that evaluates their J-1 visa exchange program, and provides detailed information about participants.	DOS	
Termination of designation ¹³²	The sponsor's designation may be terminated if the sponsor fails in its reporting responsibilities, changes ownership, or for several other reasons.	DOS	
Participation in SEVIS ¹³³	Sponsors are responsible for keeping up to date information about all of their program participants in SEVIS. A sponsor may be sanctioned or terminated if it fails to meet reporting duties.	DOS	
<i>Intern/Trainee</i>			
<i>Bona fide</i> skill training program ¹³⁴	The program must offer real skill training and not merely be an unskilled or casual work program.	DOS	

Regulatory framework: J-1

Regulation	Description	Oversight Agency	Comments
Full-time employment ¹³⁵	The sponsor must ensure that the exchange visitor receive full-time work of at least 32 hours/week.	DOS	
No displacement of U.S. workers ¹³⁶	The presence of exchange visitors may not result in the displacement of American workers.	DOS	
Labor protections for agricultural work ¹³⁷	When the work is agricultural, the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act apply.	DOS	
Informed third-party actors ¹³⁸	The sponsor must ensure that any third-party actors involved in the J-1 process are sufficiently educated about the goals and regulations of the J-1 visa program.	DOS	
<i>Teachers</i>			
Written offer ¹³⁹	Prior to receiving the visa, the participant must receive a written offer for a teaching position and return a written acceptance.	DOS	There is no prevailing wage guarantee. Teachers on the J-1 visa may be hired by staffing agencies instead of directly employed by a school.
Program disclosure ¹⁴⁰	In addition to general information requirements, the sponsor is responsible for providing specific information about the teaching program.	DOS	
Position must comply with collective bargaining agreement ¹⁴¹	Such position shall be in compliance with any applicable collective bargaining agreement, where one exists.	DOS	
<i>Specialist</i>			
Program disclosure ¹⁴²	The sponsor is responsible for providing the exchange visitor with information about the length and location of the program, components of the program, and stipend.	DOS	
<i>Physician</i>			
Change of program ¹⁴³	The physician may change her program once within the first two years of her stay in the U.S. Must be approved by the Secretary of State.	DOS > Secretary of State	
<i>Camp counselor</i>			
Intent is cultural, not a work program ¹⁴⁴	The program must promote cultural exchange and the participants' main tasks may not be unskilled or casual labor.	DOS	
Compensation ¹⁴⁵	Participants must receive pay and benefits commensurate with those offered to their American counterparts.	DOS	
Participant orientation ¹⁴⁶	Sponsors are responsible for providing the exchange visitor with additional information about their program. This information must be provided before the exchange visitor departs their country.	DOS	

Regulatory framework: J-1

Regulation	Description	Oversight Agency	Comments
Approval of host organization ¹⁴⁷	The sponsor is responsible for ensuring that the camping host organization is an accredited, non-profit organization in good standing. The sponsor must inspect and evaluate the host organization.	DOS	
<i>Au pairs</i>			
Written agreement ¹⁴⁸	Prior to the participant's departure from his or her home country, the sponsor must provide the participant with a signed agreement with the host family that details the terms of the program.	DOS	
Pre-departure orientation ¹⁴⁹	Sponsors must provide au pairs with additional pre-departure information about their program.	DOS	
Pre-placement training ¹⁵⁰	The sponsor is responsible for providing at least 8 hours of training prior to the au pair's placement with a host family.	DOS	
Host family selection ¹⁵¹	Sponsors must screen and approve host families.	DOS	
Hours and wages ¹⁵²	Au pairs must be compensated for 45 hours of work per week and be paid in accordance with the Fair Labor Standards Act. Au pairs may only provide 10 hours of child care per day and a total of 45 per week.	DOS/DOL > WHD	
Vacation ¹⁵³	Au pairs must be allowed a minimum of one-and-one-half days off per week in addition to one complete weekend off each month. They also must be given 2 weeks of paid vacation.	DOS	
Monitoring ¹⁵⁴	Sponsors must require monthly contact with the local program counselor and report any serious problems to the Department of State.	DOS	
Additional sanctions ¹⁵⁵	The Department of State may immediately revoke a sponsor's designation if the sponsor fails to comply with placement and selection requirements or to monitor and enforce the wage and hours agreement between the participant and the host family.	DOS	
<i>For Au pairs participating in the EduCare program: Tuition for academic coursework</i> ¹⁵⁶	Host families are responsible for facilitating the participant's enrollment in an academic institution and for paying the tuition.	DOS	
<i>Summer Work Travel</i>			
Exchange visitors must be students ¹⁵⁷	Exchange visitors must be full-time students in their home country and have successfully completed at least one semester, or equivalent, of post-secondary academic study.	DOS	

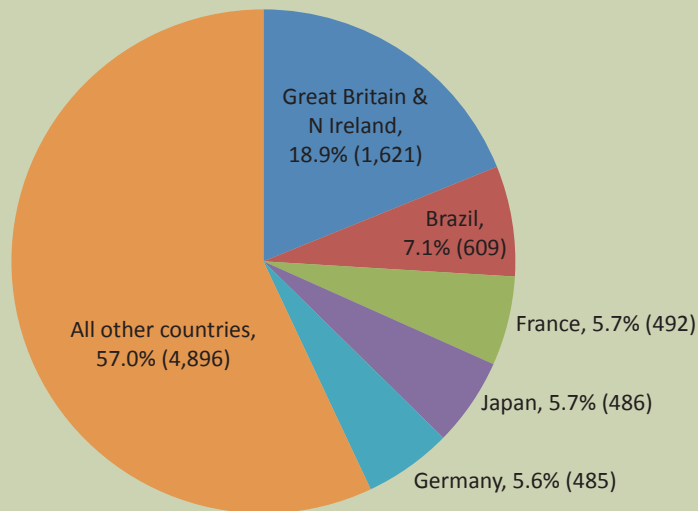
Regulatory framework: J-1

Regulation	Description	Oversight Agency	Comments
Pre-departure orientation ¹⁵⁸	The sponsor must provide additional pre-departure information to program participants.	DOS	
Wage determination ¹⁵⁹	Sponsors must ensure that program participants are paid the greater of either the state or the federal minimum wage.	DOS	
Overtime ¹⁶⁰	Overtime must be compensated in accordance with state-specific employment laws.	DOS/DOL > WHD	
Monitoring ¹⁶¹	Sponsors must maintain a minimum of monthly contact with program participants, ensuring that any concerns about the participant’s health, safety, or welfare are addressed.	DOS	
Screening and vetting of host employers ¹⁶²	Sponsors must adequately vet all potential host employers of Summer Work Travel program participants to confirm that the job offers are viable.	DOS	
Participants receive job advertised ¹⁶³	The sponsor must ensure that the host employer provides participants the number of hours of paid employment per week as identified on the job offer and pay those participants eligible for overtime in accordance with applicable law.	DOS	
Program exclusions ¹⁶⁴	Sponsors may not place exchange visitors in certain positions or industries.	DOS	
<i>For interns, trainees and the Summer Work Travel program</i>			
Written agreements with foreign third-party entities ¹⁶⁵	Sponsors are permitted to contract foreign entities to assist in their overseas duties (screening, selection, orientation). A written agreement must be provided that outlines the foreign entity’s responsibilities.	DOS	
Screening and vetting of foreign third-party entities ¹⁶⁶	The sponsor is responsible for screening and vetting foreign third party entities who assist the sponsor. The sponsor must review the foreign entity’s financial history, legal history, criminal history, business licensing, previous experience with the J-1 visa program, and advertising materials.	DOS	

O-1: Individuals of extraordinary ability or achievement

Total visas issued (2010)¹ 8,589

Africa	142
Asia	1,455
Europe	4,866
Oceania	550
South America	1,072
North & Central America	503



Distribution among the top five countries of origin (2010)²

Description

The O-1 visa holder must possess extraordinary ability in the sciences, arts, education, business, or athletics (O-1A), or extraordinary achievement in the motion picture or television industry (O-1B).

O-1 process

The O-1 visa recipient must be able to demonstrate “extraordinary ability” in their area of work and must be coming to the United States to continue work in that area. An employer or agent must submit a Form I-129 Petition for Nonimmigrant Worker to USCIS on behalf of the O-1 visa applicant.¹⁶⁷

The petitioner must submit additional materials to USCIS in order to receive approval: a written advisory opinion from a peer group or labor organization attesting to the validity of the applicant’s ability (with some exceptions);¹⁶⁸ either a written contract or evidence of an oral contract that include a description of the position offered by the employer and the terms accepted by the employee;¹⁶⁹ an itinerary of the applicant’s planned activities;¹⁷⁰ and evidence of the applicant’s extraordinary ability.¹⁷¹

Once approved by USCIS, consular offices are directed to approve O-1 visas in all cases except where there is sufficient evidence for the consular officer to question the intent of the applicant.¹⁷²

Issues

The contractual requirements for this visa are weak. No formal, written contract is required and if the employer submits evidence of an oral agreement to satisfy this requirement, no signature is necessary. This is a gap in the protections for O-1 visa applicants, as employers wield disproportionate control over the

Max initial visa authorization period	3 years. ¹⁷⁴
Renewals/Extensions	Visa holders may solicit extensions by submitting a new Form I-129 Petition for Nonimmigrant Worker to USCIS. USCIS will determine whether an extension is necessary for the participant to finish the event or project. Extensions are granted in increments of 1 year. ¹⁷⁵
Annual cap	No.
Industries	Sciences, arts, education, business, athletics, television, and cinema.
Minimum required compensation	O-1 visa holders are protected by the Fair Labor Standards Act (FLSA), but no other wage determination is required.
Right to change employers?	Yes. The new employer must file a Form I-129 which must be approved by USCIS. If the petitioner is an agent, an amended petition must be filed with evidence relating to the new employer along with a request for extension of stay. ¹⁷⁶
Recruitment fees	There is no mention of recruitment fees.
Complaint process	Contract violations may be investigated by the WHD.
Public access to information	No public database exists with data about employers or any other actor involved with the O-1 visa.

terms of work and prospective workers may not have a clear understanding of the position for which they are applying or the terms of their employment. Furthermore, regulations of the O-1 visa do not contain a prevailing wage requirement, describe how the wage should be structured, or require that a wage by specified in the petition.

