

Immigration Maze Of Bringing In A Foreign Talent

COMMON VISA ISSUES

After two decades of representing clients in various cross border transactions, I have found that most U.S. corporate law practitioners lack appreciation of what the foreign client has to face in coming to the U.S. (the “U.S.”) and potential reoccurring Immigration Law violations right under their supervision. This is a general outline of basic U.S. immigration laws regarding: (a) misuse of visitor’s visa; (b) visa interview and port of entry issues; (c) visa quotas and alternatives; and (d) who can pay for what in employing a foreign employee. To discuss them properly, we need to visit the basics of each step of bringing in a foreign person through the current U.S. immigration process from applying for a nonimmigrant visa, visa interview process, inspection and admission into the U.S., wage and benefit issues, and maintaining the employment records.

1. Misuse of Visitor’s Visa. We start with a question of what is a visa. There is no legal text book definition. However, a visa is an official acknowledgement of a foreigner’s travel plans to the U.S. for a specific purpose and his or her identification by the U.S. Department of State, through its consulate office in the foreign person’s place of residency or in his or her physically present location. It is typically evidenced by an official notation on the foreigner’s passport or by a separate form DS-232.¹

There are two types of visas: immigrant and nonimmigrant. We will be focusing our discussion on nonimmigrant visa issues. Nonimmigrant visas are divided into eighteen categories, and only a few categories of nonimmigrant visas allow their holders to work in the U.S.²

An applicant for a nonimmigrant visa shall be presumed to be an immigrant until the consulate officer is satisfied that the applicant is entitled to nonimmigrant status. The burden of proof is upon the applicant to establish the entitlement for nonimmigrant status and the type of nonimmigrant status for which application is made.³

¹ 22 CFR 41.113 (b)(c)

² 8 USC 1184

³ 22 CFR 41.11(a)(b)

An alien is a term of art in U.S. immigration law jargons describing a foreign person, and we will follow the convention here in our outline. An alien is classifiable as a nonimmigrant visitor if: (1) the alien qualifies under the provision of INA 101(a)(15)(b); (2) the alien intends to leave the US at the end of the temporary stay; (3) the alien has permission to enter a foreign country at the end of the temporary stay; and (4) an adequate financial arrangement has been made to enable the alien to carry out the purpose of the visit to and depart from the U.S. There are two types of nonimmigrant visitor's visas based upon the purpose of the visit. If the purpose of the visit is for business, it will be a (B)(1) visa, and if it is for pleasure, the visa will be issued under (B)(2).⁴

The term business, as used in INA 101(a)(115)(B), refers to conventions, conferences, consultations and other legitimate activities of a commercial or professional nature. It does not include a local employment or labor for hire. For the purpose of this section, building or construction work, whether onsite or in a plant, shall not deem to constitute purely a local employment or labor for hire; provided that the supervision or training of others engaged in building or construction work shall not be deemed to construe purely a local employment or labor for hire if the alien is otherwise qualified under B-1 nonimmigrant.^{5 & 6}

Generally speaking, any form of observation to conduct of business or other profession that does not involve hands on business activities, or activities that are merely incidental, can be valid for business visitors under B-1.⁷

What constitutes a local employment or a labor for hire depends on the facts for each case. However, if the business visitors receive compensation as wages or salaries from a U.S. employer for his/her services, the fact has weighed heavily as local employment or labor for hire. There are some specific exceptions to these general rules. They are: (1) Ministers on evangelical tour or on pulpit exchange; (2) attendance of a board meeting by the Board of Directors of a U.S.' company; (3) corporate personnel to set up U.S. subsidiaries; (4) commercial truck drivers engaged in international hauling; and (5) certain airline employees who would otherwise be eligible for an E visa (except no treaty currently exists with the U.S.).

Once a business visitor stays beyond the original term of the permitted number of days in the U.S., the business visitor is subject to deportation. The business visitor also violates his/her purpose of visit to the U.S. if he or she enrolls in a course of study without approval from U.S. Custom and Immigration Service ("USCIS"). The business visitor may also get into trouble by changing his or her purpose of visit within 30 days of his or her entry into the U.S. under the legal presumption test that the Department of State has adopted.⁸ USCIS may consider that the business visitor becomes intent on seeking a change of status involved in abandonment of nonimmigrant intent, and the business visitor is subject to the legal presumption that he or she is an intending immigrant.

⁴ 22 CFR 41.31(a) and (b)

⁵ 22 CFR 41.31(a) and (b)

⁶ 8 CFR 21.214.2(b)(5)

⁷ (B) & (K), 6 I & N, Dec. 827, BIA 1955

⁸ Fuentes-Blanco, Int. Dec. No. 1938 (Dec. 27, 1968)

Therefore, in an event that the business visitor is interested in extending his or her stay in the U.S. or change his or her business visit purpose to the U.S., one must file a change of status request and receive an approval prior to commencing any new activities in the U.S.

