

## Employment-Based Immigration

The Employment-Based Immigration System allows immigrants who have skills and talents needed in the United States to be admitted to work. Currently, immigration law allots 140,000 employment-based immigrant visas annually.

### How Does the System Work?

In most cases, a worker must have an employer petition the Immigration and Naturalization Service on his or her behalf. Some workers—priority workers, investors, and certain special immigrants—may petition on their own behalf. Employment-based visas are divided into the following categories:

**1ST PREFERENCE:** About 40,000 visas a year (28.6% of the employment preference total) may be issued to *priority workers*—people who have "extraordinary ability," are "outstanding professors and researchers," or are "certain multinational executives and managers." Any unused visas from the fourth and fifth preferences are added to this category.

**2ND PREFERENCE:** About 40,000 visas a year (28.6% of the total, plus any visas left over from the first preference) may be issued to persons who are "members of the professions holding advanced degrees or aliens of exceptional ability."

**3RD PREFERENCE:** About 40,000 visas a year (28.6% of the employment total, plus any visas left over from the first and second preferences) may be issued to *skilled workers, professionals, and other workers*. The "other workers" category covers workers who are "capable of performing unskilled labor," and who are not temporary or seasonal. Workers in this category are limited to 5,000 visas per year. *Skilled workers* must be capable of performing skilled labor requiring at least two years training or experience.

**4TH PREFERENCE:** About 10,000 visas a year (7.1% of the employment preference total) may be issued to certain special immigrants, including ministers, religious workers, and others.

**5TH PREFERENCE:** About 10,000 visas a year (7.1% of the total) may be issued to persons who will invest between \$500,000 and \$3 million in a job-creating enterprise. At least ten U.S. workers must be employed by each investor. The amount of money varies depending on which area of the country will benefit from the investment.

## How are U.S. Workers Protected?

Before visas can be issued in the Second and Third Preference categories, the employer must obtain a "labor certification" from the U.S. Department of Labor confirming that there are not sufficient U.S. workers who are able, qualified, and willing to perform the work. The Labor Department must also confirm that employment of the alien will not adversely affect the wages and working conditions of U.S. workers. When applying for a labor certification, the employer must provide notice to the union representing the employer's employees or to other workers at the site. Any member of the public may challenge an application for a labor certification by showing that sufficient U.S. workers are available to perform the work, or by demonstrating that the employer is offering wages or working conditions that adversely affect U.S. workers.

## What are Temporary Workers?

In addition to visas given to those coming to the U.S. to live permanently, visas are also given to individuals coming to the U.S. to fill the *temporary* needs of U.S. employers.

One category of non-immigrant worker visa is the "H-1B" visa given to highly-skilled individuals for a renewable period of three years. Many of these workers are employed in computer-related fields. In Fiscal Year 2001, up to 195,000 of these temporary visas will be issued. Companies applying for temporary workers must pay a fee of \$1000 per worker, most of which is used for education and training programs for U.S. workers so that they might eventually fill the labor gaps.

Another category of visa issued to temporary non-immigrant workers is the H-2 visa. H-2A visas are issued to temporary or seasonal agricultural workers. H-2B visas are issued to temporary workers in industries other than agriculture. (A ski resort, for example, might seek H-2B workers during ski season, if American workers are not sufficiently available.) There is an annual limit of 66,000 visas that may be issued to H-2B workers. Employers wishing to bring in workers under the H-2 visa category must demonstrate that the workers' duties are temporary or seasonal, and that their employment will not displace American workers or adversely affect their wages.

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**Provided courtesy of the National Immigration Forum, Website 2001**

### SOURCES:

*Immigration and Nationality Act.*

U.S. Department of State, *Tips for U.S. Visas: Immigrants* (<http://travel.state.gov/visa/immigrants.html>).

American Immigration Lawyers Association, *1999-00 Immigration & Nationality Law Handbook—Volume I, Immigration Basics*, (Washington, DC: American Immigration Lawyers Association, 1999).