- foreign airline employees who meet E visa criteria but are not nationals of a treaty country or of the airlines' country of nationality
- planning, constructing, dismantling, maintaining or other employment by foreign employer in connection with exhibits at international fairs and exhibitions
- certain religious and charitable activities (e.g. missionaries and recognized international volunteer efforts)
- certain athletes who:
    - are professional but intend to receive no salary or payment their than prize money
    - are individuals or members of a foreign-based team in an internationally recognized sporting activity whose principal place of business is in the foreign country where their salaries typically accrue and seek to enter pay only their incidental expenses
- servants employed[5] abroad of:
    - US citizens residing abroad who return or are assigned to the US on a temporary basis
    - Foreign nationals who have been accorded B, E, F, H, I, J, L, M, O, P, R or TN nonimmigrant status for temporary activities in the US

LECTURING OR SHORT-TERM ACADEMIC ACTIVITY[6]

The American Competitiveness and Worksite Improvement Act (ACWIA) of 1998 authorized B classification visitors, performing lecture and seminar services for US non-profit research and higher education and higher education institution, to receive honoraria (compensation for services, in addition to reimbursement for expenses). Certain restrictions apply. Although this legislative provision has net been formally implemented via regulation, INS issued field guidance dated 11/30/99 clarifying that nonimmigrants will be admitted under B classification for compensated academic activities qualifying under ACWIA and, by implication, that B visitors who perform qualifying services in exchange for honorarium payments do not breach their status.

Note: Under existing regulations, and alien professional who will lecture or provide short-term academic, cultural, etc. services at a US institution must be admitted in H-1B, H-2B, or O-1 status in order to be paid for such activities; that make a business visitor whole for participating in a function or event. B-2 status supports such activities where business visitors give brief, impromptu presentations as an incidental part of US visits but are not subsidized, in whole or in part, by US institutions. At this time, it remains unclear, in spite of INS' 11/99-field guidance, whether visas will be issued to compensated B lecturers or whether SSA will issue SSN's to them for tax reporting purposes.

[5] Source of payments to servants who meet these criteria is not relevant.
[6] See footnote 1.

VOLUNTEER ACTIVITIES

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

TRAINNING IN B-1 STATUS

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

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

ENTERTAINERS[9]

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

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

ACCEPTABLE B-2 (VISITOR FOR PLEASURE) ACTIVITIES

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

[8] Foreign affiliates of US companies are acceptable.

[9] Includes performing artists and production personnel.

Individuals in B-2 status are not restricted to tourist activity or social visits. Other permissible activities include, but are not limited to:

- medical treatment
- participation in conferences, conventions, etc. of social or fraternal organizations
- short courses of study incidental to tourist or social activities
- amateur entertainers or athletes who will compete or perform in a non-profit context, without payment except for expenses

BUSINESS VISTORS ACTIVITES UNDER NAFTA[10]

General

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

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

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

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

Period of Stay

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

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

Canadian Business Visitors

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

Mexican Business Visitors

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

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

[11] See employer Bulletin on the INSpass and PORTpass programs, available from the office.

9 FAM 41.31
NOTES

(CT:VISA-1801; 02-09-2012)
(Office of Origin: CA/VO/L/R)

9 FAM 41.31 N1 TEMPORARY VISITORS

(CT:VISA-1365; 10-29-2009)

Factors to be used in determining entitlement to Temporary Visitor Classification are as follows:

(1) In determining whether visa applicants are entitled to temporary visitor classification, you (the consular officer) must assess whether the applicants:

  (a) Have a residence in a foreign country, which they do not intend to abandon;

  (b) Intend to enter the United States for a period of specifically limited duration; and

  (c) Seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure.

(2) If an applicant for a B1/B2 visa fails to meet one or more of the above criteria, you must refuse the applicant under section 214(b) of the INA. (See 9 FAM 40.7 for a complete discussion on Refusals Under Section 214(b)).

9 FAM 41.31 N2 RESIDENCE ABROAD

9 FAM 41.31 N2.1 "Residence" Defined

(CT:VISA-1365; 10-29-2009)

The term "residence" is defined in INA 101(a)(33) as the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. This does not mean that an alien must maintain an independent household in order to qualify as an alien who has a residence in a foreign country and has no intention of abandoning. If the alien customarily resides in the household of another, that household is the residence in fact.

NOTE: Only the following visa categories are subject to residence abroad

requirements: B, F, H (except H-1), J, M, O-2, P, and Q. When adjudicating this requirement, it is essential to view the requirement within the nature of the visa classification.

9 FAM 41.31 N2.2 Intent to Establish Residence Abroad

(CT:VISA-701; 02-15-2005)

The residence in a foreign country need not be the alien's former residence. For example, an alien who has been living in Germany may meet the residence abroad requirement by showing a clear intention to establish a residence in Canada after a temporary visit in the United States.

9 FAM 41.31 N2.3 Mere Suspicion Not a Reason for Refusal

(CT:VISA-1034; 09-24-2008)

Suspicion that an alien, after admission, may be swayed to remain in the United States because of more favorable living conditions is not a sufficient ground to refuse a visa as long as the alien's current intent is to return to a foreign residence.

9 FAM 41.31 N3 TEMPORARY PERIOD OF STAY

9 FAM 41.31 N3.1 Period of Time in United States Consistent with Purpose of Trip

(CT:VISA-701; 02-15-2005)

The period of time projected for the visit must be consistent with the stated purpose of the trip. The applicant must establish with reasonable certainty that departure from the United States will take place upon completion of the temporary visit. Although "temporary" is not specifically defined by either statute or regulation, it generally signifies a limited period of stay. The fact that the period of stay in a given case may exceed six months or a year is not in itself controlling, provided that you are satisfied that the intended stay actually has a time limitation and is not indefinite in nature.

9 FAM 41.31 N3.2 Specific and Realistic Plans

(CT:VISA-701; 02-15-2005)

The applicant must have specific and realistic plans for the entire period of the contemplated visit.

9 FAM 41.31 N3.3 Evaluating Cases

(CT:VISA-701; 02-15-2005)

In evaluating these cases, you should not focus on the absolute length of the stay, but on whether the stay has some finite limit. For example, the temporariness requirement would be met in a case where the cohabitating partner will accompany, and depart with, the "principal" alien on a two-year work assignment or a four-year degree program.

9 FAM 41.31 N3.4 Ties Abroad

(CT:VISA-701; 02-15-2005)

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

9 FAM 41.31 N3.5 Doubtful Cases not Resolved by Offer to Leave Dependent Abroad

(CT:VISA-701; 02-15-2005)

If you doubt an alien’s intent to return abroad, the alien cannot satisfy your doubts by offering to leave a child, spouse, or other dependent abroad.

9 FAM 41.31 N4 LEGITIMATE ACTIVITIES RELATING TO BUSINESS OR PLEASURE

9 FAM 41.31 N4.1 Unlawful Activity While in Visitor Status

(CT:VISA-1753; 10-21-2011)

The law contemplates that an alien is traveling to the United States for legal purposes. Therefore, an application for a visitor visa must be denied in those cases where you have reason to believe or know that, while in the United States as a visitor, the applicant will engage in unlawful or criminal activities.