The petitioner may add additional events during the validity period of the visa without filing an amended petition. Preliminary research suggests that O-1 visas have been used to bring foreigners to work in low-wage jobs in the traveling carnival industry.¹⁷³

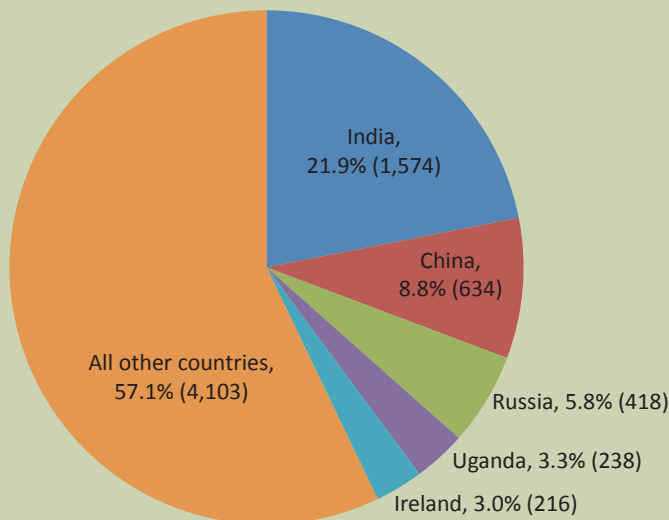
Regulatory framework: O-1

Regulation	Description	Oversight Agency	Comments
Authorized petitioner ¹⁷⁷	O-1 petitions may only be filed by a U.S. employer, a U.S. sponsoring organization, a U.S. agent, or a foreign employer through a U.S. agent. Self-petitioning by the O-1 worker is not allowed.	DHS > USCIS	
Petition	The petitioner must submit a Form I-129 Petition for Nonimmigrant Worker with the following documents:		
Evidentiary requirements ¹⁷⁸	The petitioner must submit certain documentation that demonstrates the applicant's "extraordinary ability."	DHS > USCIS	
Written advisory opinion ¹⁷⁹	A written advisory opinion from a peer group (including labor organizations) or a person designated by the group with expertise in the beneficiary's area of ability.	DHS > USCIS	
Contract between worker and employer ¹⁸⁰	The petitioner must submit a copy of any written contract, or a written summary of the terms of the oral agreement that will govern the O-1 worker's employment. It must document the terms of the employment offered and that the worker has agreed to the offer.	DHS > USCIS	This regulation offers very little protection to the worker since no contract must be submitted and even the summary of an oral agreement is not required to be signed. Situations could arise in which the employer was not fully informed of the terms of contract under which she or he would be employed.
Itinerary ¹⁸¹	The petitioner must explain the nature of activities, the beginning and ending dates, and a copy of any itinerary for the events or activities, if applicable.	DHS > USCIS	In the case of a petition filed for an artist or entertainer, the petitioner may add additional performances during the validity period of the petition without filing an amended petition. ¹⁸²
Right to change employers ¹⁸³	The new employer must file a Form I-129 with USCIS.	DHS > USCIS	
Employer pays return transportation when employment is involuntarily terminated ¹⁸⁴	If the worker's employment ends for reasons other than voluntary resignation, the employer must pay the reasonable costs of the worker's transportation to her last place of residence outside the U.S.	DHS > USCIS	
Material change in terms and conditions of employment ¹⁸⁵	The employer must file an amended petition if there are any material changes in the terms and conditions of the worker's employment.	DHS > USCIS	This, however, does not cover changes in the itinerary (see above).
No labor dispute ¹⁸⁶	The petition will be denied if a strike or labor dispute is in progress in the occupation at the place the applicant will be employed, and the applicant's employment would adversely affect the wages and working conditions of U.S. workers.	DHS > USCIS	

P-3: Artists or entertainers coming to be part of a culturally unique program

Total visas issued (2010)¹ 7,183

Africa	684
Asia	3,239
Europe	1,995
Oceania	38
South America	396
North & Central America	789



Description

The P-3 visa allows artists or entertainers to enter the country for the purpose of performing, teaching or coaching in a culturally unique program of a commercial or noncommercial nature.

P-3 process

The performer or group must be coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation. In addition, the worker(s) must be coming to the United States to participate in a cultural event or events which will further the understanding or development of the art form.

The program may be of a commercial or non-commercial nature. The group is not required to have existed before their trip to the United States.

The application must be supported by testimonials from recognized experts or by published reviews attesting to the culturally unique nature of the program.

Issues

The employer must submit either a written contract or written evidence of an oral “agreement” with a worker. If the employer submits written evidence of an oral agreement for this requirement, that written document does not need to be signed by the employee or employer. This is a gap in the protections for P-3 visa applicants, as employers wield disproportionate control over the terms of work and prospective workers may not have a clear understanding of the position for which they are applying or the terms of their employment.

Max initial visa authorization period	1 year. ¹⁸⁹
Renewals/Extensions	Visa holders may apply for a one-time extension for an additional year. ¹⁹⁰
Annual cap	No.
Industries	Entertainment and arts.
Minimum required compensation	P-3 visa holders are protected by the Fair Labor Standards Act (FLSA), but no other wage determination is required.
Right to change employers?	Yes.
Recruitment fees	There is no mention of recruitment fees.
Complaint process	Contract violations may be investigated by the WHD.
Public access to information	No public database exists with data about employers or any other actor involved with the P-3 visa.

In a cable leaked by Wikileaks, the U.S. consulate in Mumbai reports that in January of 2009, Georgia police arrested four members of an Indian entertainment group on a P-3 visa to the United States on charges of human trafficking. The group brought women dancers to the U.S. to perform at a local bar. The women were forced to work 14-hour days, held against their will in a locked house, and had their passports and plane tickets confiscated.¹⁸⁷

Preliminary research suggests that P-3 visas have been used to bring foreigners to work in low-wage jobs in the amusement and itinerant fair industry.¹⁸⁸

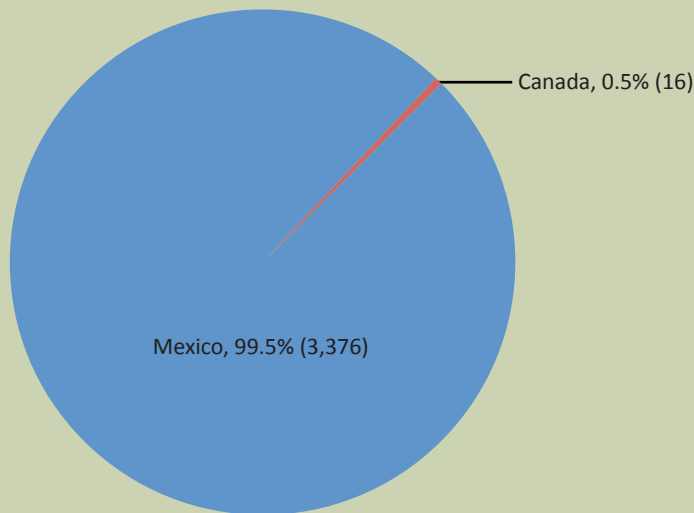
Regulatory framework: P-3

Regulation	Description	Oversight Agency	Comments
Authorized petitioner ¹⁹¹	P-3 petitions may only be filed by a U.S. employer, a U.S. sponsoring organization, a U.S. agent, or a foreign employer through a U.S. agent. Self-petitioning by the P-3 worker is not allowed.	DHS > USCIS	
Petition	The petitioner must submit a Form I-129 Petition for Nonimmigrant Worker with the following documents:	DHS > USCIS	
Evidentiary requirements ¹⁹²	The employer must provide evidence from experts testifying to the worker’s skills, or publications proving that the performance is culturally unique. The employer must also submit a written consultation from an appropriate organization attesting to the culturally unique nature of the activity.	DHS > USCIS	
Written advisory opinion ¹⁹³	A written advisory opinion from a peer group (including labor organizations) or a person designated by the group with expertise in the beneficiary’s area of ability.	DHS > USCIS	
Contract between worker and employer ¹⁹⁴	The petitioner must submit a copy of any written contract, or a written summary of the terms of the oral agreement that will govern the P-3 worker’s employment. It must document the terms of the employment offered and that the worker has agreed to the offer.	DHS > USCIS	This regulation offers very little protection to the worker since no contract must be submitted and even the summary of an oral agreement is not required to be signed. Situations could arise in which the employee was not fully informed of the terms of contract under which she or he would be employed.
Explanation of event and itinerary ¹⁹⁵	The employer must submit an explanation of the event and itinerary in which the P-3 worker will participate.	DHS > USCIS	
Right to change employers ¹⁹⁶	The P-3 worker may change employers, but only after the new employer has filed a new Form I-129 with USCIS requesting permission to employ the worker and extend her or his stay.	DHS > USCIS	
Employer pays return transportation when employment is involuntarily terminated ¹⁹⁷	If the worker’s employment ends for reasons other than voluntary resignation, the employer must pay the reasonable costs of the worker’s transportation to her last place of residence outside the U.S.		
No labor dispute ¹⁹⁸	The petition will be denied if a strike or labor dispute is in progress in the occupation at the place the applicant will be employed, and the applicant’s employment would adversely affect the wages and working conditions of U.S. workers.	DHS > USCIS	

TN: NAFTA Professionals

Total visas issued (2010)¹ 3,392

Mexico	3,376
Canada	16



Distribution between Mexico and Canada (2010)²

Description

The nonimmigrant NAFTA Professional (TN) visa allows citizens of Canada and Mexico, as NAFTA professionals, to work in the U.S. in a prearranged business activity for a U.S. or foreign employer on a full-time or part-time basis. The applicant’s proposed activity must be included in the list of approved TN visa professions.¹⁹⁹

Because Canadians are not required to obtain a nonimmigrant visa to enter the U.S. Canadian citizens usually do not need a TN visa as a NAFTA Professional. A TN visa can be issued to qualified TN visa applicants upon request.²⁰⁰

TN process

The TN visa is a component of the North American Free Trade Agreement between the United States, Canada and Mexico, and therefore only citizens of Mexico and Canada are permitted entry into the U.S. under the TN visa program.

Applicants must prove citizenship of either Mexico or Canada, present an employment letter or contract that describes in detail the duties they will perform (to verify that the profession is included in the approved list), and evidence that the applicant meets the minimum educational requirements. Most professions require a bachelor’s degree in the relevant field although some require advanced degrees or professional licenses, and some require professional experience in addition to education.²⁰¹

Dependents (spouses and children under 21) may receive TD visas and do not have to be citizens of Mexico or Canada. Spouses and children cannot work while in the U.S., but they are permitted to study.

Issues

Although the TN visa was derived from the H-1B visa,²⁰² several important worker protections included in the original H-1B visa framework were stripped from the new TN visa.

Max initial visa authorization period	3 years. ²⁰³
Renewals/Extensions	Yes, by filing Form I-129 Petition for a Nonimmigrant Worker with USCIS. ²⁰⁴
Annual cap	No.
Industries	The profession must appear on the list of approved NAFTA professions, which are divided into the following four categories: General, Medical/Allied Professional, Scientist, and Teacher.
Minimum required compensation	Not specified.
Right to change employers?	Yes, a TN visa holder may apply to add or change employers by submitting Form I-129 Petition for a Nonimmigrant Worker with USCIS. ²⁰⁵
Recruitment fees	There is no mention of recruitment fees.
Complaint process	Not specified.
Public access to information	No public database exists with data about employers or any other actor involved with the TN visa.

Regulatory framework: TN

Regulation	Description	Oversight Agency	Comments
Applicant is Mexican or Canadian ²⁰⁶	The applicant must be a Mexican or Canadian citizen.	DOS > Consular office	
Profession is on NAFTA list ²⁰⁷	See “NAFTA Professions List” below.	DOS	
Applicant qualified for job	Applicant’s employer must submit proof in the form of degrees/diplomas/licenses; letters from former employers; or records of self-employment.	DOS	
Pre-arranged employment with employment letter or contract ²⁰⁸	Part-time work is permitted, but self-employment is not allowed. The letter or contract must include:	DOS	
Arrangements for paying the worker		DOS	
Description of duties	Activity in which the applicant shall be engaged; purpose of entry; and duration of stay.	DOS	
Legal compliance	Evidence of compliance with applicable DHS regulations and/or state laws.	DOS	
No labor dispute ²⁰⁹	A TN visa may be denied if a labor dispute exists involving workers of the same labor classification in the same place of work.	DOS	

NAFTA Professions List²¹⁰

General: Accountant, Architect, Computer Systems Analyst, Disaster Relief Insurance Claims Adjuster, Economist, Engineer, Forester, Graphic Designer, Hotel Manager, Industrial Designer, Interior Designer, Land Surveyor, Landscape Architect, Lawyer, Librarian, Management Consultant, Mathematician (including Statistician), Range Manager/Range Conservationist, Research Assistant (working in a post-secondary educational institution), Scientific Technician/Technologist, Social Worker, Sylviculturist (including Forestry Specialist), Technical Publications Writer, Urban Planner (including Geographer), Vocational Counselor.