2. Visa Interview and Port of Entry Problems. Typically, a nonimmigrant visa is issued by the Secretary of State through its consulate office, and its supervisors or designated alternative ensures compliance with all applicable laws and procedures. An alien seeking a nonimmigrant visa would visit a U.S. consulate in his or her home country unless the alien is physically present in a third country where a U.S. consulate office is located.⁹

In a U.S. consulate, an alien will find a local directive on how to apply for a nonimmigrant visa. Typically, it will include completing a DS-156, Nonimmigrant Visa Application, and all supporting documents. The alien applicant will pay an appropriate nonimmigrant visa application fee and will be subject to a visa interview.¹⁰ These procedures are governed by the Foreign Services Manual created to administer the State Department's consulate activities in foreign countries. These administrative guidelines in the Foreign Services Manual are also interpreted and practiced to meet the local socio-economic conditions currently existing in each country. A careful review of the local directive is necessary.

In a typical situation, an alien applicant will complete and execute the DS-156, Nonimmigrant Visa Application, unless it is waived by the consulate officer, or by the visa waiver program instituted to expedite and encourage exchange by and between the host country and the U.S. These nations are known as visa waiver countries, and their citizens are exempt from the requirements of obtaining a visa prior to presenting themselves for an entry to the U.S. in B-1 or B-2 status. Entry is limited to 90 days and status cannot be extended or changed.

VISA WAIVER COUNTRIES

| | | | |
|-----------|---------------|-------------|-------------|
| Andorra | France | Luxembourg | Singapore |
| Australia | Germany | Monaco | Slovenia |
| Austria | Iceland | Netherlands | Spain |
| Belgium | Ireland | New Zealand | Sweden |
| Brunei | Italy | Norway | Switzerland |
| Denmark | Japan | Portugal | UK |
| Finland | Liechtenstein | San Marino | |

Along with the completed DS-156, the consulate officer may require additional documents to support his or her request to enter the U.S. Based upon the specific purpose of the alien applicant, he or she is required to provide a valid passport showing his or her identity, evidence of permission to enter into his or her home country, two photographs of the alien applicant, a police certificate from the appropriate authority, a fingerprint on form AL-4 (alien registration fingerprint chart), and any documents and other evidence to

⁹ 22 CFR 41.113(i)

¹⁰ 22 CFR 41.103, 104, 105, 107 & Section 102

be presented and submitted by the alien that will assist the purpose of the alien's application.¹¹

The fees for the issuance of visas to nonimmigrant aliens shall be collected in the amount described by the Secretary of State unless, on the basis of reciprocity by and between the host country and the U.S., no fee is chargeable. Fee schedules are typically listed on the U.S. consulate website homepage in each foreign country where a US embassy is located. We have attached a fee schedule from the U.S. Consulate in Japan in this outline. The consulate office shall waive a nonimmigrant visa application and issuance fee for an alien who will be engaged in charitable activity for a charitable organization upon the written request of the charitable organization claiming that it will find the fees a financial burden. If the consulate officer is satisfied that the organization seeking relief from the fee is tax exempt as a charitable organization under the provision of 501(c)(3) of the Internal Revenue Code, or if a foreign organization based outside the U.S. is in a country having laws recognizing the charitable institution by that government; and, if a foreign organization based in a country without such law shows that it is engaged in activities substantially similar to those underlying IRS Section 501(c)(3), then those fees shall also be waived.

In addition, consulate offices shall collect a surcharge fee for the processing of an application for machine-readable nonimmigrant visa and machine-readable combined border crossing card. Although there is a general guideline of fees, each consulate sets its own ultimate processing fees for the nonimmigrant visa applications to meet the host country's socio-economic situation.¹²

Once an application and its supporting documents, along with the appropriate fees, are properly paid and filed, an alien applicant may be required to wait until the consulate office can verify all the supporting documents including the police reports, and FBI national fingerprint clearance, which may take up to several weeks. Most consulate posts in each location set their own diligence parameter and each consulate will typically inform the nonimmigrant visa applicants regarding approximate delay of time necessary to perform their due diligence before issuance of a nonimmigrant visa. Once the due diligence is completed, the applicant is scheduled for a visa interview.