9 FAM 41.31 N4.2 Adequate Funds to Avoid Unlawful Employment

(CT:VISA-701; 02-15-2005)

The arrangements which the applicant has made for defraying the expenses of his or her visit and return abroad must be adequate in order to prevent their obtaining unlawful employment in the United States.

9 FAM 41.31 N5 IMPORTANCE OF FACILITATING INTERNATIONAL TRAVEL

(CT:VISA-1753; 10-21-2011)

a. The policy of the U.S. Government is to facilitate and promote international travel and the free movement of people of all nationalities to the United States both for the cultural and social value to the world and for economic purposes.

b. You should expedite applications for the issuance of a visitor visa if the issuance is consistent with U.S. immigration and naturalization laws and regulations. You must be satisfied that the applicants have overcome the presumption of intending immigration. You should give particular attention to applicants traveling to the United States to attend conferences, conventions, or meetings on specific dates.

9 FAM 41.31 N6 CHOICE OF CLASSIFICATION

9 FAM 41.31 N6.1 Principal Purpose of Admission

(CT:VISA-767; 08-30-2005)

An alien desiring to come to the United States for one principal, and one or more incidental purposes, should be classified in accordance with the principal purpose. For example, you should classify an alien seeking to enter the United States as a student who desires, prior to entering an approved school, to make a tourist trip of not more than 30 days within the United States, as F-1 or M-1. Also, when a family member's primary purpose to come to the United States is to accompany the principal, the classification of the accompanying family member is either of a derivative of the principal if the classification provides or as a B-2, if not. This is the case even if the accompanying family member decides to attend school. (See 9 FAM 41.11 N5.2.)

9 FAM 41.31 N6.2 Choice When More Than One Classification Possible

(CT:VISA-701; 02-15-2005)

When it appears that an alien can properly be classified under two or more nonimmigrant classifications, you should explain to the alien the terms and requirements of each, including documentary requirements, maximum lengths of stay which may be authorized upon admission, and any other pertinent factors. You should then base the classification of the visa on the alien's stated preference. (See Visa Reciprocity and Country Documents Finder.)

9 FAM 41.31 N6.3 Prohibition on Alternative to A and G Classification

(CT:VISA-701; 02-15-2005)

The provisions of 22 CFR 41.22(b) relating to the A and G classifications are always controlling. You should not suggest alternative classifications.

9 FAM 41.31 N7 ALIENS TRAVELING TO UNITED STATES AS VISITORS FOR BUSINESS

(CT:VISA-1599; 10-28-2010)

a. Aliens who desire to enter the United States for business and who are otherwise eligible for visa issuance, may be classifiable as nonimmigrant B-1 visitors provided they meet the criteria described in 9 FAM 41.31 N8 through 9 FAM 41.31 N11. Engaging in business contemplated for B-1 visa classification generally entails business activities other than the performance of skilled or unskilled labor. Thus, the issuance of a B-1 visa is not intended for the purpose of obtaining and engaging in employment while in the United States. Specific circumstances or past patterns have been found to fall within the parameters of this classification and are listed below.

b. It can be difficult to distinguish between appropriate B-1 business activities, and activities that constitute skilled or unskilled labor in the United States that are not appropriate on B status. The clearest legal definition comes from the decision of the Board of Immigration Appeals in Matter of Hira, affirmed by the Attorney General. Hira involved a tailor measuring customers in the United States for suits to be manufactured and shipped from outside the United States. The decision stated that this was an appropriate B-1 activity, because the principal place of business and the actual place of accrual of profits, if any, was in the foreign

country. Most of the following examples of proper B-1 relate to the Hira ruling, in that they relate to activities that are incidental to work that will principally be performed outside of the United States.

c. You may encounter a case involving temporary employment in the United States, which does not fall within the categories listed below. You should submit such cases to the Advisory Opinions Division (CA/VO/L/A) of the Visa Office in accordance with the procedures in 9 FAM 41.31 N12 for an advisory opinion (AO) to ensure uniformity and proper application of the law.

9 FAM 41.31 N8 ALIENS TRAVELING TO UNITED STATES TO ENGAGE IN COMMERCIAL TRANSACTIONS, NEGOTIATIONS, CONSULTATIONS, CONFERENCES, ETC.

(CT:VISA-701; 02-15-2005)

Aliens should be classified B-1 visitors for business, if otherwise eligible, if they are traveling to the United States to:

(1) Engage in commercial transactions, which do not involve gainful employment in the United States (such as a merchant who takes orders for goods manufactured abroad);

(2) Negotiate contracts;

(3) Consult with business associates;

(4) Litigate;

(5) Participate in scientific, educational, professional, or business conventions, conferences, or seminars; or

(6) Undertake independent research.

9 FAM 41.31 N9 ALIENS COMING TO UNITED STATES TO PURSUE EMPLOYMENT INCIDENTAL TO THEIR PROFESSIONAL BUSINESS ACTIVITIES

(CT:VISA-701; 02-15-2005)

The statutory terms of INA 101(a)(15)(B) specifically exclude from this classification aliens coming to the United States to perform skilled or unskilled labor. Aliens coming to the United States for the purpose of

pursuing employment which does not qualify them for A, C, D, E, G, H, I, J, L, O, P, Q, or NATO status must be classified as immigrants. Exception is made for aliens who may be eligible for B-1 business visas provided they meet the criteria of one of the categories listed below.

9 FAM 41.31 N9.1 Members of Religious and Charitable Activities

9 FAM 41.31 N9.1-1 Ministers on Evangelical Tour

(CT:VISA-1365; 10-29-2009)

Ministers of religion proceeding to the United States to engage in an evangelical tour who do not plan to take an appointment with any one church and who will be supported by offerings contributed at each evangelical meeting. (See 9 FAM 41.113 PN14.2.)

9 FAM 41.31 N9.1-2 Ministers of Religion Exchanging Pulpits

(CT:VISA-701; 02-15-2005)

Ministers of religion temporarily exchanging pulpits with U.S. counterparts who will continue to be reimbursed by the foreign church and will draw no salary from the host church in the United States.

9 FAM 41.31 N9.1-3 Missionary Work

(CT:VISA-701; 02-15-2005)

Members of religious denominations, whether ordained or not, entering the United States temporarily for the sole purpose of performing missionary work on behalf of a denomination, so long as the work does not involve the selling of articles or the solicitation or acceptance of donations and provided the minister will receive no salary or remuneration from U.S. sources other than an allowance or other reimbursement for expenses incidental to the temporary stay. "Missionary work" for this purpose may include religious instruction, aid to the elderly or needy, proselytizing, etc. It does not include ordinary administrative work, nor should it be used as a substitute for ordinary labor for hire.