Medical/Allied Professional: Dentist, Dietitian, Medical Technologist, Nutritionist, Occupational Therapist, Pharmacist, Physician (teaching or research only), Physiotherapist/Physical Therapist, Psychologist, Recreational Therapist, Registered Nurse, Veterinarian.

Scientist: Agriculturist (including Agronomist), Animal Breeder, Animal Scientist, Apiculturist, Astronomer, Biochemist, Biologist, Chemist, Dairy Scientist, Entomologist, Epidemiologist, Geneticist, Geologist, Geochemist, Geophysicist (including Oceanographer), Horticulturist, Meteorologist, Pharmacologist, Physicist, Plant Breeder, Poultry Scientist, Soil Scientist, Zoologist.

Teacher: College, Seminary, University

Notes

- 1 U.S. Department of State, "FY2010 NIV Detail Table," <http://www.travel.state.gov/pdf/FY10NIVDetailTable.pdf>.
- 2 U.S. Department of State, "FY2010 NIV Detail Table."
- 3 U.S. Department of State, "N4 Aliens Entitled to A-3 or G-5 Classification" (July 15, 2011), *9 FAM 41.22 Officials of Foreign Governments-Notes*, <http://www.state.gov/documents/organization/87177.pdf>. The Office of Foreign Mission's (OFM) Management Information System (TOMIS). Employers must be entered in the database in order to confirm their official status as A-1, A-2, G-1, G-2, G-3 or G-4 visa holders. There must also be a record in the database that they pre-notified the Office of the Chief of Protocol of their intention to hire a domestic employee on an A-3 or G-5 visa
- 4 Domestic Workers United and Datacenter, *Home is Where the Work Is: Inside New York's Domestic Work Industry* (July 14, 2006), 29 <http://www.datacenter.org/wp-content/uploads/homeiswheretheworkis.pdf>.
- 5 American Civil Liberties Union, Women's Rights Project, *Table of Publicly Reported Cases of Abuse and Exploitation of Migrant Domestic Workers Employed by Diplomats* (2007), http://www.aclu.org/files/pdfs/womensrights/diplomatcasedatabase_20071109.xls.
- 6 U.S. Department of State, "N4.5 A-3 and G-5 Domestic Worker Principal Applicants Under the Age of 18" (February 24, 2010), *9 FAM 41.22 Officials of Foreign Governments-Notes*.
- 7 U.S. Department of State, "N2.6 Validity of A-3 and G-5 Visa" (January 6, 2009), *9 FAM 41.112 Validity of Visas-Notes*, <http://www.state.gov/documents/organization/87498.pdf>.
- 8 U.S. Department of State, Bureau of Consular Affairs. "Renewing A, G, and NATO Visas in the U.S." http://travel.state.gov/visa/temp/types/types_1280.html#6.
- 9 U.S. Department of State, "N4.4 Salary, Contracts, and Employer Obligation" (July 15, 2011), *9 FAM 41.22 Officials of Foreign Governments-Notes*. A-3 and G-5 visa holders are covered as domestic employees under the Fair Labor Standards Act (FLSA). Under FLSA, domestic workers are entitled to overtime pay rate except if they are live-in employees. For a discussion of protections under FLSA, see: U.S. Department of Labor, "Wages and Hours Worked: Minimum Wage and Overtime Pay," *Employment Law Guide* (May 2011), <http://www.dol.gov/compliance/guide/minwage.htm>.
- 10 U.S. Department of State, "N6.2 Terms and Conditions of Employment; Mandatory Employment Contracts" (July 6, 2010), *9 FAM 41.21 Foreign Officials-Notes*, <http://www.state.gov/documents/organization/87174.pdf>. No reference is made to recruitment or placement fees in any of the literature on A-3/G-5 visas. The employer is prohibited from charging the employee for expenses such as medical insurance, medical treatment, and travel. The only deduction deemed reasonable is a maximum of 20% of the employees daily wages for a minimum of three daily meals.
- 11 U.S. Department of State, Bureau of Consular Affairs, "Visas for Diplomats and Foreign Government Officials," http://travel.state.gov/visa/temp/types/types_2637.html; U.S. Department of State, Bureau of Consular Affairs, "Visas for employees of international organizations and NATO," http://travel.state.gov/visa/temp/types/types_2638.html.
- 12 See note 3.
- 13 U.S. Department of State, "N4.4 Salary, Contracts, and Employer Obligation," *9 FAM 41.22 Officials of Foreign Governments-Notes*. Requirements related to employment contracts for A-3 and G-5 visa applicants.
- 14 U.S. Department of State, "N4.3(4) Key Questions to be Addressed in A-3 Applications," *9 FAM 41.22 Officials of Foreign Governments-Notes*. The employer is responsible for ensuring that the employee does not become a public charge while in his or her employ.
- 15 U.S. Department of State, Bureau of Consular Affairs, "Visitor Visas - Business and Pleasure," http://travel.state.gov/visa/temp/types/types_1262.html.
- 16 U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "B-1 Temporary Business Visitor," <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=cf6d83453d4a3210VgnVCM100000b92c60aRCRD&vgnnextchannel=cf6d83453d4a3210VgnVCM100000b92ca60aRCRD>. Non-U.S. Citizens in the U.S. on a B, E, F, H, I, J, L, or TN non-immigrant visa may apply to employ a domestic worker on a B-1 visa.
- 17 U.S. Department of State, "N9.3-1 Personal/Domestic Employees of U.S. Citizens Residing Abroad" (October 21, 2011), *9 FAM 41.31 Temporary Visitors for Business or Pleasure-Notes*, <http://www.state.gov/documents/organization/87206.pdf>.
- 18 U.S. Department of State, "N9.3-1 Personal/Domestic Employees of U.S. Citizens Residing Abroad," *9 FAM 41.31 Temporary Visitors for Business or Pleasure-Notes*.
- 19 Domestic Workers United and Datacenter, *Home is Where the Work Is: Inside New York's Domestic Work Industry*, 29.
- 20 U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "B-1 Temporary Business Visitor."
- 21 U.S. Department of Labor, "Wages and Hours Worked: Minimum Wage and Overtime Pay," *Employment Law Guide*. B-1 visa holders are covered as domestic employees under the Fair Labor Standards Act (FLSA). Under FLSA, domestic workers are entitled to overtime pay rate except if they are live-in employees.
- 22 U.S. Department of State, *Are you coming temporarily to the United States to work or study?* <http://www.travel.state.gov/pdf/Pamphlet-Order.pdf>.
- 23 U.S. Department of State, "N9.3 Personal/Domestic Employees," *9 FAM 41.31 Temporary Visitors for Business or Pleasure-Notes*. The Foreign Affairs Manual directs consular offices to require and review an employment contract in order to approve the B-1 visa petition. The FAM identifies three categories of possible employers of a B-1 domestic employee: U.S. citizens who reside abroad, U.S. citizens on temporary assignment in the U.S., and foreign nationals with non-immigrant status. For each category, the description of requirements for the employment contract varies. The FAM specifies the fewest requirements for employees of U.S. citizens residing abroad. These contracts must contain the signatures of employee and employer, a minimum or prevailing wage guarantee, two weeks notice for termination of employment by either employee or employer, and "reflect any other benefits normally required for U.S. domestic workers in the area of employment." Intending employees of U.S. citizens on temporary assignment in the U.S. are additionally required to include in the contract: a statement the employee will not seek employment from any other employer, free room and board, and free round-trip airfare. Requirements for intending employees of foreign nationals with non-immigrant status are slightly different as well. Their contracts must include the signatures of the employer and employee, a minimum or prevailing wage guarantee, statement the employee will not seek employment from any other employer, free room and board, and round-trip airfare.