A consulate officer then conducts the nonimmigrant visa interview, unless the interview is waived by the consulate office. Typically, if the alien applicant is a child under 14 years of age or a person over 79 years of age, or holds a special diplomatic or official passport, they may be subject to the discretion of the consulate for an interview waiver. At a visa interview, a consulate officer will review the alien's eligibility to receive the type of visa he or she is seeking. The consulate officer may require original documents from the alien applicant or ask relevant questions as to whether the alien applicant has prior immigration law violations, and will determine whether a nonimmigrant visa is available to be issued.¹³

¹¹ 22 CFR 41.105, 22 CFR 41.104

¹² 22 CFR 41.107

¹³ 22 CFR 41.102, 41.112 and 41.113

Once a consulate officer has made a decision on a nonimmigrant visa, it must be reviewed without delay on the day of issuance or as soon as possible. If the reviewing officer disagrees with the decision of the original consulate officer, the consulate supervisor may assume responsibility and re-adjudicate the case.¹⁴ The grounds of ineligibility may be overcome by the presentation of additional evidence. If the alien applicant has indicated the intent to submit such evidence, a review of refusal must be deferred for not more than 120 days.¹⁵

Further, the Department of State may request a consulate officer in a specific case to submit a report if a visa has been refused. The Department will review each report and may furnish an advisory opinion to the consulate officer for assistance in considering the case further.¹⁶ A local consulate opinion, once reviewed by the Department of State, becomes final; and, no other independent third party judiciary review exists.

All arriving aliens are subject to inspection by the Secretary of Homeland Security who has administrative authority and power to enforce the immigration laws. At the Secretary's discretion, the Secretary may delegate any such authority or functions to any officer or employee of the Department of Homeland Security. Each alien seeking admission at a U.S. port of entry must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal under the immigration laws, executive orders or Presidential proclamations, and is entitled, under all of the applicable provisions of the immigration laws, to enter the U.S.¹⁷

Entry into the U.S. shall be made in person to an immigration officer at a U.S. port of entry.¹⁸

Upon arriving at the port of entry in person, the alien will be interviewed and his/her entry documents will be reviewed by the immigration officer. The purpose of the interview is to assure that the arriving alien has the proper immigrant visa to conduct his/her affairs in the U.S. The immigration officer will also review all supporting documents to determine the fitness of the entering alien to conduct his/her visit in the U.S. Upon a brief interview, the inspection officer will issue an I-94 Form, Arrival and Departure Record, which evidences the proper inspection and admission into the U.S. In the Arrival and Departure Record (I-94), the inspecting officer will note the types of visit he or she will have in the U.S. and the duration of the authorized period for the travel to be complete. It is a *prima facie* evidence that the alien has been properly inspected and admitted to the U.S.¹⁹

The entry interview becomes an issue if the alien, who is a nonimmigrant visa holder, wishes to alter his or her purpose of the trip during his or her visit to the U.S. In such instance, the immigration law requires that the alien must be properly inspected and

¹⁴ 22 CFR 41.113(i)

¹⁵ 22 CFR 41.121(c)

¹⁶ 22 CFR 41.121(c) & (d)

¹⁷ 8 CFR 235.1(f)

¹⁸ 8 CFR 235.1(a)

¹⁹ 8 CFR 235.1

admitted and continually obeying the U.S. immigration laws while he or she is in the U.S. before any change of his or her immigration status can be effectuated to alter his or her travel plans. It is also worth noting that the Department of Homeland Security, who has the authority to enforce immigration laws within the U.S., does not have any influence on the initial visa issued by the Department of State.

If an immigration officer at the port of entry determines that an alien nonimmigrant visa holder is deemed inadmissible according to U.S. laws, the entering alien will be further interviewed and investigated and the process will be carefully documented. In every case in which the expedited removal provision will be applied, and before removing an alien from the U.S. pursuant to the Immigration and Nationality Act of 1952 (“INA”), the examining officer shall create a record of the facts of the case and statements made by the alien. The examining officer shall advise the alien of the charges against him or her on Form I-860, Notice and Order of Expedited Removal, and the alien shall be given an opportunity to respond to those charges in a sworn statement. After obtaining the supervisory concurrence in the interview record, the examining immigration officer shall serve the alien with a Form I-860, and the alien shall sign the reverse of the form acknowledging the receipt thereof.²⁰

The arriving alien is not entitled to a hearing before an immigration judge or to an appeal of the Order of Expedited Removal to the Board of Immigration. If the Expedited Removal order is in place, the arriving alien will take the next available flight back to the last place of embarkation prior to arriving at the U.S. Port of Entry.

3. Visa Quotas and Alternatives. The U.S. has a long history of immigration laws. The INA, with some major, and many minor, changes continues to be the basic immigration law of the country. The most significant amendment to the INA was in 1965 which abolished the natural origin provisions, and established a new quota system.

The goals in immigration policies are achieved by granting or denying visas. There are two types of visas: immigrant and nonimmigrant. Nonimmigrant visas are primarily issued to tourists and temporary business visitors. Nonimmigrant visas are divided into eighteen main categories, and the numbers of visas in most categories are not limited. Only a few categories of nonimmigrant visas allow their holders to work in the U.S. Immigrant visas permit their holders to stay in the U.S. permanently and ultimately to apply for citizenship. An alien who has an immigrant visa is permitted to work in the U.S. Congress limits the overall number of immigrant visas, which were 675,000 in 1995. Many immigrant visas are also subject to per-country caps.²¹

In the nonimmigrant visa category, the quotas exist in the temporary workers and trainees classification area according to 8 U.S.C. Section 1101(a)(15)(H)(i)(b), which states:

“(H) an alien (i) ... (b) subject to section 1182(j)(2) of this title, who is coming temporarily to the U.S. to perform services (other than services described in

²⁰ 8 CFR 235.3(2)(i)

²¹ 8 USC 1184(a)(A)

subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section [1184\(i\)\(1\)](#) of this title or as a fashion model, who meets the requirements for the occupation specified in section [1184\(i\)\(2\)](#) of this title or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section [1182\(n\)\(1\)](#) of this title; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the U.S. to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of title 26 and agriculture as defined in section 203(f) of title 29, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the U.S. to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the U.S. to perform services as members of the medical profession.”

