

ActionBrief

Alien Labor Certification Programs

Labor certification is a written determination from the U.S. Department of Labor (DOL) that a particular position at a particular company is “open” for employment by foreign workers. The Department of Labor issues labor certifications for employment of foreign nationals at U.S. companies in the United States in two instances: (1) for permanent employment of aliens and (2) for temporary employment of aliens.

Alien Labor Certification Programs are *employment-based visa programs*. These programs are intended by Congress to provide employers, pinched by labor shortage, with a regular means [to hire foreign workers] to supplement their workforce and fulfill business obligations when qualified U.S. workers are not available. Foreign worker certification programs are generally designed to assure that the admission of aliens to work in this country on a permanent or temporary basis will not adversely affect the job opportunities, wages and working conditions of U.S. workers.

Visas are *government issued passes allowing foreigners to enter the United States*. Visas may be issued on a temporary or permanent basis. Temporary visas are non-immigrant status visas; permanent visas are immigrant status visas. Depending upon type of visa, a person may be allowed to attend school, obtain specialized training, vacation, marry a U.S. citizen, compete athletically, receive medical treatment, work or remain indefinitely in the United States. While holding one type of visa, a person may concurrently apply for, or change, or “adjust status” while in the United States. A person may, thereby, enter the country on a tourist visa and change to a student visa in order to attend school. A person may come to work in the United States under an alien labor certification program (temporary



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visa) and while here might apply for and obtain permanent U.S. residency. Since applying for a non-immigrant visa is generally quicker than applying for permanent residency (i.e. a “Green Card”) workers who are often initially brought into the United States on long-term assignment, under a non-immigrant visa (e.g. temporary labor certification), will seek to obtain an immigrant visa and ultimately change their status to permanent resident.

Including the six alien labor certification programs administered by the U.S. Department of Labor and discussed next, there exist over thirty-five (35) different visa programs whereby foreigners may legally enter the United States. (See Appendix A – for Visa Series Listings and accompanying applicant information.)

U.S. Department of Labor (DOL)

The U.S. Department of Labor is responsible for administering the following employment-based, certification programs giving employers access to import foreign workers to meet employers’ needs:

- **H-1B** Specialty (Professional) Workers Temporary Labor Certification
- **H-1C** Registered Nurses for Disadvantaged Areas Temporary Labor Certification
- **H-2A** Agricultural Workers Temporary Labor Certification
- **H-2B** Non-Agricultural Workers Temporary Labor Certification
- **D-1** Crewmember Certification
- **Permanent Labor Certification**

With few exceptions, these six programs are jointly administered by the U.S. Department of Labor and the State Employment Security Agencies (SESAs). Correspondingly, the Labor Department also administers attestation and labor condition applications (LCA’s) relating to the admission and/or work authorization of nonimmigrant workers.

H-1B Specialty (Professional) Workers Temporary Labor Certification Program

The October 2000 American Competitiveness in the Twenty-First Century Act expands employer access to hire foreign temporary specialty personnel under the H-1B visa program. Specialty occupations include those occupations, which require a high degree of specialized knowledge. Generally candidates will be college graduates with post-graduation experience of the occupation; however, appropriate equivalent training and job experience may be substituted. Specialty occupations include most computer science jobs, therapists, accountants and auditors, electrical and electronic engineers, and also include occupations such as artist, entertainer or fashion model having national or international acclaim. (See Appendix B1 for complete List of H-1B Visa-Identified Occupations.)

Employers who intend to employ alien workers in the specialty professional occupations must file labor condition applications with the Department of Labor stating: they will pay the higher of the “prevailing wage” or “actual wage” for the position; they have notified the bargaining representative or otherwise posted notice of their intent to employ H-1B workers; there is no strike or lockout at the place of employment; and, that such aliens will not adversely affect the working conditions of U.S. workers. The DOL may investigate an employer upon receipt of a complaint, or without a complaint if it receives “specific, credible information” from a reliable source. An employer may not discharge or otherwise discriminate against an employee, former employee or applicant because such individual has disclosed information to the employer or anyone else regarding a potential violation, or for cooperating in an investigation or proceeding. Employers must pay the required wage for full hours specified on the visa petition even if the beneficiary is in non-productive status due to a decision by the employer, or based on the H-1B worker’s lack of a permit or license (i.e. there exists a no “benching” requirement).

Employers must offer H-1B employees benefits and eligibility for benefits (including participation in health, life, disability, and other insurance plans, retirement and savings plans, bonuses and stock options) on the same basis and in accordance with the same criteria it offers to its U.S. workers.