- 24 U.S. Department of State, “N9.3 Personal/Domestic Employees,” 9 FAM 41.31 *Temporary Visitors for Business or Pleasure-Notes*. The section on domestic employees is further divided into three sections: N9.3-1 Personal/Domestic Employees of U.S. Citizens Residing Abroad; N9.3-2 Personal/Domestic Employees of U.S. Citizens on Temporary Assignment in United States; and N9.3-3 Personal Employees of Foreign Nationals in Nonimmigrant Status. Each section describes the required provisions for employment contracts, depending on the employer’s classification.
- 25 U.S. Department of State, “N9.3-6 Consular Officer Responsibilities in Processing Applications Under the William Wilberforce Trafficking Victims Protection Act” (October 21, 2010), 9 FAM 41.31 *Temporary Visitors for Business or Pleasure-Notes*. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires consular officers to ensure that the visa applicant has received, read and understood information presented in the pamphlet “Are you coming temporarily to the United States to work or study?” at the time of the applicant’s interview. The pamphlet is produced by the U.S. Department of State and can be found at <http://www.travel.state.gov/pdf/Pamphlet-Order.pdf>.
- 26 U.S. Department of State, “N2.1 Department of Homeland Security (DHS) Responsible for Adjudicating H Petitions” (September 24, 2010), 9 FAM 41.53 *Temporary Workers and Trainees-Notes*, <http://www.state.gov/documents/organization/87226.pdf>; U.S. Department of State, N8.3 “Approved Petition is Prima Facie Evidence of Entitlement to H Classification” (October 26, 2011), 9 FAM 41.53 *Temporary Workers and Trainees-Notes*.
- 27 U.S. Department of State, “N3.1 H-1B Nonimmigrants Excluded From 214(B) Intending Immigrant Presumption” (October 26, 2011), 9 FAM 41.53 *Temporary Workers and Trainees-Notes*. Applicants are not required to show that they have a residence abroad which they have no intent of abandoning and may be admitted to the U.S. on an H-1B visa with the intention of later obtaining an immigrant visa.
- 28 U.S. Department of State, “N4.1 General Licensure Requirement for H Nonimmigrant” (March 31, 2011), 9 FAM 41.53 *Temporary Workers and Trainees-Notes*. In cases where the state’s laws allow the individual to enter the U.S. as a visitor for the purpose of obtaining a professional license, the applicants may be required to have a professional license prior to being approved for an H-1B visa
- 29 U.S. Department of Labor, Wage and Hour Division, “Prince George’s Country Public Schools charged with violating provisions of H-1B temporary foreign worker program” (April 4, 2011), <http://www.dol.gov/opa/media/press/whd/whd20110357.htm>.
- 30 Southern Poverty Law Center, “Fact Sheet: H-1B Guestworker Program” (August 5, 2010), <http://www.splcenter.org/get-informed/news/splc-fights-for-guestworker-teachers-defrauded-in-international-labor-trafficking-1>.
- 31 U.S. Department of State, “N12.1 H-1B Nonimmigrants” (January 20, 2011), 9 FAM 41.53 *Temporary Workers and Trainees-Notes*. The initial maximum visa validity period for H-1B applicants who will be participating in Department of Defense (DOD) research and development projects is 5 years. For all other H-1B applicants, the maximum visa validity period is 3 years.
- 32 U.S. Department of State, “N12.1 H-1B Nonimmigrants” (January 20, 2011), 9 FAM 41.53 *Temporary Workers and Trainees-Notes*. H-1B workers may apply for extensions by submitting an I-129 Form to USCIS. H-1B workers participating in Department of Defense (DOD) research and development projects may request an extension for up to a total of 10 years. Other H-1B workers may request an extension for up to a total of 6 years. H-1B visa holders who have a pending employment-based immigrant petition or adjustment of status application may receive an unlimited number of 1- or 3- year extensions.
- 33 U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “H-1B Fiscal Year (FY) 2012 Cap Season,” http://www.uscis.gov/h-1b_count.
- 34 U.S. Department of Labor, Office of Foreign Labor Certification, “Prevailing Wages (PERM, H-2B, H-1B, H-1B1 AND E-3,” <http://www.foreignlaborcert.doleta.gov/pwscreens.cfm>. Employers are required to submit a prevailing wage determination with their Labor Condition Application. Employers may either apply to the National Prevailing Wage Center for a wage determination using ETA Form 9141, or make their own determination by assessing legitimate sources of information, such as the Online Wage Library (<http://www.flcdatacenter.com>) which publishes information collected by the Bureau of Labor Statistics (DOL).
- 35 U.S. Department of Labor, “Work Authorization for non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas),” *Employment Law Guide* (March 4, 2010), <http://www.dol.gov/compliance/guide/h1b.htm>.
- 36 U.S. Department of Labor, Office of Foreign Labor Certification, “H-1B Program Data,” <http://www.flcdatacenter.com/CaseH1B.aspx>. This website provides downloadable spreadsheets that contain information about all employer applicants to the H-1B program for fiscal years beginning in 2001.
- 37 U.S. Department of Labor, Wage and Hour Division, “H-1B Willful Violator List of Employers” (September 30, 2011), <http://www.dol.gov/whd/immigration/H1BWillfulViolator.htm>; U.S. Department of Labor, Wage and Hour Division, “H-1B Debarred/Disqualified List of Employers” (September 30, 2011), <http://www.dol.gov/whd/immigration/H1BDebarment.htm>. Employers who have been designated willful violators must meet additional attestations under any Labor Conditions Application for the following 5 years (see: U.S. Department of Labor, Wage and Hour Division, *Fact Sheet #62S: What is a willful violator employer?* (July 2008), <http://www.dol.gov/whd/regs/compliance/FactSheet62/whdfs62S.pdf>.)
- 38 U.S. Department of Labor, “Work Authorization for non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas),” *Employment Law Guide*.
- 39 U.S. Department of Labor, “Work Authorization for non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas),” *Employment Law Guide*. Employers must make the LCA available to the public for inspection no more than one day after submission. The public notice must include the following information: A copy of the certified LCA including cover pages; Documents providing the wage rate paid to the H-1B non-immigrant worker; Method used to establish the “actual wage,” including any periodic increases which the system may provide; Prevailing wage rate and a general description of the methodology of the source; Documents showing satisfaction of the union/employee notification requirements; Summary of benefits offered to U. S. workers and H-1B worker; Where the employer utilizes the definition of “single employer” in the Internal Revenue Code (IRC), a list of any entities included as part of the single employer in making the determination as to its H–1B-dependency status.
- 40 U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models,” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a-3e5b9ac89243c6a7543f6d1a/?vgnnextoid=73566811264a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD>.

Notes

- 41 U.S. Department of State, "N4.6 Evidence Submitted in Support of H Petitions" (September 24, 2010), *9 FAM 41.53 Temporary Workers and Trainees-Notes*.
- 42 U.S. Department of Labor, Wage and Hour Division, *Fact Sheet #62H: What are the rules concerning deductions from an H-1B worker's pay?* (August 2009), <http://www.dol.gov/whd/regs/compliance/FactSheet62/whdfs62H.pdf>. Employers are strictly prohibited from requiring employees to pay the following: penalty (as defined by state law) for the worker's failure to complete the full employment period; Any part of the statutory training and processing fee imposed by USCIS; Any part of the statutory fraud protection and detection fee imposed by USCIS; Any deduction for the employer's business expenses that would reduce an H-1B worker's pay below the required wage rate (such as fees associated with filing the LCA, any expenses related to the filing of the Petition for Nonimmigrant Worker, tools and equipment, travel expenses while on the employer's business). Other deductions are allowed, even when they reduce pay to below required wage rate, when they are required by law, reasonable and customary, or voluntarily authorized by the employee.
- 43 U.S. Department of State, "N16 Return Transportation if H-1B or H-2B Alien's Employment Terminated Involuntarily" (September 26, 2008), *9 FAM 41.53 Temporary Workers and Trainees-Notes*. The worker must notify the same USCIS Service Center that originally processed her H-1B visa if she believes her employer has violated this provision. See U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models."
- 44 U.S. Department of State, "N8.4-1 Validity of H-1B Visas When Change of Employer Pending," (March 11, 2010), *9 FAM 41.53 Temporary Workers and Trainees-Notes*.
- 45 U.S. Department of Labor, "Work Authorization for non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas)," *Employment Law Guide*.
- 46 U.S. Department of Labor, "Work Authorization for non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas)," *Employment Law Guide*.
- 47 U.S. Congress, House, *To amend the Immigration and Nationality Act to modify the requirements for admission of nonimmigrant nurses in health professional shortage areas*, H.R.1933. 112th Cong., 1st sess. (Pending Senate vote. Submitted August 1, 2011), <http://www.govtrack.us/congress/billtext.xpd?bill=h112-1933>. This bill seeks to reauthorize and modify the original Nursing Relief for Disadvantaged Areas Act (U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. November 12, 1999, <http://www.govtrack.us/congress/billtext.xpd?bill=h106-441>).
- 48 U.S. Congress, House, *To amend the Immigration and Nationality Act to modify the requirements for admission of nonimmigrant nurses in health professional shortage areas*, H.R.1933. 112th Cong., 1st sess. Sec. 1(a)(3). The possibility of a one-time three year extension is an addition proposed in the reauthorization bill, H.R. 1933, and was not permitted in the original visa program.
- 49 See note 58.
- 50 U.S. Department of Labor, Office of Foreign Labor Certification, "H-1C Nurses in Disadvantaged Areas," <http://www.foreignlaborcert.doleta.gov/h-1c.cfm>. The Office of Foreign Labor Certification would be responsible for certifying visas for applicant hospitals.
- 51 In general, the education and experience requirements are more strict for employees hired on H-1B visas. In most cases a bachelor's degree or equivalent is required. See note 28.
- 52 *Act to modify the requirements for admission of nonimmigrant nurses in health professional shortage areas*, H.R.1933. 112th Cong., 1st sess.
- 53 *Act to modify the requirements for admission of nonimmigrant nurses in health professional shortage areas*, H.R.1933. 112th Cong., 1st sess.
- 54 U.S. Congress, House, *To amend the Immigration and Nationality Act to modify the requirements for admission of nonimmigrant nurses in health professional shortage areas*, H.R.1933. 112th Cong., 1st sess., Sec. 1(b). The proposed amendments to the Immigration and Nationality Act would reduce the annual cap from 500 to 300.
- 55 The H-1B regulations, on the other hand, include very specific provisions making it illegal for employers to pass any costs or fees associated with the visa application to their employees. See note 42.
- 56 U.S. Department of Labor, "Work Authorization for Non-U.S. Citizens: Registered Nurses (H-1C Visas)," *Employment Law Guide* (May 2011), <http://www.dol.gov/compliance/guide/h1c.htm>.
- 57 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(2)(E)(i).
- 58 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(6)(A). The hospital must be located in a health professional shortage area (as defined in section 332 of the Public Health Service Act). The hospital must meet other requirements with respect to patient volume and percentage of patients eligible to receive Medicare or Medicaid assistance.
- 59 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(2)(A)(vi). More details on public notification requirements can be found at the Department of Labor website (U.S. Department of Labor, "Work Authorization for Non-U.S. Citizens: Registered Nurses (H-1C Visas)," *Employment Law Guide*.)
- 60 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(m)(1)(A). The nurse applicant must be in possession of a full and unrestricted license to practice professional nursing in the country where they obtained nursing education or have received nursing education in the United States.
- 61 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(m)(1)(B).
- 62 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(2)(A)(iv). Hospitals may take several steps to demonstrate their effort in employing U.S. citizen employees: operating or finance a training program for nurses, providing career development programs or other methods for health care workers to become nurses, paying higher wages to nurses than the average wage in the region, or providing nurses with opportunities for salary advancement. See also Sec. 2(b)(2)(B).
- 63 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(2)(A)(ii).
- 64 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(5)(A,B). Employer must provide the H-1C employee a wage rate and hours commensurate with those of similarly employed nurses at the hospital.
- 65 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(2)(A)(viii).

- 66 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(2)(E)(iii-v). The Secretary of Labor will conduct investigations into complaints by aggrieved persons or organizations. If the Secretary of Labor finds that a facility has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General and may, in addition, impose other administrative remedies (including civil monetary penalties). Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least one year for nurses to be employed by the facility
- 67 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(5)(c).
- 68 U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. Sec. 2(b)(2)(A)(v). Applications will be denied if there is an active strike, lockout or labor dispute at the facility. The hospital may not layoff any employees during the period beginning 90 days before and ending 90 days after the date of filing of any visa petition.
- 69 U.S. Department of Labor, Office of Foreign Labor Certification, “H-2A Temporary Agricultural Program,” <http://www.foreignlaborcert.doleta.gov/h-2a.cfm>.
- 70 See note 76.
- 71 U.S. Department of Labor, “Work Authorization for Non-U.S. Citizens: Temporary Agricultural Workers (H-2A Visas),” Employment Law Guide (May 2011) <http://www.dol.gov/compliance/guide/taw.htm>.
- 72 U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “H-2A Temporary Agricultural Program,” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac8-9243c6a7543f6d1a/?vgnnextoid=889f0b89284a3210VgnVCM10000b92ca60aRCRD&vgnnextchannel=889f0b89284a3210VgnVCM10000b92ca60aRCRD>.
- 73 “§655.135(c) Assurances and obligations of H–2A employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B.
- 74 “§655.122(a) Contents of job offers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. Employers are prohibited from giving H-2A workers preferential treatment over U.S. workers and offer U.S. workers the same benefits, wages and working conditions offered to the H-2A workers.
- 75 “§655.135(b) Assurances and obligations of H–2A employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B.
- 76 “§655.120(a) Offered wage rate,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. To be certified for H-2A visas, the employer must offer the highest of the AEWR, the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage.
- 77 U.S. Department of Labor, Office of Foreign Labor Certification, “Adverse Effect Wage Rates - Year 2012,” <http://www.foreignlaborcert.doleta.gov/adverse.cfm>.
- 78 “§655.135(j-k) Assurances and obligations of H–2A employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. The employer and its agents may not charge the worker for any processing costs or other fees related to the worker obtaining the H-2A visa (j). The employer must forbid all of its foreign labor contractors or recruiters, and their agents, from receiving payments or compensation in a written contract with the foreign labor contractor or recruiter (k).
- 79 “§655.135(d) Assurances and obligations of H–2A employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. The employer must hire all qualified U.S. candidates beginning from the time that the foreign workers depart for the employer’s work site until 50% of the contract period (specified in the employer’s application for H-2A certification).
- 80 “§655.122(q) Contents of job offers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. The employer must provide the H-2A worker with a written copy of the employment contract by the time the worker applies for a visa with the U.S. consulate or embassy.
- 81 “§655.122(j)(1) Contents of job offers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. The employer must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total period beginning with the first workday after the arrival of the worker at the place of employment or the advertised contractual first date of need, whichever is later, and ending on the expiration date specified in the work contract or in its extensions, if any.
- 82 “§655.122(d) Contents of job offers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. The employer must provide housing at no cost to the H–2A workers. The employer must also provide housing at no cost to U.S. workers who are not reasonably able to return to their residence within the same day. “§655.122(g) Contents of job offers,” The employer either must provide each worker with three meals a day or must furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals.
- 83 “§655.122(e) Contents of job offers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. The employer must provide workers’ compensation insurance coverage in compliance with State law covering injury and disease arising out of and in the course of the worker’s employment. If the type of employment for which the certification is sought is not covered by or is exempt from the State’s workers’ compensation law, the employer must provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker’s employment that will provide benefits at least equal to those provided under the State workers’ compensation law for other comparable employment.
- 84 “§655.122(h)(1) Contents of job offers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. If the employer did not provide transportation to the worker from his/her home to the work site, the employer must reimburse the worker for those costs when the worker completes 50% of the work contract. If those transportation costs would lower the worker’s pay during the first week below minimum wage, the worker may be able to recuperate those costs during the first workweek.
- 85 “§655.122(h)(2) Contents of job offers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. If the worker completes the work contract period, or if the employee is terminated without cause, the employer must provide or pay for the worker’s transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer.
- 86 “§655.122(n) Contents of job offers,” *Temporary Employment of*