9 FAM 41.31 N9.1-4 When Applicant Is Unable to Qualify for R Status

(CT:VISA-701; 02-15-2005)

In cases where an applicant is coming to perform voluntary services for a

religious organization, and does not qualify for R status, the B-1 status remains an option, provided that the applicant meets the requirements in 9 FAM 41.31 N9.1, even if he or she intends to stay a year or more in the United States.

9 FAM 41.31 N9.1-5 Participants in Voluntary Service Programs

(CT:VISA-1034; 09-24-2008)

a. Aliens participating in a voluntary service program benefiting U.S. local communities, who establish that they are members of, and have a commitment to, a particular recognized religious or nonprofit charitable organization. No salary or remuneration should be paid from a U.S. source, other than an allowance or other reimbursement for expenses incidental to the volunteers' stay in the United States.

b. A "voluntary service program" is an organized project conducted by a recognized religious or nonprofit charitable organization to assist the poor or the needy or to further a religious or charitable cause. The program may not, however, involve the selling of articles and/or the solicitation and acceptance of donations. The burden that the voluntary program meets the Department of Homeland Security (DHS) definition of "voluntary service program" is placed upon the recognized religious or nonprofit charitable organization, which must also meet other criteria set out in the DHS Operating Instructions with regard to voluntary workers.

c. You must assure that the written statement issued by the sponsoring organization is attached to the passport containing the visa for presentation to the DHS officer at the port of entry. The written statement will be furnished by the alien participating in a service program sponsored by the religious or nonprofit charitable organization and must contain DHS required information such as the:

   (1) Volunteer's name and date and place of birth;

   (2) Volunteer's foreign permanent residence address;

   (3) Name and address of initial destination in the United States; and

   (4) Volunteer's anticipated duration of assignment.

9 FAM 41.31 N9.2 Members of Board of Directors of U.S. Corporation

(CT:VISA-701; 02-15-2005)

An alien who is a member of the board of directors of a U.S. corporation seeking to enter the United States to attend a meeting of the board or to

perform other functions resulting from membership on the board.

9 FAM 41.31 N9.3 Personal/Domestic Employees

9 FAM 41.31 N9.3-1 Personal/Domestic Employees of U.S. Citizens Residing Abroad

(CT:VISA-1753; 10-21-2011)

Personal or domestic employees who accompany or follow to join U.S. citizen employers who have a permanent home or are stationed in a foreign country and who are visiting the United States temporarily. The employer-employee relationship existed prior to the commencement of the employer's visit to the United States, provided that you are satisfied that:

(1) The employee has a residence abroad which he or she has no intention of abandoning;

(2) The alien has been employed abroad by the employer as a personal or domestic servant for at least six months prior to the date of the employer's admission to the United States;

(3) In the alternative, the employer can show that while abroad the employer has regularly employed a domestic servant in the same capacity as that intended for the applicant;

(4) The employee can demonstrate at least one year experience as a personal or domestic servant by producing statements from previous employers attesting to such experience; and

(5) The employee is in possession of an original contract or a copy of the contract, to be presented at the port of entry, which contains the original signatures of both the employer and the employee.

b. The required employment contract has been signed and dated by the employer and employee and contains a guarantee from the employer that, in addition to the provisions listed in item (5) above, the employee will receive the minimum or prevailing wages whichever is greater for an eight hour work-day. The employment contract must also reflect any other benefits normally required for U.S. domestic workers in the area of employment. The employer will give at least two weeks' notice of his or her intent to terminate the employment, and the employee need not give more than two weeks' notice of intent to leave the employment.

9 FAM 41.31 N9.3-2 Personal/Domestic Employees of U.S. Citizens on Temporary Assignment in United States

(CT:VISA-1753; 10-21-2011)

a. Personal or domestic employees who are accompanying or following to join U.S. citizen employers temporarily assigned to the United States provided you are satisfied that:

   (1) The employee has a residence abroad which he or she has no intention of abandoning;

   (2) The alien has been employed abroad by the employer as a personal or domestic servant for at least six months prior to the date of the employer's admission to the United States;

   (3) In the alternative, the employer can show that while abroad the employer has regularly employed a domestic servant in the same capacity as that intended for the applicant;

   (4) The employee can demonstrate at least one year experience as a personal or domestic servant by producing statements from previous employers attesting to such experience; and

   (5) The employee is in possession of an original contract or a copy of the contract, to be presented at the port of entry, which contains the original signatures of both the employer and the employee.

b. The U.S. citizen employer is subject to frequent international transfers lasting two years or more as a condition of the job as confirmed by the employer's personnel office and is returning to the United States for a stay of no more than four years. The employer will be the only provider of employment to the domestic employee and will provide the employee free room and board and a round trip airfare as indicated under the terms of the employment contract; and

c. The required employment contract has been signed and dated by the employer and employee and contains a guarantee from the employer that, in addition to the provisions listed in item (b) above, the employee will receive the minimum or prevailing wages whichever is greater for an eight hour work-day. The employment contract must also reflect any other benefits normally required for U.S. domestic workers in the area of employment. The employer will give at least two weeks' notice of his or her intent to terminate the employment, and the employee need not give more than two weeks' notice of intent to leave the employment.

9 FAM 41.31 N9.3-3 Personal Employees of Foreign Nationals in Nonimmigrant Status

(CT:VISA-1034; 09-24-2008)

A personal or domestic employee who accompanies or follows to join an employer who is seeking admission into, or is already in, the United States in B, E, F, H, I, J, L, M, O, P, or Q nonimmigrant status, must meet the following requirements:

(1) The employee has a residence abroad which he or she has no intention of abandoning (notwithstanding the fact that the employer may be in a nonimmigrant status which does not require such a showing);

(2) The employee can demonstrate at least one year's experience as a personal or domestic employee;

(3) The employee has been employed abroad by the employer as a personal or domestic employee for at least one year prior to the date of the employer's admission to the United States;

OR

If the employee-employer relationship existed immediately prior to the time of visa application, the employer can demonstrate that he or she has regularly employed (either year-round or seasonally) personal or domestic employees over a period of several years preceding the domestic employee's visa application for a nonimmigrant B-1 visa;

(4) The employer and the employee have signed an employment contract which contains statements that the employee is guaranteed the minimum or prevailing wages, whichever is greater, and free room and board, and the employer will be the only provider of employment to the employee;

(5) The employer must pay the domestic's initial travel expenses to the United States, and subsequently to the employer's onward assignment, or to the employee's country of normal residence at the termination of the assignment.

9 FAM 41.31 N9.3-4 Personal Employees/Domestics of Lawful Permanent Residents (LPRs)

(CT:VISA-701; 02-15-2005)

Personal employees of all lawful permanent residents (LPRs), including conditional permanent residents and LPRs who have filed a Form N-470, Application to Preserve Residence for Naturalization Purposes, must obtain permanent resident status, as it is contemplated that the employing LPR is a resident of the United States.

9 FAM 41.31 N9.3-5 Source of Payment to B-1 Personal Employees/Domestics

(CT:VISA-701; 02-15-2005)

The source of payment to a B-1 personal or domestic employee or the place where the payment is made or the location of the bank is not relevant.