8 USC 1184(g):

(g) Temporary workers and trainees; limitation on numbers

- (1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)
 - (A) under section [1101\(a\)\(15\)\(H\)\(i\)\(b\)](#) of this title may not exceed 65,000, or
 - (B) under section [1101\(a\)\(15\)\(H\)\(ii\)\(b\)](#) of this title may not exceed 66,000.
- (2) The numerical limitations of paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.
- (3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.
- (4) In the case of a nonimmigrant described in section [1101\(a\)\(15\)\(H\)\(i\)\(b\)](#) of this title, the period of authorized admission as such a nonimmigrant may not exceed 6 years.
- (5) The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section [1101 \(a\)\(15\)\(H\)\(i\)\(b\)](#) of this title who—
 - (A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section [1001 \(a\)](#) of title [20](#)), or a related or affiliated nonprofit entity;
 - (B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or
 - (C) has earned a master’s or higher degree from a U.S. institution of higher education (as defined in section [1001 \(a\)](#) of title [20](#)), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.

Table Summarizing Existing Quotas (2007)

| | |
|--|--------|
| Specialty Occupation (H-1B) | 65,000 |
| Intracompany Transfer (Executives) (L-1) | none |
| Investment (E-2) | none |
| Temporary/Seasonal Workers (H-2B) | 66,000 |
| Job Training (H-3) | none |
| Student Visas (F-1, M-1) | none |
| Religious Worker Visas (R-1) | none |

Since there are limited numbers of H visas allotted each year and the allocation of them is made on a first filed/first served basis, those U.S. employers who are seeking the foreign specialty occupation workers and temporary workers must plan ahead to meet their needs. Alternatively, it is recommended to seek other visas for those foreign workers. One must understand each type of visa requirement prior to making a necessary selection. We have listed the most common business related nonimmigrant visa categories in the chart below for your consideration.

Most Common Business Related Non-Immigrant Categories

1. B-1 Visitors for Business
2. E-1/E-2 Treaty Traders/Investors
3. F-1 foreign students, in particular the practical training provisions
4. H Temporary Workers
5. J-1 Exchange Visitor
6. L-1 Intra-company Transferee
7. O-1 Persons of Extraordinary Ability
8. TN Trade NAFTA – Canadian and Mexican professionals

4. Who Should Pay For What? The State of Colorado and many adjoining states are “employment at will” states. It means that both employer and employee can terminate their relationship with or without a cause, with or without a notice, or at any time unless there is a written agreement to the contrary. When there is an employees’ union, it is presumed that there is a written agreement by and between each employee and their employer under the union agreement. If the employment practice of the employer is such that each employee is under a written employment agreement, it is presumed that the foreign temporary worker will also be subject to the firm’s common practice and should be in compliance with that employment agreement.

In an era when one out of every eight U.S. citizen is foreign born, and perhaps educated in both foreign and domestic educational institutions, it is critical that an employer should incorporate and reflect the needs of employees in its employment policy. An employer should consider the existing immigration laws as well as the labor laws in creating its employment policy. If the employer exports its services or products overseas, the U.S. export control laws should also be reviewed. It becomes very difficult for a global operator to review employment policy without adhering to current U.S. laws.

The Department of Labor will impose a local and national recruitment of the specialty occupation position prior to making an offer to hire a foreign specialty worker. In this setting, an employer also needs to understand how and what should be advertised, and all costs related to advertisement must be understood by the employer.

If the essential job requirement includes a foreign language skill, it will eliminate many local and national candidates that could fill the position. Certain government contracts and all government positions may require that all personnel maintain a U.S. citizenship and that will eliminate all non- U.S. citizens to apply for the position. Also, the immigration law requires that all employers should conduct I-9 inspections and maintain records up to three years of the employment termination.²² With all these requirements, it is deemed necessary that all employers are allowed to qualify their candidates not only based upon their skill sets and competency in the special area of their interest but also their ability to comply with all U.S. immigration laws. It becomes difficult, at best, for a private employer to not discriminate against foreign workers who seek employment in the U.S.

According to the Department of Labor regulations, a temporary foreign worker's salary is determined based upon the local prevailing wages. The prevailing wage becomes the minimum that the employer must pay.²³ The employer cannot discriminate against the foreign worker in the area of wages and benefits once the employer has made a decision to offer the position to the foreign worker.

