

9 FAM 41.31 NOTES

(CT:VISA-828; 07-24-2006)
(Office of Origin: CA/VO/L/R)

9 FAM 41.31 N1 TEMPORARY VISITORS

9 FAM 41.31 N1.1 Factors in Determining Entitlement to Temporary Visitor Classification

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

- a. In determining whether visa applicants are entitled to temporary visitor classification, you (the consular officer) must assess whether the applicants:
 - (1) Have a residence in a foreign country, which they do not intend to abandon;
 - (2) Intend to enter the United States for a period of specifically limited duration; and
 - (3) Seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure.
- b. 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 of how to apply Section 214(b)).

9 FAM 41.31 N2 RESIDENCE ABROAD

9 FAM 41.31 N2.1 "Residence" Defined

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

The term "residence" is defined in INA 101(a)(33) as the place of general abode or the principal, actual dwelling place in fact. 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.

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 N9.4 Professional Athletes

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

- 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 shall 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-701; 02-15-2005)

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 cruising 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-701; 02-15-2005)

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

abroad; and

- (3) An alien classifiable H-2 shall 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-701; 02-15-2005)

INA 212(p) 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(p);
- (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-701; 02-15-2005)

- 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 shall 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-701; 02-15-2005)

- 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 REQUIRED IF APPLICANT NOT CLEARLY IDENTIFIABLE B-1

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

- 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-828; 07-24-2006)

Aliens coming to the United States for health purposes. (See 9 FAM 40.11 N11.1 and *9 FAM 40.41 N9.1.*)

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 ALIENS CLASSIFIABLE B-2 VISITORS UNDER SPECIAL CIRCUMSTANCES

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

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.