9 FAM 41.31 N9.3-6 Consular Officer Responsibilities in Processing Applications Under the William Wilberforce Trafficking Victims Protection Act

(CT:VISA-1753; 10-21-2011)

a. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires you to ensure that an alien applying for a B-1 nonimmigrant visa (NIV) as a personal or domestic servant accompanying or following to join an employer, is made aware of his or her legal rights under Federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the NIV interview, you must confirm that a pamphlet prepared by the Department detailing this information has been received, read, and understood by the applicant. See 9 FAM 41.21 N6.5 for information about WWTVPRA enforcement and consular officer responsibilities. Consular officers must add a mandatory case note in the NIV system stating the pamphlet was provided and the applicant indicated that s/he understood its contents.

b. If a B-1 personal employee/domestic applicant is eligible for an in-person interview waiver (see 9 FAM 41.102 N3) and the applicant's previous visa was issued at a time when post was adhering to the WWTVPRA requirements, post may apply the fingerprint reuse/interview waiver policies and ensure a copy of the pamphlet is returned to every issued applicant along with his/her visa.

9 FAM 41.31 N9.4 Professional Athletes

(CT:VISA-1753; 10-21-2011)

a. Professional athletes, such as golfers and auto racers, who receive no salary or payment other than prize money for his or her participation in a tournament or sporting event.

b. Athletes or team members who seek to enter the United States as members of a foreign-based team in order to compete with another sports team should be admitted provided:

(1) The foreign athlete and the foreign sports team have their principal place of business or activity in a foreign country;

(2) The income of the foreign-based team and the salary of its players are principally accrued in a foreign country; and

(3) The foreign-based sports team is a member of an international sports league or the sporting activities involved have an international dimension.

c. Amateur hockey players who are asked to join a professional team during the course of the regular professional season or playoffs for brief try-outs. The players are draft choices who have not signed professional contracts, but have signed a memorandum of agreement with a National Hockey League (NHL)-parent team. Under the terms of the agreement, the team will provide only for incidental expenses such as round-trip fare, hotel room, meals, and transportation. At the time of the visa application or application for admission to the United States, the players must provide a copy of the memorandum of agreement and a letter from the NHL team giving the details of the try-outs. If an agreement is not available at that time, a letter from the NHL team must give the details of the try out and state that such an agreement has been signed.

9 FAM 41.31 N9.5 Yacht Crewmen

(CT:VISA-1777; 11-29-2011)

Crewmen of a private yacht who are able to establish that they have a residence abroad which they do not intend to abandon, regardless of the nationality of the private yacht. The yacht is to sail out of a foreign home port and cruise in U.S. waters for more than 29 days.

9 FAM 41.31 N9.6 Coasting Officers

(CT:VISA-701; 02-15-2005)

See 9 FAM 41.41 N4 for aliens seeking to enter the United States as "coasting officers."

9 FAM 41.31 N9.7 Investor Seeking Investment in United States

(CT:VISA-701; 02-15-2005)

An alien seeking investment in the United States, including an investment that would qualify him or her for status as an E-2 investor. Such an alien is precluded from performing productive labor or from actively participating in the management of the business prior to being granted E-2 status.

9 FAM 41.31 N9.8 Horse Races

(CT:VISA-779; 10-13-2005)

An alien coming to the United States to perform services on behalf of a foreign-based employer as a jockey, sulky driver, trainer, or groomer.

9 FAM 41.31 N9.9 Outer Continental Shelf (OCS) Employees

(CT:VISA-1034; 09-24-2008)

a. The Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) were enacted on September 18, 1978. 43 U.S.C. 1356 of OCSLA directs, that with specified exceptions, all units operating on the Outer Continental Shelf (OCS) must employ only U.S. citizens or lawful permanent resident (LPR) aliens as members of the regular complement of the unit. Subsequently, the U.S. Coast Guard issued regulations (33 CFR 141) which became effective on April 5, 1983. The regulations contain guidelines concerning exemptions available to units operating on the OCS.

b. Not included are nonmembers of the regular complement of a unit such as specialists, professionals, or other technically trained personnel called in to handle emergencies or other temporary operations, and extra personnel on a unit for training or for specialized operation; i.e., construction, alteration, well logging, or unusual repairs or emergencies.

9 FAM 41.31 N9.9-1 B-1 Visa Applicants

(CT:VISA-1365; 10-29-2009)

The citizenship requirement under the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) and the U.S. Coast Guard regulations may be waived in certain circumstances specified in the U.S. Coast Guard's regulations at 33 CFR 141. Exemptions to the OCSLA manning restrictions can be obtained from the U.S. Coast Guard, which will issue a letter of exemption for the vessel or individual(s). Based on this letter, a B-1/OCS (Outer Continental Shelf) visa may be issued for the purpose and validity specified in the letter, without the need of an advisory opinion (AO) from the Department. If an alien requests a B-1 visa to work on the OCS, and cannot satisfy that the work has been exempted by the U.S. Coast Guard, an AO request must be submitted to the Department (CA/VO/L/A) before a visa can be issued.

9 FAM 41.31 N9.9-2 Visa Notation

(CT:VISA-701; 02-15-2005)

If issuance of a visa is approved, you should annotate the visa with "OCS."

9 FAM 41.31 N9.9-3 Requests for Exemption from Restrictions on Alien Employment

(CT:VISA-701; 02-15-2005)

Employers who wish to employ persons other than citizens of the United States or permanent resident aliens as part of the regular complement of the unit must request, in writing, an exemption from the restrictions on employment in accordance with specific U.S. Coast Guard regulations. The request for the exemption must be addressed to:

Commandant
U.S. Department of Homeland Security
U.S. Coast Guard
(G-MOC-2)
2100 2nd Street, SW
Washington, DC 20593-0001

9 FAM 41.31 N10 OTHER BUSINESS ACTIVITIES CLASSIFIABLE B-1

(CT:VISA-701; 02-15-2005)

While the categories listed below generally may be classified under the proper applicable nonimmigrant class, i.e., A, E, H, F, L, or M visas, you may issue B-1 visas to otherwise eligible aliens under the criteria provided below.

9 FAM 41.31 N10.1 Commercial or Industrial Workers

(CT:VISA-701; 02-15-2005)

a. An alien coming to the United States to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the United States or to train U.S. workers to perform such services. However, in such cases, the contract of sale must specifically require the seller to provide such services or training and the visa applicant must possess specialized knowledge essential to the seller's contractual obligation to perform the services or training and must receive no remuneration from a U.S. source.

b. These provisions do not apply to an alien seeking to perform building or construction work, whether on-site or in-plant. The exception is for an alien who is applying for a B-1 visa for supervising or training other workers engaged in building or construction work, but not actually performing any such building or construction work.

9 FAM 41.31 N10.2 Foreign Airline Employees

(CT:VISA-701; 02-15-2005)

Foreign airline employee aliens who:

(1) Seek to enter the United States for employment with a foreign airline that is engaged in international transportation of passengers and freight;

(2) Are working in an executive, supervisory, or highly technical capacity; and

(3) Otherwise meet the requirements for E visa classification but are precluded from entitlement to treaty trader E-1 classification solely because there is no treaty of friendship, commerce, and navigation in effect between the United States and the country of the aliens' nationality, or because they are not nationals of the airline's country of nationality.