The most troublesome area of employment wages and benefits is how to account for the extra costs and expenses incurred by the employer who has to comply with the legal requirements in hiring a foreign worker. These costs are viewed as extra beyond any typical hiring of U.S. workers. They may include: (a) extra advertising for the position, (2) a labor conditional application with the Department of Labor, (3) filing fees for the USCIS and expediting fee, if any, (4) legal counsel fees for immigration law review, (5) filing fees to extend the status of the employee, and (6) the return traveling cost for the terminating employee. These costs can easily aggregate into several thousand dollars.

Common sense dictates that an employer should be able to either share the extra costs or shift them to the employee. However, the Department of Labor regulations prohibit the net receipt of the foreign worker's salary to be less than the prevailing wage or less than a U.S. person performing similar duties and responsibilities under the same employer. If there is any discrepancy in wages to foreign workers, the Department of Labor will sanction the employer in such practice with a penalty, and have the employer pay the difference of wages to the foreign workers.²⁴

Under the I-9 regulations, the USCIS has an authority to audit each U.S. employer regarding any employees of their employment eligibility in U.S. facilities. Also, the most recently enacted state laws, including the State of Colorado, have opened a second venue

²² 8 CFR 274a.2(b)(1)

²³ 20 CFR 655.731

²⁴ 20 CFR 655.731(d)

for the state authority to not only audit the appropriate employment eligibility records but also empower them to sanction the employers in immigration law violations.²⁵ & ²⁶

Knowing this may be just the surface of a U.S. employer's issue in hiring a foreign national, what can a U.S. employer do with a limited local and national talent pool in an economy that is evolving in the global economic market? It can be challenging for any U.S. employer to keep up with all the regulations and the compliance requirements imposed by hiring foreign nationals without a knowledgeable U.S. immigration legal counsel.



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²⁵ . 8 CFR 274a.2(b)(2)(ii)

²⁶ CRS 8-2-122

APPENDIX A

FORM D-156 – NON-IMMIGRANT VISA APPLICATION

DO NOT PRINT THIS PAGE. You must click the "Continue" button below and then print the form to complete the process. Please do not click the "Continue" button more than once. Your answers must be in English and must use English characters.



**U.S. Department of State
NONIMMIGRANT VISA APPLICATION**

Approved OMB 1405-0018
Expires 11/30/2010
Estimated Burden 1 hour
See Page 2

PLEASE TYPE OR PRINT YOUR ANSWERS IN THE SPACE PROVIDED BELOW EACH ITEM

1. Passport Number

2. Place of Issuance:

City

Country

State/Province

DO NOT WRITE IN THIS SPACE

3. Issuing Country

4. Issuance Date (dd-month-yyyy)

| | | |
|----------------------|-------------------------------------|----------------------|
| day | month | year |
| <input type="text"/> | <input type="text" value="Select"/> | <input type="text"/> |

5. Expiration Date (dd-month-yyyy)

| | | |
|----------------------|-------------------------------------|----------------------|
| day | month | year |
| <input type="text"/> | <input type="text" value="Select"/> | <input type="text"/> |

6. Surnames (As in Passport)

7. First and Middle Names (As in Passport)

8. Other Surnames Used (Maiden, Religious, Professional, Aliases)

9. Other First and Middle Names Used

10. Date of Birth (dd-month-yyyy)

| | | |
|----------------------|-------------------------------------|----------------------|
| day | month | year |
| <input type="text"/> | <input type="text" value="Select"/> | <input type="text"/> |

11. Place of Birth

City

Country

State/Province

12. Nationality

13. Sex

Male

Female

14. National Identification Number

(If applicable)

15. Home Address (Include apartment number, street, city, state or province, postal zone and country)

Street Address Line 1

Street Address Line 2

City

State/Province

Postal Code

Country
Select

16. Home Telephone Number

Business Phone Number

Mobile/Cell Number

Fax Number

Business Fax Number

Pager Number

17. Marital Status

Married Single (Never Married)

Widowed Divorced Separated
(Even if divorced or separated. Include maiden name.)

18. Spouse's Full Name

19. Spouse's DOB (dd-month-yyyy)

day month year
Select

20. Name and Address of Present Employer or School

Name:

Address:

21. Present Occupation

(If retired, write "retired". If student, write "student".)

22. When Do You Intend To Arrive In The U.S.?

(Provide specific date if known)

day month year
Select

23. E-Mail Address

24. At What Address Will You Stay in The U.S.?

Street Address Line 1

Street Address Line 2

City

State/Province

Postal Code

25. Name and Telephone Numbers of Person in U.S. Who You Will Be Staying With or Visiting for Tourism or Business

Name
[Text Field]

Business Phone
[Text Field]

[Text Field]

Home Phone

Cell Phone

DO NOT WRITE IN THIS

SPACE

50mm X 50 mm

PHOTO

Staple or glue photo here.