Foreign Workers in the United States, Code of Federal Regulations Title 20 Pt. 655, Subpart B. If a worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the employer must notify the NPC and DHS not later than two working days after such abandonment occurs.

- 87 “§655.135(h) Assurances and obligations of H–2A employers,” The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has filed a complaint; testified or will be testifying; consulted with a workers’ center, community organization, labor union, legal assistance program; or exercised or asserted on behalf of himself/herself or others his or her legal rights.
- 88 “§655.174 Public disclosure,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. The DOL will maintain an electronic file accessible to the public with information on all employers applying for temporary agricultural labor certifications. The database will include such information as the number of workers requested, the date filed, the date decided, and the final disposition. H-2A data is kept on two separate websites: data from past financial years (<http://www.flcdatacenter.com/CaseH2A.aspx>) and certifications from the past 30 days (<http://icert.doleta.gov/index.cfm>).
- 89 “§655.182 Debarment,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart B. See also U.S. Department of Labor, “Work Authorization for Non-U.S. Citizens: Temporary Agricultural Workers (H-2A Visas),” *Employment Law Guide*.
- 90 U.S. Department of Homeland Security, U.S. Citizen and Immigration Services, “H-2B Temporary Non-Agricultural Workers,” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac8-9243c6a7543f6d1a/?vgnnextoid=d1d333e559274210VgnVCM10000082ca60aRCRD&vgnnextchannel=d1d333e559274210VgnVCM10000082ca60aRCRD>.
- 91 “§655.60 Extensions,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A.
- 92 U.S. Department of Homeland Security, U.S. Citizen and Immigration Services, “Cap Count for H-2B Nonimmigrants,” <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=356b6c521eb97210VgnVCM10000082ca60aRCRD&vgnnextchannel=d1d333e559274210VgnVCM10000082ca60aRCRD>. The annual H-2B cap is set by Congress. Several categories of workers are exempt from the cap count: workers applying for an extension of their visa, fish roe workers, and workers serving the Guam or the Commonwealth of Northern Mariana Islands.
- 93 “§655.10 Prevailing Wage,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A.
- 94 “§655.20(o) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. The employer and its attorney, agents, or employees may not receive payment of any kind from the worker for any activity related to obtaining H-2B labor certification or employment, including payment of the employer’s attorney or agent fees, application and H-2B Petition fees, recruitment costs, or any fees attributed to obtaining the approved Application for Temporary Employment Certification. Payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor.
- 95 “§655.20(j)(2) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. Although the employer must reimburse for the visa fee, the passport is considered to be for the benefit of the worker, and thus reimbursement is not required.
- 96 U.S. Department of Labor, “Work Authorization for Non-U.S. Citizens: Temporary Nonagricultural Workers (H-2B Visas),” *Employment Law Guide* (May 2011), <http://www.dol.gov/compliance/guide/tnw.htm>.
- 97 U.S. Department of Labor, Office of Foreign Labor Certification, *Foreign Labor Certification Data Center/Online Wage Library*, <http://www.flcdatacenter.com>. This website contains information about all certifications submitted for approval in past fiscal years. The new H-2B rule includes expanded public reporting requirements.
- 98 “§655.63 Public disclosure,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. The new rule contains identical language to the public disclosure requirements for the H-2A visa: “The Department will maintain an electronic file accessible to the public with information on all employers applying for temporary nonagricultural labor certifications. The database will include such information as the number of workers requested, the date filed, the date decided, and the final disposition.” This new language indicates that the DOL will create a database of H-2B certification data similar to the existing H-2A database.
- 99 U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “H-2B Temporary Non-Agricultural Workers,” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=d1d333e559274210VgnVCM10000082ca60aRCRD&vgnnextchannel=d1d333e559274210VgnVCM10000082ca60aRCRD>.
- 100 “§655.15 Required pre-filing recruitment,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. In addition, employers are required to continue to hire all qualified U.S. workers who apply until 21 days before the date of need (“§655.20(t) Assurances and obligations of H-2B employers”).
- 101 See “§655.6 Temporary need,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A, for a definition of “temporary need.” See “§655.11(d) Registration of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A, for description of the reporting requirements for employers as to demonstrate their temporary need.
- 102 “§655.1(a)(2) Scope and purpose of subpart A,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. The employment of the H-2B worker(s) will not adversely affect the wages and working conditions of U.S. workers similarly employed.
- 103 “§655.20(u) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A.
- 104 “§655.20(a) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A.
- 105 “§655.20(p) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. In addition to the prohibitions on charging recruitment fees described (see note

94), the employer is required to hold written contracts with their agent/recruiter that explicitly prohibits the agent/recruiter and their employees from charging the worker any fee whatsoever.

- 106** “§655.20(l) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. The employer must provide to an H-2B worker, no later than the time at which the worker applies for the visa, a copy of the job order including any subsequent approved modifications.
- 107** “§655.20(f) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. The employer must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays in each 12-week period (each 6-week period if the period).
- 108** “§655.20(j)(1)(i) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. The employer must provide or reimburse the worker for transportation and subsistence from the place from which the worker has come to work for the employer, whether in the U.S. or abroad, to the place of employment if the worker completes 50 percent of the period of employment covered by the job order. “§655.20(j)(2) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. The employer must pay or reimburse the worker in the first workweek for all visa, visa processing, border crossing, and other related fees (including those mandated by the government) incurred by the H-2B worker, but not for passport expenses or other charges primarily for the benefit of the worker.
- 109** “§655.20(j)(1)(ii) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. If the worker completes the period of employment covered by the job order (not counting any extensions), or if the worker is dismissed from employment for any reason by the employer before the end of the period, and the worker has no immediate subsequent H-2B employment, the employer must provide or pay at the time of departure for the worker’s cost of return transportation and daily subsistence from the place of employment to the place from which the worker departed to work for the employer.
- 110** “§655.20(y) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A.
- 111** “§655.20(n) Assurances and obligations of H-2B employers,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A. The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, any person who has filed a complaint; testified or will be testifying; consulted with a workers’ center, community organization, labor union, legal assistance program; or exercised or asserted on behalf of himself/herself or others his or her legal rights.
- 112** “§655.72 Revocation,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A.; “§655.73 Debarment,” *Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655, Subpart A.
- 113** “Statutory Restrictions on LSC-funded Programs,” Legal Services Corporation, <http://www.lsc.gov/media/fact-sheets/statutory-restrictions-lsc-funded-programs>.
- 114** U.S. Department of State, Bureau of Consular Affairs. “Exchange Visitor Visas.” http://travel.state.gov/visa/temp/types/types_1267.html. The following is a full list of J-1 visa categories: Professors and research scholars; short-term scholars; trainees; interns; college and university students; teachers; secondary school students; specialists; physicians; international visitors; government visitors; camp counselors; au pairs; and summer work travel.
- 115** Julia Preston, “Foreign Students in Work Visa Program Stage Walkout at Plant,” *New York Times*, August 17, 2011, <http://www.nytimes.com/2011/08/18/us/18immig.html?pagewanted=all>.
- 116** Colleen Breslin et al, *Human Rights Delegation Report* (August 2011), <http://www.guestworkeralliance.org/wp-content/uploads/2011/09/Human-Rights-Delegation-Report-Hershey-Reissue-September-8.pdf>.
- 117** “§62.20-§62.32 Specific Program Provisions,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62 (2010), <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=22:1.0.1.7.37&idno=22>. Maximum visa authorization periods are as follows. Professors and research scholars: 5 years. Short-term scholars: 6 months. Trainee: 18 months (in some sectors 12 months). Interns: 12 months. Post-Secondary Degree Student: duration of study (no maximum). Post-Secondary Non-Degree Student: 2 years. Post-Secondary Student Intern: 1 year. Teachers: 3 years. Secondary Students: 10 months (academic year). Specialist: 1 year. Alien physician: 7 years. International Visitor: 1 year. Government Visitor: 18 months. Camp Counselor: 4 months. Au-Pair: 12 months (with possible extension for a maximum of an additional 12 months). Summer Work Travel: 4 months.
- 118** “§62.75 Extension of program participation,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. A sponsor may extend the participation period of an exchange visitor up to the limit authorized for the exchange visitor’s specific program category. All changes must be maintained in the SEVIS database. A sponsor must make a written request to the Department of State for an exchange visitor wishing to stay beyond the authorized vis period for their given program category.
- 119** Daniel Costa and Economic Policy Institute, *Guestworker Diplomacy: J Visas Receive Minimal Oversight Despite Significant Implications for the U.S. Labor Market* (July 14, 2011), <http://www.epi.org/files/2011/BriefingPaper317.pdf>.
- 120** “§62.70 SEVIS reporting requirements,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Sponsors are required to maintain up-to-date information about all of their exchange visitors and their dependents.
- 121** “§62.3 Sponsor eligibility,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. To become a designated sponsor with the permissions to sponsor exchange visitors under the J-1 program, entities must apply to the Department of State. Sponsors may be U.S. local, state and federal government agencies; International agencies or organizations of which the United States is a member and which have an office in the United States; or reputable organizations which are “citizens of the United States” (U.S. citizens or lawful permanent residents; a general or limited partnership organized under U.S. laws; a for-profit entity organized under U.S. laws; a non-profit entity organized under U.S. laws; or an accredited post-secondary educational institution). Aspiring sponsors must submit Form DS-3036 “Exchange Visitor Program Application” to the Department of State’s Exchange Visitor Program Services. (“§62.5 Application procedure,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.)
- 122** “§62.6 Designation,” *Exchange Visitor Program*, Code of Federal

Regulations Title 22 Pt. 62. The Department of State has the sole authority to designate sponsors and exchange programs. A designated sponsor is only permitted to engage in activities and exchange visitor programs specifically approved in its application.