9 FAM 41.31 N10.3 Employees of Foreign Airlines Coming to United States to Join Aircraft

(CT:VISA-701; 02-15-2005)

Employees of foreign airlines coming to the United States to join aircraft may also be documented as B-1 visitors in that they are not transiting the United States and are not admissible as crewmen. Such applicants, however, must present a letter from the headquarters branch of the foreign airline verifying their employment and the official nature of their duties in the United States.

9 FAM 41.31 N10.4 Clerkship

(CT:VISA-701; 02-15-2005)

Except as in the cases described below, aliens who wish to obtain hands-on clerkship experience are not deemed to fall within B-1 visa classification.

9 FAM 41.31 N10.4-1 Medical

(CT:VISA-1777; 11-29-2011)

An alien who is studying at a foreign medical school and seeks to enter the United States temporarily in order to take an "elective clerkship" at a U.S. medical school's hospital without remuneration from the hospital. The medical clerkship is only for medical students pursuing their normal third or fourth year internship in a U.S. medical school as part of a foreign medical school degree. (An "elective clerkship" affords practical experience and instructions in the various disciplines of medicine under the supervision and direction of faculty physicians at a U.S. medical school's hospital as an approved part of the alien's foreign medical school education. It does not apply to graduate medical training, which is restricted by INA 212(e) and normally requires a J-visa.)

9 FAM 41.31 N10.4-2 Business or Other Professional or Vocational Activities

(CT:VISA-701; 02-15-2005)

An alien who is coming to the United States merely and exclusively to observe the conduct of business or other professional or vocational activity may be classified B-1, provided the alien pays for his or her own expenses. However, aliens, often students, who seek to gain practical experience through on-the-job training or clerkships must qualify under INA 101(a)(15)(H) or (L), or when an appropriate exchange visitors program exists (J).

9 FAM 41.31 N10.5 Participants in Foreign Assistance Act Program

(CT:VISA-940; 03-24-2008)

An alien invited to participate in any program furnishing technical information and assistance under section 635(f) of the Foreign Assistance Act of 1961, 75 Statute 424.

9 FAM 41.31 N10.6 Peace Corps Volunteer Trainers

(CT:VISA-940; 03-24-2008)

An alien invited to participate in the training of Peace Corps volunteers or coming to the United States under contract pursuant to sections 9 and 10(a)(4) of the Peace Corps Act (75 Statute 612), unless the alien qualifies for A classification. (See 9 FAM 41.113 PN11.1 for notation to be inserted on any visa issued under this legislation.)

9 FAM 41.31 N10.7 Internship with United Nations Institute for Training and Research (UNITAR)

(CT:VISA-1034; 09-24-2008)

Participants in the United Nations Institute for Training and Research (UNITAR) program of internship for training and research who are not employees of foreign governments.

9 FAM 41.31 N10.8 Aliens Employed by Foreign or U.S. Exhibitors at International Fairs or Expositions

(CT:VISA-701; 02-15-2005)

Aliens who are coming to the United States to plan, construct, dismantle,

maintain, or be employed in connection with exhibits at international fairs or expositions may, depending upon the circumstances in each case, qualify for one of the following classifications.

9 FAM 41.31 N10.8-1 Foreign Government Officials

(CT:VISA-701; 02-15-2005)

Aliens representing a foreign government in a planning or supervisory capacity and/or their immediate staffs are entitled to "A" classification if an appropriate note is received from their government, and if they are otherwise properly documented.

9 FAM 41.31 N10.8-2 Employees of Foreign Exhibitors

(CT:VISA-701; 02-15-2005)

Employees of foreign exhibitors at international fairs or expositions who are not foreign government representatives and do not qualify for "A" classification ordinarily are classified B-1.

9 FAM 41.31 N10.8-3 Employees of U.S. Exhibitors

(CT:VISA-701; 02-15-2005)

While alien employees of U.S. exhibitors or employers are not eligible for B-1 visas they may be classifiable as H-1 or H-2 temporary workers.

9 FAM 41.31 N11 ALIENS NORMALLY CLASSIFIABLE H-1 OR H-3

(CT:VISA-1753; 10-21-2011)

There are cases in which aliens who qualify for H-1 or H-3 visas may more appropriately be classified as B-1 visa applicants in certain circumstances; e.g., a qualified H-1 or H-3 visa applicant coming to the United States to perform H-1 services or to participate in a training program. In such a case, the applicant must not receive any salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses incidental to the alien's temporary stay. For purposes of this Note, it is essential that the remuneration or source of income for services performed in the United States continue to be provided by the business entity located abroad, and that the alien meets the following criteria:

(1) With regard to foreign-sourced remuneration for services performed by aliens admitted under the provisions of INA 101(a)(15)(B), the Department has maintained that where a U.S. business enterprise

or entity has a separate business enterprise abroad, the salary paid by such foreign entity should not be considered as coming from a "U.S. source;"

(2) In order for an employer to be considered a "foreign firm" the entity must have an office abroad and its payroll must be disbursed abroad. To qualify for a B-1 visa, the employee must customarily be employed by the foreign firm, the employing entity must pay the employee's salary, and the source of the employee's salary must be abroad; and

(3) An alien classifiable H-2 must be classified as such notwithstanding the fact that the salary or other remuneration is being paid by a source outside the United States, or the fact that the alien is working without compensation (other than a voluntary service worker classifiable B-1 in accordance with 9 FAM 41.31 N9.1-5). A nonimmigrant visa petition accompanied by an approved labor certification must be filed on behalf of the alien.

9 FAM 41.31 N11.1 Incidental Expenses or Remuneration

(CT:VISA-701; 02-15-2005)

A nonimmigrant in B-1 status may not receive a salary from a U.S. source for services rendered in connection with his or her activities in the United States. A U.S. source, however, may provide the alien with an expense allowance or reimbursement for expenses incidental to the temporary stay. Incidental expenses may not exceed the actual reasonable expenses the alien will incur in traveling to and from the event, together with living expenses the alien reasonably can be expected to incur for meals, lodging, laundry, and other basic services.

9 FAM 41.31 N11.2 Honorarium Payment

(CT:VISA-1034; 09-24-2008)

INA 212(q) provides that a B-1 nonimmigrant may accept an honorarium payment and associated incidental expenses for usual academic activities (which can include lecturing, guest teaching, or performing in an academic sponsored festival) if:

(1) The activities last no longer than nine days at any single institution or organization;

(2) Payment is offered by an institution or organization described in INA 212(q);

(3) The honorarium is for services conducted for the benefit of the

institution or entity; and

(4) The alien has not accepted such payment or expenses from more than five institutions or organizations over the last six months.