26. How Long Do You Intend To Stay in The U.S.?

[Spinner]

27. What is The Purpose of Your Trip?

[Spinner]

28. Who Will Pay For Your Trip?

[Spinner]

29. Have You Ever Been in The U.S.?

Yes No

WHEN?
(Most Recent) day month year
[Text] [Select] [Text]

FOR HOW LONG?

[Text]

Enter Additional Visits to the U.S. Here:

[Spinner]

DS-156
11-2007

PREVIOUS EDITIONS OBSOLETE

Page 1 of 2

30. Have You Ever Been Issued a U.S. Visa?

Yes No

WHEN?
(Most Recent) day month year
[Text] [Select] [Text]

WHERE?

[Text] [Select]

WHAT TYPE OF VISA?

Enter Additional Visa Issuances Here:

Timeline input field for date selection.

31. Have You Ever Been Refused a U.S. Visa? Yes No

WHEN? (Most Recent) day month year. Includes a "Select" dropdown menu.

WHERE? Select dropdown menu.

WHAT TYPE OF VISA? Enter Additional Visa Refusals Here:

Timeline input field for additional visa refusals.

32. Do You Intend To Work in The U.S.? Yes No (If YES, give the name and complete address of U.S. employer.)

Timeline input field for work intention.

33. Do You Intend To Study in The U.S.? Yes No

(If YES, give the name and complete address of the school.)

Timeline input field for study intention.

34. Names and Relationships of Persons Traveling With You

Timeline input field for names and relationships of persons traveling with you.

35. Has Your U.S. Visa Ever Been Cancelled or Revoked? Yes No

Form with radio buttons and a text input field for "If Yes, Who?".

36. Has Anyone Ever Filed an Immigrant Visa Petition on Your Behalf?

37. Are Any of The Following Persons in The U.S., or Do They Have U.S. Legal Permanent Residence or U.S. Citizenship? Mark YES or NO and indicate that person's status in the U.S. (i.e., U.S. legal permanent resident, U.S. citizen, visiting, studying, working, etc.).

Form for question 37 with radio buttons and dropdown menus for "Husband/Wife", "Father/Mother", and other categories.

Form for question 36 with radio buttons for "Fiance/Fiancee", "Son/Daughter", and "Brother/Sister".

38. IMPORTANT: ALL APPLICANTS MUST READ AND CHECK THE APPROPRIATE BOX FOR EACH ITEM.

A visa may not be issued to persons who are within specific categories defined by law as inadmissible to the U.S. (except when a waiver is obtained in advance). Is any of the following applicable to you? Have you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty or other similar legal action? Have you ever unlawfully distributed or sold a controlled substance(drug), or been a

prostitute or procurer for prostitutes? Yes No

Have you ever been refused admission to the U.S., or been the subject of a deportation hearing or sought to obtain or assist others to obtain a visa, entry into the U.S., or any other U.S. immigration benefit by fraud or willful

misrepresentation or other unlawful means? Have you attended a U.S. public elementary school on student (F) status or a public secondary school after November 30, 1996 without reimbursing the school? Yes

No Do you seek to enter the U.S. to engage in export control violations, subversive or terrorist activities, or any other unlawful purpose? Are you a member or representative of a terrorist organization as currently designated by the

U.S. Secretary of State? Have you ever participated in persecutions directed by the Nazi government of Germany; or have you ever participated in genocide?

Yes No

Have you ever violated the terms of a U.S. visa, or been unlawfully present in, or deported from, the U.S.?

Yes No

Have you ever withheld custody of a U.S. citizen child outside the U.S. from a person granted legal custody by a U.S. court, voted in the U.S. in violation of any law or regulation, or renounced U.S. citizenship for the purpose of avoiding taxation?

Yes No

Have you ever been afflicted with a communicable disease of public health significance or a dangerous physical or mental disorder, or ever been a drug abuser or addict? While a YES answer does not automatically signify ineligibility for a visa, if you answered YES you may be required to personally appear before a consular officer.

Yes No

39. Was this Application Prepared by Another Person on Your Behalf? (If answer is YES, then have that person complete item 40.)

Yes No

40. Application Prepared By:

NAME:

Relationship to Applicant:

ADDRESS:

Signature of Person Preparing Form: _____ DATE (dd-month-yyyy) _____

41. I certify that I have read and understood all the questions set forth in this application and the answers I have furnished on this form are true and correct to the best of my knowledge and belief. I understand that any false or misleading statement may result in the permanent refusal of a visa or denial of entry into the U.S.. I understand that possession of a visa does not automatically entitle the bearer to enter the U.S. of America upon arrival at a port of entry if he or she is found inadmissible.