- 123** U.S. Department of State, “Find Designated Sponsor Organizations,” *J-1 Visa Exchange Visitor Program*, <http://j1visa.state.gov/participants/how-to-apply/sponsor-search/>.
- 124** “§62.8(d) General program requirements,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 125** “§62.10(b) Program administration,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Information must include: the purpose of the program; the home-country physical presence requirement; travel and entry into the U.S.; housing; fees payable to the sponsor; other costs that the exchange visitor will likely incur (e.g., living expenses); and health care and insurance.
- 126** §62.10(c) Program administration,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. The orientation must include the following information: life and customs in the U.S.; local community resources (e.g., public transportation, medical centers, schools, libraries, recreation centers, and banks); available health care, emergency assistance, and insurance coverage; a description of the program in which the exchange visitor is participating; rules that the exchange visitors are required to follow under the sponsor’s program; address of the sponsor and the name and telephone number of the responsible officer; and an address and telephone number of the Exchange Visitor Program Services of the Department of State and a copy of the Exchange Visitor Program brochure outlining the regulations relevant to the exchange visitors.
- 127** §62.10(e) Program administration,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Employers shall ensure that the activity in which the exchange visitor is engaged is consistent with the category and activity listed on the exchange visitor’s Form DS–2019; monitor the progress and welfare of the exchange visitor to the extent appropriate for the category; and require the exchange visitor to keep the sponsor apprised of his or her address and telephone number, and maintain such information.
- 128** §62.13(c) “Notification requirements,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. The sponsor must notify the Department of State if an exchange visitor has withdrawn from or completed a program thirty or more days prior to the ending date on his or her Form DS–2019 or has been terminated from his or her program.
- 129** §62.14 “Insurance,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 130** §62.16 “Employment,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. An exchange visitor may receive compensation from the sponsor or the sponsor’s appropriate designee for employment when such activities are part of the exchange visitor’s program, but an exchange visitor who engages in unauthorized employment is subject to termination as a program participant.
- 131** §62.15 “Annual reports,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. The annual report must include contain a program report and evaluation, a description of reciprocity, a summary of cross-cultural activities, proof of insurance, Form DS-2019 usage, a summary of program participation, and request for redesignation.
- 132** §62.60 “Termination of designation,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. A sponsor’s designation as such may be terminated for the following reasons: voluntary termination; inactivity; failure to file annual reports; failure to

file an annual management audit; change in ownership or control; non-compliance with other requirements; or failure to apply for redesignation.

- 133** §62.60 “SEVIS reporting requirements,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. All sponsors must be registered with SEVIS and maintain accurate and current information about all of their program participants.
- 134** §62.22(i)(2) “Trainees and interns,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 135** §62.22(f)(1)(iv) “Trainees and interns,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.T
- 136** §62.22(f)(2)(v) “Trainees and interns,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 137** §62.22(f)(2)(vi) “Trainees and interns,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 138** §62.22(f)(2)(v) “Trainees and interns,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. This applied so third party actors involved in recruitment, selection, screening, placement, orientation, evaluation for, or the provision of training and internship programs.
- 139** §62.24(e) “Teachers,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 140** §62.24(f) “Teachers,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. In addition to general information and orientation requirements (§62.10), the sponsor must provide the participant with information about the length and location(s) of the exchange visitor program; a summary of the significant components of the program, including a written statement of the teaching requirements and related professional obligations; and a written statement which clearly states the compensation, if any, to be paid to the teacher and any other financial arrangements in regards to the exchange visitor program.
- 141** §62.24(e) “Teachers,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 142** §62.26(f) “Specialists,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. In addition to general information and orientation requirements (§62.10), the sponsor must provide the participant with information about the length and location(s) of the exchange visitor program; a summary of the significant components of the program; and a written statement which clearly states the stipend, if any, to be paid to the specialist.
- 143** §62.27(f) “Alien physicians,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 144** §62.30(a) “Camp counselors,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. “These programs promote international understanding by improving American knowledge of foreign cultures while enabling foreign participants to increase their knowledge of American culture.[...] While it is recognized that some non-counseling chores are an essential part of camp life for all counselors, this program is not intended to assist American camps in bringing in foreign nationals to serve as administrative personnel, cooks, or menial laborers, such as dishwashers or janitors.”
- 145** §62.30(d) “Camp counselors,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. In addition to general information and orientation requirements (§62.10), the sponsor must provide the participant with information about their duties and responsibilities as a camp counselor; contractual obligations relating to their acceptance of a camp counselor position; and financial compensation for their service as a camp counselor.

- 146** §62.30(f) “Camp counselors,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 147** §62.30(e) “Camp counselors,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Sponsors shall place eligible participants at camping facilities which are accredited, a member in good standing of the American Camping Association; officially affiliated with a nationally recognized non-profit organization; or have been inspected, evaluated, and approved by the sponsor.
- 148** §62.31(e)(5) “Au pairs,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 149** §62.31(f) “Au pairs,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. The sponsor must provide the participant with a copy of all operating procedures, rules, and regulations, including a grievance process, which govern the au pair’s participation in the exchange program prior to departure from their home country. In addition, the sponsor must provide a pre-departure orientation that includes a detailed profile of the family and community in which the au pair will be placed; a detailed profile of the educational institutions in the community where the au pair will be placed, including the financial cost of attendance at these institutions; a detailed summary of travel arrangements; and a copy of the Department of State’s written statement and brochure regarding the au pair program.
- 150** §62.31(g) “Au pairs,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 151** §62.31(h) “Au pairs,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Host families must be screened to ensure that they meet certain minimum standards such as passing an extensive background investigation, among other requirements.
- 152** §62.31(j)(1-2) “Au pairs,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Participants may not work more than 45 hours per week or 10 hours per day, unless they are participating in the Educare program, in which case the weekly maximum is 30 hours. They must be paid in accordance with FLSA standards and Educare participants must be paid at least 75% of what non-Educare participants are paid.
- 153** §62.31(j)(3-4) “Au pairs,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Participants must receive a minimum of one and one half days off per week in addition to one complete weekend off each month and receive two weeks of paid vacation.
- 154** §62.31(l)(1-4) “Au pairs,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Monitoring must include monthly contact with the local counselor and quarterly contact with the regional counselor. Counselors must report unusual or strange situations. The sponsor must report serious incidents to the Department of State.
- 155** §62.31(m) “Au pairs,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.
- 156** §62.31(k) “Au pairs,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Host families must pay for the au pair’s academic coursework. For Educare participants this amount must not exceed \$1,000. For non-Educare participants this amount must not exceed \$500.
- 157** §62.32(d)(3) “Summer Work Travel,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Sponsors must confirm that at the time of application, applicants (including final year students) are enrolled full-time and pursuing studies at accredited post-secondary academic institutions located outside of the United States.
- 158** §62.32(e)(1-6) “Summer Work Travel,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. In addition to the general pre-departure orientation requirements, sponsors of the Summer Work Travel program must present the participants with a copy of the Department of State’s Summer Work Travel Participant Letter, a copy of the Department of State’s Summer Work Travel Program Brochure, the Department of State’s toll-free help line telephone number, the sponsor’s 24/7 immediate contact telephone number; information advising participants of their obligation to notify their sponsors when they arrive in the United States and to provide information, within 10 days, of any change in jobs or residences; and information concerning any contractual obligations related to participants’ acceptance of paid employment in the United States, if employment has been pre-arranged.
- 159** §62.32(g) “Summer Work Travel,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Participants must be compensated at the prevailing local wage, which must meet the higher of either the applicable state or the Federal minimum wage requirement.
- 160** §62.32(g) “Summer Work Travel,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Participants must receive payment for overtime in accordance with state-specific employment laws.
- 161** §62.32(h)(1-2) “Summer Work Travel,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Sponsors must maintain, at a minimum, a monthly schedule of personal contact with program participants and ensure that the participants health, safety and welfare needs are addressed promptly and appropriately. Sponsors must act as facilitators, counselors, and information resources for the participants as needed.
- 162** §62.32(l)(1) “Summer Work Travel,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Sponsors must adequately vet all potential host employers of Summer Work Travel program participants to confirm that the job offers are viable.
- 163** §62.32(m)(1) “Summer Work Travel,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Sponsors must provide participants the number of hours of paid employment per week as identified on the job offer and agreed to when the sponsors vetted the jobs.
- 164** §62.32(o) “Summer Work Travel,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Sponsors may not place participants in the adult entertainment industry; domestic help positions in private homes; sales positions that require participants to purchase inventory; positions as pedicab or rolling chair operators; positions as operators of vehicles or vessels that carry passengers for hire; positions that require commercial drivers licenses; clinical care positions that involve patient contact; or positions that could bring notoriety or disrepute to the Exchange Visitor Program.
- 165** §62.22(g)(1) “Trainees and interns,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.; §62.32(j) “Summer Work Travel,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. If sponsors utilize foreign entities to assist in fulfilling the sponsors’ core programmatic functions that may be conducted outside the United States (i.e. , screening, selection, and orientation), they must obtain written and executed agreements with such third parties. In the Summer Work Program these foreign entities are prohibited from engaging with other third parties (including staffing or employment agencies or subcontractors) for the purpose of recruiting or outsourcing any core programmatic functions covered by the agreement. Summer Work Program sponsors may not pay or provide incentives to host employers in the United States to accept program participants for job placements.