9 FAM 41.31 N11.3 Entertainers

(CT:VISA-1753; 10-21-2011)

a. Except for the following cases, B visa status is not appropriate for a member of the entertainment profession (professional entertainer) who seeks to enter the United States temporarily to perform services. Instead, performers should be accorded another appropriate visa classification, which in most cases will be P, regardless of the amount or source of compensation, whether the services will involve public appearance(s), or whether the performance is for charity or U.S. based ethnic society. (See 9 FAM 41.31 N13.7 on B-2 visas for amateur performances.)

b. The term "member of the entertainment profession" includes not only performing artists such as stage and movie actors, musicians, singers and dancers, but also other personnel such as technicians, electricians, make-up specialists, film crew members coming to the United States to produce films, etc.

9 FAM 41.31 N11.4 Participants in Cultural Programs

(CT:VISA-701; 02-15-2005)

A professional entertainer may be classified B-1 if the entertainer:

(1) Is coming to the United States to participate only in a cultural program sponsored by the sending country;

(2) Will be performing before a nonpaying audience; and

(3) All expenses, including per diem, will be paid by the member's government.

9 FAM 41.31 N11.5 Participants in International Competitions

(CT:VISA-701; 02-15-2005)

A professional entertainer may be classified B-1 if the entertainer is coming to the United States to participate in a competition for which there is no remuneration other than a prize (monetary or otherwise) and expenses.

9 FAM 41.31 N11.6 Still Photographers

(CT:VISA-701; 02-15-2005)

The Department of Homeland Security (DHS) permits still photographers to enter the United States with B-1 visas for the purpose of taking photographs, provided that they receive no income from a U.S. source.

9 FAM 41.31 N11.7 Musicians

(CT:VISA-701; 02-15-2005)

An alien musician may be issued a B-1 visa, provided:

(1) The musician is coming to the United States in order to utilize recording facilities for recording purposes only;

(2) The recording will be distributed and sold only outside the United States; and

(3) No public performances will be given.

9 FAM 41.31 N11.8 Medical Doctor

(CT:VISA-701; 02-15-2005)

A medical doctor otherwise classifiable H-1 as a member of a profession whose purpose for coming to the United States is to observe U.S. medical practices and consult with colleagues on latest techniques, provided no remuneration is received from a U.S. source and no patient care is involved. Failure to pass the Foreign Medical Graduate Examination (FMGE) is irrelevant in such a case.

9 FAM 41.31 N11.9 H-3 Trainees

(CT:VISA-1034; 09-24-2008)

a. Aliens already employed abroad, who are coming to undertake training and who are classifiable as H-3 trainees. Department of Homeland Security (DHS) regulations state that in order for an alien to be classifiable as H-3, the petitioner must demonstrate that:

(1) The proposed training is not available in the alien’s own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside

the United States.

b. They will continue to receive a salary from the foreign employer and will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses (including room and board) incidental to the temporary stay. In addition, the fact that the training may last one year or more is not in itself controlling and it should not result in denial of a visa, provided you are satisfied that the intended stay in the United States is temporary, and that, in fact, there is a definite time limitation to such training.

9 FAM 41.31 N11.10 Artists

(CT:VISA-701; 02-15-2005)

An artist coming to the United States to paint, sculpt, etc. who is not under contract with a U.S. employer and who does not intend to regularly sell such art-work in the United States.

9 FAM 41.31 N12 ADVISORY OPINION (AO) REQUIRED IF APPLICANT NOT CLEARLY IDENTIFIABLE B-1

(CT:VISA-1365; 10-29-2009)

a. An advisory opinion (AO) must be requested prior to the issuance of a B-1 visa in any case involving temporary employment in the United States, other than as clearly set forth in 9 FAM 41.31 N9, 9 FAM 41.31 N10, or 9 FAM 41.31 N11. The Department recognizes that there are cases which might possibly be classifiable B-1, but which do not fit precisely within one of the classes described above. An AO is required in these cases to ensure uniformity and to avoid the issuance of a B-1 to an alien classifiable H-2 and thus subject to the safeguards of the petition and labor certification requirements.

b. The request may be made through the AO feature in the nonimmigrant visas (NIV) process and must provide full details as to:

(1) Occupation of the applicant;

(2) Type of work to be performed;

(3) Place and duration of the contemplated employment;

(4) Source and amount of salary to be paid;

(5) Identity of United States and/or foreign employer;

(6) Your reasons for believing B-1 classification appropriate; and

(7) Any other relevant information.

9 FAM 41.31 N13 ALIENS COMING TO UNITED STATES AS VISITORS FOR PLEASURE

(CT:VISA-701; 02-15-2005)

Aliens who wish to enter the United States temporarily for pleasure, and who are otherwise eligible to receive visas, may be classifiable as nonimmigrant B-2 visitors provided they meet the criteria listed below.

9 FAM 41.31 N13.1 Tourism or Family Visits

(CT:VISA-701; 02-15-2005)

Aliens traveling to the United States for purposes of tourism or to make social visits to relative or friends.

9 FAM 41.31 N13.2 Medical Reasons

(CT:VISA-1365; 10-29-2009)

Aliens coming to the United States for health purposes.

9 FAM 41.31 N13.3 Participation in Social Events

(CT:VISA-701; 02-15-2005)

Aliens participating in conventions, conferences, or convocation of fraternal, social, or service organizations.

9 FAM 41.31 N13.4 Armed Forces Dependents

(CT:VISA-701; 02-15-2005)

Dependents of an alien member of any branch of the U.S. Armed Forces temporarily assigned for duty in the United States.

9 FAM 41.31 N13.5 Dependents of Crewmen

(CT:VISA-701; 02-15-2005)

Alien dependents of category "D" visa crewmen who are coming to the United States solely for the purpose of accompanying the principal alien.

9 FAM 41.31 N13.6 Short Course of Study

(CT:VISA-701; 02-15-2005)

The following annotation is to be placed in the 88-character field of the visa for aliens coming to the United States primarily for tourism, who also incidentally will engage in a short course of study during their visit: **STUDY INCIDENTAL TO VISIT—Form I-20 NOT REQUIRED.**

9 FAM 41.31 N13.7 Amateur Entertainers and Athletes

(CT:VISA-701; 02-15-2005)

A person who is an amateur in an entertainment or athletic activity is, by definition, not a member of any of the profession associated with that activity. An amateur is someone who normally performs without remuneration (other than an allotment for expenses). A performer who is normally compensated for performing cannot qualify for a B-2 visa based on this note even if the performer does not make a living at performing, or agrees to perform in the United States without compensation. Thus, an amateur (or group of amateurs) who will not be paid for performances and will perform in a social and/or charitable context or as a competitor in a talent show, contest, or athletic event is eligible for B-2 classification, even if the incidental expenses associated with the visit are reimbursed.

9 FAM 41.31 N14 VISITORS UNDER SPECIAL CIRCUMSTANCES

(CT:VISA-1777; 11-29-2011)

The following classes of aliens may be classified B-2 visitors under the following special circumstances.