APPLICANT'S SIGNATURE _____ DATE (dd-month-yyyy) _____

Privacy and Paperwork Reduction Act Statements

INA Section 222(f) provides that visa issuance and refusal records shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the U.S.. Certified copies of visa records may be made available to a court which certifies that the information contained in such records is needed in a case pending before the court.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. You do not have to provide the information unless this collection displays a currently valid OMB number. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: U.S. Department of State, A/RPS/DIR, Washington, DC 20520.

DS-156

Page 2 of 2

DO NOT PRINT THIS PAGE. You must click the "Continue" button below and then print the form to complete the process. Please do not click the "Continue" button more than once. Your answers must be in English and must use English characters.

Clicking on the "Generate Family Duplicate" button will copy some of the values into a new online DS-156 application form. Please click [here](#) for more information on this feature.

Continue

[Return to the Instructions Page](#)

APPENDIX B

FORM I-94 – ARRIVAL AND DEPARTURE RECORD

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0077

Admission Number *Welcome to the United States*

I-94 Arrival/Departure Record - Instructions

This form must be completed by all persons except U.S. Citizens, returning resident aliens, aliens with immigrant visas, and Canadian Citizens visiting or in transit.

Type or print legibly with pen in ALL CAPITAL LETTERS. Use English. Do not write on the back of this form.

This form is in two parts. Please complete both the Arrival Record (Items 1 through 13) and the Departure Record (Items 14 through 17).

When all items are completed, present this form to the U.S. Immigration and Naturalization Service Inspector.

Item 7 - If you are entering the United States by land, enter **LAND** in this space. If you are entering the United States by ship, enter **SEA** in this space.

Form I-94 (04/06/00)Y

OMB No. 1115-0077

Admission Number

I-94 Arrival Record

| | |
|--|------------------------------|
| 1. Family Name | |
| 2. First (Given) Name | 3. Birth Date (Day/Mo/Yr) |
| 4. Country of Citizenship | 5. Sex (Male or Female) |
| 6. Passport Number | 7. Airline and Flight Number |
| 8. Country Where You Live | 9. City Where You Boarded |
| 10. City Where Visa was Issued | 11. Date Issued (Day/Mo/Yr) |
| 12. Address While in the United States (Number and Street) | |
| 13. City and State | |

Authority

The authority to collect this information is contained in Title 8 of the United States Code.

Paperwork Reduction Act Notice. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The estimated average time to complete and file this application is 4 minutes per application. If you have comments regarding this form, you can write to the Immigration and Naturalization Service, HQPDI, 425 I Street N.W., Room 4307r, Washington DC 20526; OMB No. 1115-0077. **DO NOT MAIL YOUR COMPLETED APPLICATION TO THIS ADDRESS.**

Departure Number

OMB No. 1115-0077

I-94 Departure Record

| | |
|----------------------------|----------------------------|
| 14. Family Name | |
| 15. First (Given) Name | 16. Birth Date (Day/Mo/Yr) |
| 17. Country of Citizenship | |

See Other Side

STAPLE HERE

APPENDIX C
COLORADO LABOR LAW

8-2-122. Employment verification requirements - audits - fine for fraudulent documents - cash fund created - definitions.

Statute text

(1) As used in this section, unless the context otherwise requires:

(a) "Director" means the director of the division.

(b) "Division" means the division of labor in the department of labor and employment.

(c) "Employer" means a person or entity that:

(I) Transacts business in Colorado;

(II) At any time, employs another person to perform services of any nature; and

(III) Has control of the payment of wages for such services or is the officer, agent, or employee of the person or entity having control of the payment of wages.

(d) "Unauthorized alien" has the same meaning as set forth in 8 U.S.C. Sec. 1324a (h) (3).

(2) On and after January 1, 2007, within twenty days after hiring a new employee, each employer in Colorado shall affirm that the employer has examined the legal work status of such newly hired employee and has retained file copies of the documents required by 8 U.S.C. sec. 1324a; that the employer has not altered or falsified the employee's identification documents; and that the employer has not knowingly hired an unauthorized alien. The employer shall keep a written or electronic copy of the affirmation, and of the documents required by 8 U.S.C. sec. 1324a, for the term of employment of each employee.

(3) Upon the request of the director, an employer shall submit documentation to the director that demonstrates that the employer is in compliance with the employment verification requirements specified in 8 U.S.C. sec. 1324a (b) and documentation that the employer has complied with the requirements of subsection (2) of this section. The director or the director's designee may conduct random audits of employers in Colorado to obtain the documentation. When the director has reason to believe that an employer has not complied with the employment verification and examination requirements, the director shall request the employer to submit the documentation.

(4) An employer who, with reckless disregard, fails to submit the documentation required by this section, or who, with reckless disregard, submits false or fraudulent documentation, shall be subject to a fine of not more than five thousand dollars for the first offense and not more than twenty-five thousand dollars for the second and any subsequent offense. The moneys collected pursuant to this subsection (4) shall be deposited in the employment verification cash fund, which is hereby created in the state treasury. The moneys in the fund shall be appropriated to the department of labor and

employment for the purpose of implementing, administering, and enforcing this section. The moneys in the fund shall remain in the fund and not revert to the general fund or any other fund at the end of any fiscal year.(5) It is the public policy of Colorado that this section shall be enforced without regard to race, religion, gender, ethnicity, national origin, or disability.