- 166** §62.22(g)(2) “Trainees and interns,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62.; §62.32(k) “Summer Work Travel,” *Exchange Visitor Program*, Code of Federal Regulations Title 22 Pt. 62. Sponsors must undertake appropriate due diligence in the review of potential overseas agents or partners who assist in fulfilling the sponsors’ core programmatic functions that may be conducted outside the United States.
- 167** U.S. Department of State, “N9.5 Agents as Petitioners” (June 19, 1995), *9 FAM 41.55 Aliens with Extraordinary Ability-Notes*, <http://www.state.gov/documents/organization/87233.pdf>.
- 168** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “O-1 Visa: Individuals with Extraordinary Ability or Achievement,” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b9930b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=b9930b89284a3210VgnVCM100000b92ca60aRCRDADVISORY OPINION>
- 169** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “O-1 Visa.”
- 170** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “O-1 Visa.”
- 171** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “O-1 Visa.” The petition must prove the applicant has been awarded a major, internationally-recognized award or include at least three pieces of evidence that the demonstrate the applicant’s extraordinary ability.
- 172** U.S. Department of State, “N8.4 Approved Petition Is Prima Facie Evidence of Entitlement to O Classification” (September 7, 2011), *9 FAM 41.55 Aliens with Extraordinary Ability-Notes*.
- 173** Interviews conducted by Centro de los Derechos del Migrante, Inc. with foreign workers at carnivals and itinerant fairs in the United States.
- 174** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “O-1 Visa.”
- 175** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “O-1 Visa.”
- 176** U.S. Department of State, “N9.3 Change of Employer” (December 22, 2004), *9 FAM 41.55 Aliens with Extraordinary Ability-Notes*.
- 177** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “O-1 Visa.”
- 178** U.S. Department of State, “N6 Consultation requirement,” (October 4, 2010), *9 FAM 41.55 Aliens with Extraordinary Ability-Notes*.
- 179** See note 168.
- 180** See note 169.
- 181** See note 170.
- 182** U.S. Department of State, “N9.4 Amended Petition” (), *9 FAM 41.55 Aliens with Extraordinary Ability-Notes*.
- 183** See note 176.
- 184** U.S. Department of State, “N14.3 Return Transportation When Employment Involuntarily Terminated” (), *9 FAM 41.55 Aliens with Extraordinary Ability-Notes*.
- 185** U.S. Department of State, “N7 Effect of Labor Disputes” (), *9 FAM 41.55 Aliens with Extraordinary Ability-Notes*.
- 186** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “O-1 Visa.”
- 187** “216420: Mumbai P3 groups use visas for unintended purposes,” *The Hindu*, April 21, 2011, <http://www.thehindu.com/news/the-india-cables/the-cables/article1713134.ece>. Cable from the U.S. Consulate in Mumbai leaked by Wikileaks and published on
- 188** Interviews conducted by Centro de los Derechos del Migrante, Inc. with foreign workers at carnivals and itinerant fairs in the United States.
- 189** U.S. Department of State, “N9.3 Initial Period of Validity” (October 4, 2010), *9 FAM 41.56 Athletes, Artists and Entertainers-Notes*, <http://www.state.gov/documents/organization/87238.pdf>.
- 190** U.S. Department of State, “N11.2-2 Other P-1 Aliens and P-2 and P-3” (October 4, 2010), *9 FAM 41.56 Athletes, Artists and Entertainers-Notes*.
- 191** U.S. Department of State, “N8.5 Agents as Petitioners,” (October 4, 2010), *9 FAM 41.56 Athletes, Artists and Entertainers-Notes*. An agent may file a petition on behalf of an alien who is traditionally self-employed or who uses agents to arrange short-term employment on his or her behalf with numerous employers. An agent may also file a petition on behalf of a foreign employer.
- 192** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “P-3 Artist or Entertainer Coming to Be Part of a Culturally Unique Program,” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=141983453d4a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=141983453d4a3210VgnVCM100000b92ca60aRCRD>. Affidavits, testimonials or letters from recognized experts attesting to the authenticity of the applicant’s or group’s skills in performing, presenting, coaching or teaching the unique and traditional art forms and giving the credentials of the expert including the basis of his or her knowledge of the applicant’s skills.
- 193** U.S. Department of State, “N4 Consultation Requirement” (October 4, 2010), *9 FAM 41.56 Athletes, Artists and Entertainers-Notes*.
- 194** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “P-3 Artist or Entertainer Coming to Be Part of a Culturally Unique Program.”
- 195** U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “P-3 Artist or Entertainer Coming to Be Part of a Culturally Unique Program.”
- 196** U.S. Department of State, “N8.4 Change of Employer” (October 4, 2010), *9 FAM 41.56 Athletes, Artists and Entertainers-Notes*.
- 197** U.S. Department of State, “N13.3 Return Transportation When Employment Involuntarily Terminated” (October 4, 2010), *9 FAM 41.56 Athletes, Artists and Entertainers-Notes*.
- 198** U.S. Department of State, “N5 Effect of Labor Dispute” (October 4, 2010), *9 FAM 41.56 Athletes, Artists and Entertainers-Notes*.
- 199** North American Free Trade Agreement, “Business Visitors,” Part 5, Chapter 16, Appendix 1603.D.1 (December 17, 1992), <http://www.sice.oas.org/Trade/NAFTA/chap-162.asp#Ap1603.D.1>.
- 200** U.S. Department of State, “N4.1 Canadian Citizens” (October 14, 2009), *9 FAM 41.59 Professionals under NAFTA-Notes*, <http://www.state.gov/documents/organization/87246.pdf>. Because Canadian citizens are not required to obtain a non-immigrant visa for temporary entry into the U.S., it is not necessary to physically issue a TN visa once the applicant is approved. A physical visa may be issued upon request.
- 201** North American Free Trade Agreement, “Business Visitors,” Part 5, Chapter 16, Appendix 1603.D.1. This appendix includes information about the education and/or experience requirements for each NAFTA profession.

Bibliography

- American Civil Liberties Union. "Factsheet: Trafficking and Exploitation of Migrant Domestic Workers by Diplomats and Staff of International Organizations in the United States." January 17, 2007. <http://www.aclu.org/womens-rights/trafficking-and-exploitation-migrant-domestic-workers-diplomats-and-staff-international>.
- American Civil Liberties Union, Women's Rights Project. *Table of Publicly Reported Cases of Abuse and Exploitation of Migrant Domestic Workers Employed by Diplomats*. 2007. http://www.aclu.org/files/pdfs/womensrights/diplomatcasedatabase_20071109.xls.
- American Federation of Teachers. *Importing Educators: Causes and Consequences of International Teacher Recruitment*. 2009. <http://www.aft.org/pdfs/international/importingeducators0609.pdf>.
- Andolan organizing south Asian workers, CASA of Maryland, Domestic Workers United, Global Rights, University of North Carolina School of Law Human Rights Policy Clinic, Stefani Bonato, McKenna Coll and Eric Tars. *Domestic Workers' Rights in the United States: A report prepared for the U.N. Human Rights Committee In response to the Second and Third Periodic Report of the United States*. Undated, likely 2006. <http://www.domesticworkers.org/component/jdownloads/finish/3/6/0>.
- Breslin, Colleen, Stephanie Luce, Beth Lyon and Sarah Paoletti. *Human Rights Delegation Report*. August 2011. <http://www.guestworkeralliance.org/wp-content/uploads/2011/09/Human-Rights-Delegation-Report-Hershey-Reissue-September-8.pdf>.
- Centro de los Derechos del Migrante, Inc. *Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry*. 2010. http://www.wcl.american.edu/clinical/documents/20100714_auwcl_ihrlc_picked_apart.pdf?rd=1.
- Colorado Legal Services, Migrant Farm Worker Division. *Overworked and Underpaid: H-2A Herders in Colorado*. January 14, 2010. <http://users.frii.com/clsfcdsl/CLSoverworkedandunderpaid.pdf>.
- Costa, Daniel and Economic Policy Institute. *Guestworker Diplomacy: J Visas Receive Minimal Oversight Despite Significant Implications for the U.S. Labor Market*. July 14, 2011. <http://www.epi.org/files/2011/BriefingPaper317.pdf>.
- Department of Professional Employees. *Gaming the System: Guest Worker Visa Programs and Professional and Technical Workers in the U.S.* 2010. http://dpeaflcio.org/pdf/DPE_Gaming_the_System_Report.pdf.
- Domestic Workers United and Datacenter. *Home is Where the Work Is: Inside New York's Domestic Work Industry*. July 14, 2006. <http://www.datacenter.org/wp-content/uploads/homeiswheretheworkis.pdf>.
- Exchange Visitor Program. Code of Federal Regulations Title 22 Pt. 62. 2010. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=22:1.0.1.7.37&idno=22>.
- Farm Labor Organizing Committee and Oxfam America. *A State of Fear: Human Rights Abuses in North Carolina's Tobacco Industry*. 2011. <http://supportfloc.org/Documents/Oxfam-A%20state%20of%20fear-full%20report-final.pdf>.
- Farmworker Justice. *Litany of Abuses: More—Not Fewer—labor Protections Needed in the H-2A Guestworker Program*. December 2008. http://www.fwjjustice.org/images/stories/imm_labor_files/LitanyofAbuseReport_Dec2008_FINAL.pdf.
- . *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*. September 2011. <http://farmworkerjustice.org/ebook.html>.
- Farmworker Justice and Oxfam America. *Weeding Out Abuses: Recommendations for a Law-Abiding Farm Labor System*. 2010. <http://www.fwjjustice.org/files/immigration-labor/weeding-out-abuses.pdf>.
- Government Accountability Office. *H-1B Visa Program: Reforms are needed to Minimize the Risks and Costs of Current Program*. January 2011. <http://www.gao.gov/new.items/d1126.pdf>.
- Griffith, David. "New Immigrants in an Old Industry: Mexican H-2B Workers in the Mid-Atlantic Blue Crab Processing Industry." Paper presented at the conference "Immigration and the Changing Face of Rural America: Focus on the Mid-Atlantic and Southeastern States," University of Delaware, Newark, DE, September 11-13, 1997. http://migration.ucdavis.edu/cf/more.php?id=148_0_2_0.
- Human Rights Watch. *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, Vol. 13 No. 2 G. June 2001. <http://www.hrw.org/reports/2001/usadom/usadom0501.pdf>.
- Legal Services Corporation. "Statutory Restrictions on LSC-funded Programs." <http://www.lsc.gov/media/fact-sheets/statutory-restrictions-lsc-funded-programs>.
- North American Free Trade Agreement. "Business Visitors." Part 5, Chapter 16, Appendix 1603.D.1. December 17, 1992. <http://www.sice.oas.org/Trade/NAFTA/chap-162.asp#Ap1603.D.1>.
- Pittman, Patricia, Amanda Folsom, Emily Bass and Kathryn Leonhardy. *U.S.-Based International Nurse Recruitment: Structure of Practices of a Burgeoning Industry*. November 2007. http://www.fairinternationalrecruitment.org/images/uploads/International_Nurse_Recruitment_Report.pdf.
- Preston, Julia. "Foreign Students in Work Visa Program Stage Walkout at Plant." *New York Times*, August 17, 2011. <http://www.nytimes.com/2011/08/18/us/18immig.html?pagewanted=all>.
- Southern Poverty Law Center. *Beneath the Pines*. 2006. <http://www.splcenter.org/get-informed/publications/beneath-the-pines>.
- . *Close to Slavery: Guestworker Programs in the United States*. 2007. <http://www.splcenter.org/get-informed/publications/close-to-slavery-guestworker-programs-in-the-united-states>.
- . "Fact Sheet: H-1B Guestworker Program." August 5, 2010. <http://www.splcenter.org/get-informed/news/splc-fights-for-guestworker-teachers-defrauded-in-international-labor-trafficking-1>.
- . "Mairi Nunag-Tañedo et al. v. East Baton Rouge Parish School Board et al." August 5, 2010. <http://www.splcenter.org/get-informed/case-docket/mairi-nunag-tanedo-et-al-v-east-baton-rouge-parish-school-board-et-al>.
- Temporary Employment of Foreign Workers in the United States*, Code of Federal Regulations Title 20 Pt. 655. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=e94b2dfd6265049fd654439f9f738212&rgn=div5&view=text&node=20:3.0.2.1.35&idno=20>.
- U.S. Congress. House. *Nursing Relief for Disadvantaged Areas Act of 1999*. H.R. 441. 106th Cong., 1st sess. November 12, 1999, <http://www.govtrack.us/congress/billtext.xpd?bill=h106-441>.
- . *To amend the Immigration and Nationality Act to modify the requirements for admission of nonimmigrant nurses in health professional shortage areas*. H.R.1933. 112th Cong., 1st sess. (Pending Senate vote. Submitted August 1, 2011.) <http://www.govtrack.us/congress/billtext.xpd?bill=h112-1933>.
- U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. "B-1 Temporary Business Visitor." <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=cf6d83453d4a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=cf6d83453d4a3210VgnVCM100000b92ca60aRCRD>.