9 FAM 41.31 N14.1 Alien Fiancé(e)s

9 FAM 41.31 N14.1-1 Fiancé(e) of U.S. Citizens or Permanent Resident Aliens

(CT:VISA-798; 03-23-2006)

An alien proceeding to the United States to marry a U.S. citizen is classifiable K-1 as a nonimmigrant under INA 101(a)(15)(K). (See 22 CFR 41.81.) The fiancé(e) of a U.S. citizen or lawful permanent resident (LPR) may, however, be classified as a B-2 visitor if you are satisfied that the fiancé(e) intends to return to a residence abroad soon after the marriage. A B-2 visa may also be issued to an alien coming to the United States:

(1) Simply to meet the family of his or her fiancé;

(2) To become engaged;

(3) To make arrangements for the wedding; or

(4) To renew a relationship with the prospective spouse.

9 FAM 41.31 N14.1-2 Fiancé(e) of Nonimmigrant Alien in United States

(CT:VISA-1801; 02-09-2012)

Fiancé(e)s who establish a residence abroad to which they intend to return, and who are otherwise qualified to receive visas, are eligible for B-2 visas if the purpose of the visit is to marry a nonimmigrant alien in the United States in a valid nonimmigrant F, H, J, L M, O, P, or Q status. You should advise the fiancé(e) to apply soon after the marriage to the nearest office of Department of Homeland Security (DHS) to request a change in nonimmigrant status to that of the alien spouse. *B status is not appropriate if the fiancé(e) intends to remain in the United States after admission and adjust status to immigrant status, or intends to abandon the residence abroad after marrying and change to a non-immigrant status that does not require such a residence (adjust status means to apply for immigrant status while changing status means to apply for a different non-immigrant status).*

9 FAM 41.31 N14.2 Proxy Marriage

(CT:VISA-701; 02-15-2005)

A spouse married by proxy to an alien in the United States in a nonimmigrant status may be issued a visitor visa in order to join the spouse already in the United States. Upon arrival in the United States, the joining spouse must apply to the DHS for permission to change to the appropriate derivative nonimmigrant status after consummation of the marriage.

9 FAM 41.31 N14.3 Spouse or Child of U.S. Citizen or Resident Alien

(CT:VISA-701; 02-15-2005)

An alien spouse or child, including an adopted alien child, of a U.S. citizen or resident alien may be classified as a nonimmigrant B-2 visitor if the purpose of the travel is to accompany or follow to join the spouse or parent for a temporary visit.

9 FAM 41.31 N14.4 Cohabitating Partners, Extended Family Members, and Other Household

Members not Eligible for Derivative Status

(CT:VISA-1801; 02-09-2012)

The B-2 classification is appropriate for aliens who are members of the household of another alien in long-term nonimmigrant status, but who are not eligible for derivative status under that alien's visa classification. This is also an appropriate classification for aliens who are members of the household of a U.S. citizen who normally lives and works overseas, but is returning to the United States for a temporary time period. Such aliens include, but are not limited to the following: cohabitating partners or elderly parents of temporary workers, students, diplomats posted to the United States, accompanying parent(s) of minor F-1 child-student. B-2 classification may also be accorded to a spouse or child who qualifies for derivative status (other than derivative A or G status) but for whom it may be inconvenient or impossible to apply for the proper H-4, L-2, F-2, or other derivative visa*, provided that the derivative individual intends to maintain a residence outside the United States and otherwise meets the B visa eligibility requirements.* If such individuals plan to stay in the United States for more than six months, they should be advised to ask the Department of Homeland Security (DHS) for a one-year stay at the time they apply for admission. If needed, they may thereafter apply for extensions of stay, in increments of up to six months, for the duration of the principal alien's nonimmigrant status in the United States.

9 FAM 41.31 N14.5 Aliens Seeking Naturalization under INA 329

(CT:VISA-828; 07-24-2006)

An alien who is entitled to the benefits of INA 329, and who seeks to enter the United States to take advantage of such benefits, may be classified B-2 without having to meet the foreign residence abroad requirement of INA 101(a)(15)(B).

9 FAM 41.31 N14.6 Issuance of B-2 Visa for Expeditious Naturalization of a Child under INA 322

(CT:VISA-940; 03-24-2008)

a. Naturalization is a permissible activity in B-2 status. You may issue a B-2 visa to an eligible foreign-born child to facilitate that child's expeditious naturalization pursuant to INA 322. The child's intended naturalization, however, does not exempt the child from the requirements of INA 214(b); the child must intend to return to a residence abroad after naturalization. A child whose parents are residing abroad will generally

overcome the presumption of intended immigration, whereas a child whose parents habitually reside in the United States will not.

b. If the applicant for an nonimmigrant visa (NIV) to facilitate naturalization under INA 322 is the adopted foreign-born child of a U.S. citizen who resides abroad and does not intend to reside permanently in the United States, you may issue a B-2 visa if the applicant:

(1) Presents a DHS-issued Form G-56, General Call-In letter;

(2) Establishes eligibility under INA 101(a)(15)(B); and

(3) Either:

(a) If not an orphan, satisfies the two-year residency and custody requirement of INA 101(b)(1)(E); or

(b) If an orphan, is the beneficiary of an approved Form I-600, Petition to Classify Orphan as an Immediate Relative, and establishes that the Form I-604, Determination on Child for Adoption, has been conducted showing that the applicant meets the criteria of INA 101(b)(1)(F).

9 FAM 41.31 N14.6-1 Criteria to Be Met

(CT:VISA-1753; 10-21-2011)

a. The applicant must:

(1) Overcome INA 214(b);

(2) If not the natural child of the parents, prove that the U.S. citizen parents have legally and fully adopted him or her;

(3) Present a Form G-56, General Call-In Letter, from Department of Homeland Security (DHS), signifying the child has an appointment for a naturalization interview; and

(4) Show that he or she is the beneficiary of either an approved Form N-600-K, Application for Certificate of Citizenship and Issuance of Certificate Under Section 322, or Form N-643, Application for Certificate of Citizenship in Behalf of an Adopted Child, which confirms that the child qualifies for naturalization under INA 322.

b. The parents must meet the transmission requirements.

9 FAM 41.31 N14.6-2 Form I-864, Affidavit of Support Under Section 213A of the Act, not Required

(CT:VISA-940; 03-24-2008)

Because the child is applying for a nonimmigrant visa (NIV), no Form I-864, Affidavit of Support Under Section 213A of the Act, is required.

9 FAM 41.31 N14.6-3 Immigrant Visa (IV) Required if Stay Is Not Temporary

(CT:VISA-1150; 02-10-2009)

The child would not qualify for a B-2 visa if the family were relocating to the United States. If this were the case, then the child would be required to have an immigrant visa (IV). You should not issue a nonimmigrant visa in lieu of the IR3/4. The issuance of an NIV to an orphan to effect a child's immigration violates the law, places the child in an untenable immigration predicament, and circumvents the scrutiny intended to protect the orphan and the adoptive parents. The issuance of an NIV also does not accomplish the intended goal, since the orphan cannot adjust status under DHS regulations.