APPENDIX D

FORM I-9

OMB No. 1615-0047; Expires 06/30/08

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

| | | | |
|--|-------|---|--------------------------------|
| Print Name: Last | First | Middle Initial | Maiden Name |
| Address (Street Name and Number) | | Apt. # | Date of Birth (month/day/year) |
| City | State | Zip Code | Social Security # |
| I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form. | | I attest, under penalty of perjury, that I am (check one of the following): <input type="checkbox"/> A citizen or national of the United States <input type="checkbox"/> A lawful permanent resident (Alien #) A _____ <input type="checkbox"/> An alien authorized to work until _____ (Alien # or Admission #) _____ | |
| Employee's Signature | | | Date (month/day/year) |

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

| | |
|---|-----------------------|
| Preparer's/Translator's Signature | Print Name |
| Address (Street Name and Number, City, State, Zip Code) | Date (month/day/year) |

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

| List A | OR | List B | AND | List C |
|---------------------------------|----|--------|-----|--------|
| Document title: _____ | | _____ | | _____ |
| Issuing authority: _____ | | _____ | | _____ |
| Document #: _____ | | _____ | | _____ |
| Expiration Date (if any): _____ | | _____ | | _____ |
| Document #: _____ | | _____ | | _____ |
| Expiration Date (if any): _____ | | _____ | | _____ |

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

| | | |
|---|------------|-----------------------|
| Signature of Employer or Authorized Representative | Print Name | Title |
| Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) | | Date (month/day/year) |

Section 3. Updating and Reverification. To be completed and signed by employer.

| | | |
|---|--|---------------------------------|
| A. New Name (if applicable) | B. Date of Rehire (month/day/year) (if applicable) | |
| C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility. | | |
| Document Title: _____ | Document #: _____ | Expiration Date (if any): _____ |
| I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual. | | |
| Signature of Employer or Authorized Representative | | Date (month/day/year) |

Form I-9 (Rev. 06/05/07) N

APPENDIX E

U.S. CONSULATE IN JAPAN – VISA FEE SCHEDULE

Application Fees for Non-Immigrant Visas to Increase On January 1, 2008
(December, 14, 2007)

Effective January 1, 2008, the application fee for a U.S. non-immigrant visa will increase from \$100 to \$131. This increase allows the State Department to recover the costs of security and other enhancements to the non-immigrant visa application process. This increase applies both to non-immigrant visas issued on machine-readable foils in passports and to border crossing cards issued to certain applicants in Mexico.

Applicants who paid the prior \$100 application fee before January 1 will be processed only if they are scheduled and appear for a visa interview before January 31. Applicants who paid the prior \$100 application fee and appear for visa interviews after January 31, 2008 must pay the difference -- \$31 -- before they will be interviewed. In this case, applicants will be able to pay the supplemental \$31 dollar fee on their interview day at the embassy or Consulate where they are being interviewed. The Embassy and Consulate cashiers can accept Yen, US dollars, or MasterCard/VISA/American Express/Diners Club International credit cards.

The State Department is required by law to attempt to recover the cost of processing non-immigrant visas through the collection of the Machine-Readable Visa application fee. Because of new security-related costs, new information technology systems, and inflation, the \$100 Machine-Readable Visa fee is lower than the actual cost of processing non-immigrant visas. In fact, the \$100 fee was already lower than the cost of processing non-immigrant visas when the fee was reviewed as a part of the cost of service study in 2004. The State Department has been absorbing the additional cost. We are now collecting 10 fingerprints from each applicant, and the cost charged by the FBI to review those fingerprints no longer allows us to do this. The application fee has increased twice since September 11, 2001, the last time in 2002.

Application Fees for Immigrant Visas to Increase On January 1, 2008

Effective January 1, 2008, the application fee for a U.S. immigrant visa will increase from \$335 to \$355. The fee accurately reflects the cost of enhanced biometric security features which have been added to the immigrant visa system.

Applicants who paid the prior \$335 application fee before January 1, 2008 will be processed without further payment even if they appear for an immigrant visa interview after January 1, 2008. Most IV applicants pay their fees through the Department of State's National Visa Center (NVC) in the U.S.. Fee bills sent by NVC will reflect this change effective January 1, 2008.

Applicants who make their payment after January 1, 2008 will be required to pay the increase even if their original fee bill sent prior to January 1, 2008 displays the fee of \$335. This fee increase also impacts Diversity Visa applicants, who pay this fee at the time of interview at post.



DENVER - DALLAS

www.jaychoilaw.com – 303-256-6260

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