Bibliography

- _____. "Cap Count for H-2B Nonimmigrants." <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=356b6c521eb97210VgnVCM100000082ca60aRCRD&vgnnextchannel=d1d333e559274210VgnVCM100000082ca60aRCRD>.
- _____. "H-1B Fiscal Year (FY) 2012 Cap Season." http://www.uscis.gov/h-1b_count.
- _____. "H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models." <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac8-9243c6a7543f6d1a/?vgnnextoid=73566811264a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD>.
- _____. "H-2A Temporary Agricultural Program." <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=889f0b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=889f0b89284a3210VgnVCM100000b92ca60aRCRD>.
- _____. "H-2B Temporary Non-Agricultural Workers." <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=d1d333e559274210VgnVCM100000082ca60aRCRD&vgnnextchannel=d1d333e559274210VgnVCM100000082ca60aRCRD>.
- _____. "O-1 Visa: Individuals with Extraordinary Ability or Achievement." <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a-3e5b9ac89243c6a7543f6d1a/?vgnnextoid=b9930b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=b9930b89284a3210VgnVCM100000b92ca60aRCRD>.
- _____. "P-3 Artist or Entertainer Coming to Be Part of a Culturally Unique Program." <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=141983453d4a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=141983453d4a3210VgnVCM100000b92ca60aRCRD>.
- _____. "TN NAFTA Professionals." <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextchannel=bac00b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextoid=bac00b89284a3210VgnVCM100000b92ca60aRCRD>.
- U.S. Department of Labor. "Wages and Hours Worked: Minimum Wage and Overtime Pay." *Employment Law Guide*. May 2011. <http://www.dol.gov/compliance/guide/minwage.htm>.
- _____. "Work Authorization for Non-U.S. Citizens: Registered Nurses (H-1C Visas)." *Employment Law Guide*. May 2011. <http://www.dol.gov/compliance/guide/h1c.htm>.
- _____. "Work Authorization for Non-U.S. Citizens: Temporary Agricultural Workers (H-2A Visas)." *Employment Law Guide*. May 2011. <http://www.dol.gov/compliance/guide/taw.htm>.
- _____. "Work Authorization for Non-U.S. Citizens: Temporary Nonagricultural Workers (H-2B Visas)." *Employment Law Guide*. May 2011. <http://www.dol.gov/compliance/guide/tnw.htm>.
- _____. "Work Authorization for non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas)." *Employment Law Guide*. May 2011. <http://www.dol.gov/compliance/guide/h1b.htm>.
- U.S. Department of Labor, Office of Foreign Labor Certification. "Adverse Effect Wage Rates - Year 2012." <http://www.foreignlaborcert.doleta.gov/adverse.cfm>.
- _____. *Foreign Labor Certification Data Center/Online Wage Library*. <http://www.flcdatacenter.com>.
- _____. "H-1B, H-1B1 and E-3 Specialty (Professional) Workers." <http://www.foreignlaborcert.doleta.gov/h-1b.cfm>.
- _____. "H-1B Program Data." <http://www.flcdatacenter.com/CaseH1B.aspx>.
- _____. "H-1C Nurses in Disadvantaged Areas." <http://www.foreignlaborcert.doleta.gov/h-1c.cfm>.
- _____. "H-2A Temporary Agricultural Program." <http://www.foreignlaborcert.doleta.gov/h-2a.cfm>.
- _____. "H-2B Certification for Temporary Non-Agricultural Work." <http://www.foreignlaborcert.doleta.gov/h-2b.cfm>.
- _____. *Foreign Labor Certification Annual Report*. 2010. http://www.foreignlaborcert.doleta.gov/pdf/OFLC_2010_Master_for_Web-Site_StateFix.pdf.
- _____. "Prevailing Wages (PERM, H-2B, H-1B, H-1B1 AND E-3)." <http://www.foreignlaborcert.doleta.gov/pwscreens.cfm>.
- U.S. Department of Labor, Wage and Hour Division. *Fact Sheet #62H: What are the rules concerning deductions from an H-1B worker's pay?* August 2009. <http://www.dol.gov/whd/regs/compliance/FactSheet62/whdfs62H.pdf>.
- _____. *Fact Sheet #62S: What is a willful violator employer?* July 2008. <http://www.dol.gov/whd/regs/compliance/FactSheet62/whdfs62S.pdf>.
- _____. "H-1B Willful Violator List of Employers." September 30, 2011. <http://www.dol.gov/whd/immigration/H1BWillfulViolator.htm>.
- _____. "H-1B Debarred/Disqualified List of Employers." September 30, 2011. <http://www.dol.gov/whd/immigration/H1BDebarment.htm>.
- _____. "Prince George's Country Public Schools charged with violating provisions of H-1B temporary foreign worker program." April 4, 2011. <http://www.dol.gov/opa/media/press/whd/whd20110357.htm>.
- U.S. Department of State. *9 FAM 41.21 Foreign Officials-Notes*. <http://www.state.gov/documents/organization/87174.pdf>
- _____. *9 FAM 41.22 Officials of Foreign Governments-Notes*. <http://www.state.gov/documents/organization/87177.pdf>.
- _____. *9 FAM 41.31 Temporary Visitors for Business or Pleasure-Notes*. <http://www.state.gov/documents/organization/87206.pdf>
- _____. *9 FAM 41.53 Temporary Workers and Trainees-Notes*. <http://www.state.gov/documents/organization/87226.pdf>.
- _____. *9 FAM 41.55 Aliens with Extraordinary Ability-Notes*. <http://www.state.gov/documents/organization/87233.pdf>.
- _____. *9 FAM 41.56 Athletes, Artists and Entertainers-Notes*. <http://www.state.gov/documents/organization/87238.pdf>.
- _____. *9 FAM 41.59 Professionals under NAFTA-Notes*. <http://www.state.gov/documents/organization/87246.pdf>.
- _____. *9 FAM 41.112 Validity of Visas-Notes*, <http://www.state.gov/documents/organization/87498.pdf>.
- _____. *Are you coming temporarily to the United States to work or study?* <http://www.travel.state.gov/pdf/Pamphlet-Order.pdf>.
- _____. "FY2010 NIV Detail Table." <http://www.travel.state.gov/pdf/FY10NIVDetailTable.pdf>.
- _____. *J-1 Visa Exchange Visitor Program*. <http://j1visa.state.gov/>.

Bibliography

- U.S. Department of State, Bureau of Consular Affairs. "Exchange Visitor Visas." http://travel.state.gov/visa/temp/types/types_1267.html.
- . "Renewing A, G, and NATO Visas in the U.S." http://travel.state.gov/visa/temp/types/types_1280.html#6.
- . "Visas for Diplomats and Foreign Government Officials." http://travel.state.gov/visa/temp/types/types_2637.html.
- . "Visas for employees of international organizations and NATO." http://travel.state.gov/visa/temp/types/types_2638.html.
- . "Visas for Mexican and Canadian NAFTA Professional Workers." http://travel.state.gov/visa/temp/types/types_1274.html.
- . "Visitor Visas - Business and Pleasure." http://travel.state.gov/visa/temp/types/types_1262.html.
- "What protection do [H-1B] employees have from retaliation?" *Temporary Employment of Foreign Workers in the United States*. Code of Federal Regulations Title 20, Pt. 655.801. 2006. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=08e3f3a470f8947209f6b61b35866c41&rgn=div8&view=text&node=20:3.0.2.1.35.9.26.2&idno=20>.

Abbreviations

- AWPA:** Agricultural and Migrant Worker Protection Act
- DHS:** United States Department of Homeland Security
- DOL:** United States Department of Labor
- DOS:** United States Department of State
- ETA:** Employment and Training Administration, within the Department of Labor
- FAM:** Foreign Affairs Manual
- FLSA:** Fair Labor Standards Act
- OFLC:** Office of Foreign Labor Certification
- USCIS:** United States Citizen and Immigration Services, within the Department of Homeland Security
- WHD:** Wage and Hour Division, within the Department of Labor

This is a condensed version of a glossary created by The Alliance for Ethical International Recruitment Practices. Permission was obtained from The Alliance to include this glossary prior the publication of this Factbook. Please consult the full glossary at http://www.fairinternationalrecruitment.org/index.php/data_resources/glossary_of_terms/

Glossary

Alien: A foreign national who is not a U.S. citizen.

Applicant (Visa): A foreign citizen who is applying for a nonimmigrant or immigrant U.S. visa. The visa applicant may also be referred to as a beneficiary of petition-based visas.

Certificate of Naturalization: A document issued by the DHS as proof that the person has become a U.S. citizen (naturalized) after immigration to the U.S.

Dual intent: Certain Visa types (the H1B and L-1 Visas) allow a foreign national to enter the U.S. on a nonimmigrant visa, even if s/he has filed, or intends to file, for permanent residence. This is not allowed in other non-immigrant visa categories.

Green card: A wallet-sized card showing that the person is a lawful permanent resident (immigrant) in the U.S. It is also known as a permanent resident card (PRC), an alien registration receipt card and I-551.

I-551 (Green Card): Permanent residence card or alien registration receipt card or “green card.”

Immigrant Visa: A visa for a person who plans to live indefinitely and permanently in the U.S.

Labor Certification: The initial stage of the process by which certain foreign workers get permission to work in the U.S. The employer is responsible for getting the labor certification from the Department of Labor.

Naturalization: A citizen who acquires nationality of a country after birth. That is, the person did not become a citizen by birth, but by a legal procedure.

Nonimmigrant Visa (NIV): A U.S. visa allows the bearer, a foreign citizen, to apply to enter the U.S. temporarily for a specific purpose. Nonimmigrant visas are primarily classified according to the principal purpose of travel. With few exceptions, while in the U.S., non-immigrants are restricted to the activity or reason for which their visa was issued. Examples of persons who may receive nonimmigrant visas are students (F), visitors (B), temporary workers (H).

Out of status: A U.S. visa allows the bearer to apply for entry to the U.S. in a certain classification, for a specific purpose such as student (F), visitor (B), temporary worker (H) visas. Every visa is issued for a particular purpose and for a specific class of visitor. Each visa classification has a set of requirements that the visa holder must follow and maintain. When you arrive in the U.S., a DHS CBP inspector determines whether you will be admitted, length of stay and conditions of stay in, the U.S. When admitted

you are given a Form I-94 (Arrival/Departure Record), which tells you when you must leave the U.S. The date granted on the I-94 card at the airport governs how long you may stay in the U.S. If you do not follow the requirements, you stay longer than that date, or you engage in activities not permitted for your particular type of visa, you violate your status and are considered to be “out of status”. It is important to understand the concept of immigration status and the consequences of violating that status. Failure to maintain status can result in arrest, and violators may be required to leave the U.S. Violation of status also can affect the prospect of readmission to the U.S. for a period of time, by making you ineligible for a visa. Most people who violate the terms of their status are barred from lawfully returning to the U.S. for years.

Skills List: The Exchange Visitor Skills List (J Visas) is a list of fields of specialized knowledge and skills that are deemed necessary for the development of an exchange visitor’s home country. When you agree to participate in an Exchange Visitor Program, if your skill is on your country’s Skills List you are subject to the two-year foreign residence (home-country physical presence) requirement, which requires you to return to your home country for two years at the end of your exchange visitor program, under U.S. law.

Temporary Worker: A foreign worker who will work in the U.S. for a limited period of time. Some visas classes for temporary workers are H, L, O, P, Q and R. If you are seeking to come to the U.S. for employment as a temporary worker in the U.S. (H, L, O, P, and Q visas), your prospective employer must file a petition with the DHS, USCIS. This petition must be approved by USCIS before you can apply for a visa.

Two Year Home-Country Physical Presence Requirement: This refers to (J) exchange visitors who are required to return to your home country for two years at the end of your exchange visitor program, under U.S. immigration law.

Work Authorization: If you are not a citizen or a lawful permanent resident, you may need to apply for an Employment Authorization Document to prove you may work in the U.S.

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