9 FAM 41.31 N14.6-4 Children Paroled into United States

(CT:VISA-701; 02-15-2005)

Children paroled into the United States have not been lawfully admitted to the United States for the purpose of the certificate of citizenship under INA 322.

9 FAM 41.31 N14.7 Dependents of Alien Members of U.S. Armed Forces Eligible for Naturalization under INA 328

(CT:VISA-1777; 11-29-2011)

a. An alien who is a dependent of an alien member of the U.S. Armed Forces who qualifies for naturalization under INA 328 and whose primary intent is to accompany the spouse or parent on the service member’s assignment to the United States may be issued a B visa. The further possibility of adjustment of status need not necessitate a “denial of visa” under INA 214(b). A dependent of an alien service member who is refused a visa under INA 214(b) as an intending immigrant must be referred to the Department of Homeland Security (DHS) office having jurisdiction over the dependent’s place of residence for parole consideration under INA 212(d)(5).

b. Since the purpose of parole in these cases is to serve humanitarian interests, it is not appropriate for an alien dependent to seek parole from DHS to enter the United States while the service member served a tour of duty outside the United States.

9 FAM 41.31 N14.8 Aliens Destined to Avocational

or Recreational School

(CT:VISA-752; 06-28-2005)

An alien enrolling in such a school may be classified B-2 if the purpose of attendance is recreational or avocational. When the nature of a school's program is difficult to determine, you should request from DHS the proper classification of the program and whether approval of Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status – for Academic and Language Students, will be more appropriate.

9 FAM 41.31 N15 LAWFUL PERMANENT RESIDENT (LPR) ISSUED NONIMMIGRANT VISITOR VISA FOR EMERGENCY TEMPORARY VISIT TO UNITED STATES

(CT:VISA-1777; 11-29-2011)

A lawful permanent resident (LPR) may, in some cases, need to get a visa more quickly than obtaining a returning resident visa would permit. For example: a permanent resident alien employed by a U.S. corporation is temporarily assigned abroad but has necessarily remained more than one year and may not use Form I-551, Permanent Resident Card, in order to travel to the United States for an urgent conference and then return abroad. The alien has never relinquished permanent residence, has continued to pay U.S. income taxes, and perhaps even maintains a home in the United States. The alien may be issued a nonimmigrant visa for this purpose and Form I-551 need not be surrendered. The relinquishment of either of these forms must not be required as a condition precedent to the issuance of either an immigrant or nonimmigrant visa (NIV) unless the Department of Homeland Security (DHS) has requested such action.

9 FAM 41.31 N16 B-2 FOR ADOPTIVE CHILD COMING TO UNITED STATES FOR ACQUISITION OF CITIZENSHIP

(CT:VISA-701; 02-15-2005)

You may issue a B-2 visa to a child seeking to enter the United States for the acquisition of U.S. citizenship under the Child Citizenship Act of 2000 (Public Law 106-395) provided the child demonstrates an intent to return abroad after a temporary stay in the United States.

9 FAM 41.31 N17 AUTHORITY TO CLASSIFY CERTAIN VISAS "B-1/B-2" AND AMOUNT OF FEES TO BE COLLECTED

(CT:VISA-1034; 09-24-2008)

a. You may properly issue B-1/B-2 visitor visas to aliens with immigrant visa (IV) applications pending with the United States Citizenship and Immigration Services (USCIS). You must be satisfied that the alien's intent in seeking entry into the United States is to engage in activities consistent with B-1/B-2 classification for a temporary period and that the alien has a residence abroad which he or she does not intend to abandon. While immigrant visa registration is reflective of an intent to immigrate, it may not be proper for you to refuse issuance of a visa under INA 214(b) solely on the basis of such registration, unless you have reason to believe the applicant's true intent is to remain in the United States until such a time as an immigrant visa (IV) becomes available.

b. Also eligible for B-1/B-2 visas are qualified applicants whose principal purpose for visiting the United States at various times falls within the B-1 or B-2 category.

c. When the fee prescribed in the appropriate reciprocity schedule is not the same for each classification, the higher of the two fees must be collected.

9 FAM 41.31 N18 NONIMMIGRANTS OBTAINING SOCIAL SECURITY CARDS

(CT:VISA-1801; 02-09-2012)

a. The Department of State, the Department of Homeland Security (DHS), and the Social Security Administration (SSA) have agreed that certain nonimmigrant aliens who are coming to the United States for the purpose of pursuing certain employment activities incidental to the aliens' professional business commitments, and who will receive remuneration or salary from sources in the United States, may apply for a social security card. Although for immigration purposes these activities might not constitute "employment in the United States," even with a U.S. source of income, the activities might be considered "employment" for other purposes or by other agencies, such as the Internal Revenue *Service* (IRS). In order to qualify for a social security card, the employee must have the B-1 visa annotated to identify the employer for whom the employee will be working in the United States and the applicable 9 FAM reference. This annotation will enable the social security officer to quickly identify these aliens as being eligible for issuance of a working social

security card which in turn will enable the employer and employee to comply with legal requirements such as participation in the social security fund, IRS tax payments, workmen compensation and any other work related requirements. (See 9 FAM 41.113 PN8 for the appropriate visa annotation.)

b. Personal or domestic servants of U.S citizen employers or nonimmigrant employers who are classifiable B-1, E, F, H, I, J, L, M, O, P, or Q provided they meet the criteria under 9 FAM 41.31 N6.

c. Airline employees who, because of their visa classification and the nature of their work, are authorized to be employed and receive compensation in the United States. (See 9 FAM 41.31 N10.2.)

d. Visiting Ministers in B-1 visa category who are engaged in an evangelical tour and are supported by offerings contributed at each evangelical meeting. (See 9 FAM 41.31 N9.1.)

9 FAM 41.31 N19 NOTATIONS ON NONIMMIGRANT VISAS (NIV)

(CT:VISA-1777; 11-29-2011)

Notations on nonimmigrant visas (NIV) regarding the purpose and duration of stay are encouraged when the visas are limited and when the use of such notations would be helpful to the Department of Homeland Security (DHS) inspectors or other consular officers when processing future visa applications. Positive notations such as **VISIT UNCLE SAN FRANCISCO, THREE WEEKS** are helpful and are authorized. However, endorsements of a negative type such as **NO ADJUSTMENT OF STATUS OR EXTENSION OF STAY RECOMMENDED** or any other notation which tends to tell DHS what to do or which questions the alien's veracity are not allowed.

9 FAM 41.31 N20 MAINTENANCE OF STATUS AND DEPARTURE BONDS

(CT:VISA-701; 02-15-2005)

See 9 FAM 41.11 PN1.7.

9 FAM 41.31 N21 BORDER CROSSING IDENTIFICATION CARDS

(CT:VISA-701; 02-15-2005)

For instructions concerning processing of applications for border crossing identification cards by posts in Mexico, (see 9 FAM 41.32).

9 FAM 41.31 N22 ISSUANCE OF TWO-ENTRY VISA IN LIEU OF RECIPROCAL SINGLE-ENTRY VISA

(CT:VISA-1150; 02-10-2009)

See 9 FAM 41.112 N4.