To implement the statutory amendments to the Immigration and Nationality Act enacted through the American Competitiveness and Workforce Improvement Act, the Department of Labor issued interim final regulations. These rules change the H-1B program in the following major ways:

- Temporarily requires, until October 1, 2003, new non-displacement (layoff) and recruitment attestations by H-1B employers who are “H-1B-dependent” (i.e. employers whose workforce is more than 15 percent H-1B workers) or are willful violators. The non-displacement provisions generally prohibit these employers from replacing U.S. workers with H-1B workers, and from placing H-1B workers at other employers’ worksites where U.S. workers are being displaced. The recruitment provision requires these employers to make good faith efforts to hire qualified U.S. workers before hiring H-1B workers and to hire U.S. workers if they are at least as qualified as the H-1B workers they intend to employ (this latter provision is administered by the Department of Justice).
- Provides whistleblower protections to employees – including former employees and applicants – who disclose information about

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potential violations or cooperate in an investigation or proceeding, and provides that the Department of Justice and the Department of Labor will develop a procedure under which the Department of Justice may allow H-1B worker whistleblowers to stay in the U.S. for up to six years.

- Requires all H-1B employers to refrain from requiring an H-1B worker to pay the employer's petition filing fees or imposing a penalty for early cessation of employment.
- (See Appendix B2 for Checklist/Description of H-1B Violations.)

Although the Act does not raise the current H-1B employer-paid filing fee of \$610, companion legislation (H.R. 5362) raises total fees charged to employers who petition to employ H-1B workers by an additional

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\$500. The employer must therefore pay a total Immigration and Naturalization Service fee of \$1,110 under the new regulations. Most of the funds raised by the fee are earmarked for education and training of U.S. workers for high technology and science jobs. Legislation imposes the fee be employer-paid. Certain employers qualify for a \$1,000 exemption. That is, the total fee is not required of colleges, universities, or non-profit research organizations. Employers may not require an H-1B employee to reimburse or otherwise compensate the employer for the cost of this fee, or they will be subject to a \$1,000 fine per violation.

Applications may be approved for periods of up to 3 years, renewable for a total of 6 years, the maximum allowable period of stay in the U.S. under H-1B status. That is, under the H-1B program a foreign national may be employed by a U.S. company for up to six years. [Dependents of H-1B visa holders hold H-4 Visas but are not authorized to accept employment.]

[Exclusive of spouses and children,] the Act establishes an annual ceiling on the number of workers who may be issued H-1B visas. The current program has a legislated cap of 195,000 visas in FY 2001; 195,000 in FY 2002; 195,000 visas in FY 2003; and, 65,000 in each succeed year.

H-1C Nurses for Disadvantaged Areas

The Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA) was passed to respond to a very specific need for qualified nursing professionals in understaffed facilities serving mostly poor patients in inner-cities and in some rural areas. NRDAA allows qualifying hospitals to employ temporary foreign workers as Registered Nurses (RNs) for up to three years under H-1C visas. The law creates a non-immigrants visa category for nurses who will work in areas designated as "Health Professional Shortage Areas" by the Department of Health and Human Services.

Only 500 H-1C visas can be issued each year during the four-year

period of the H-1C program (2000-2003). The sponsoring employer must pay a filing fee of \$250 for each application filed with the Department of Labor.

The criteria that a hospital must meet to employ temporary foreign RNs under the H-1C Program are:

1. Be a “subpart D” hospital under the Social Security Act;
2. Be located in a health professional shortage area;
3. Have at least 190 acute care beds;
4. Be reimbursed by Medicare for at least 35 % of acute care inpatient days; and,
5. Be reimbursed by Medicaid for at least 28 % of acute care inpatient days.

Facilities have to file a labor attestation with the Department of Labor and a filing fee of \$250 per application. The attestation process requires that health care facilities attest that: the employment of aliens will not adversely affect wages and working conditions of U.S. nurses; the aliens will be paid the wage rate for nurses similarly employed by the facility; the facility is taking steps designed to recruit and retain sufficient registered nurses; there is not a strike or lockout; the facility has not had layoffs nor will layoff an RN within 90 days; notice of H-1C filing had been provided to the union for nurses or, where there is no union, notice was posted in conspicuous locations. Fines may be imposed on employers who do not comply with attestation rules. Such fines may be up to \$10,000 per single violation and employers may be barred from being approved to take H-1C workers for one year.

Under the program alien nurses must meet the following qualifications: the nurse must have passed an appropriate examination; the nurse must have obtained full and unrestricted license to practice professional nursing; and, the nurse is fully qualified and eligible under the laws to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States.

H-1C visa holders can receive a period of admission for up to 3 years.

H-2A Agricultural Workers Temporary Labor Certification Program

In accord with the Immigration and Nationality Act (INA) and the amending Immigration Reform and Control Act of 1986 (IRAC), the H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant aliens to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Before the INS can approve an employer’s petition for such workers, the employer must file an application with the Department of Labor stating that there are not sufficient workers who are able, willing, qualified, and available,

and that the employment of aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers. The statute and Departmental regulations provide for numerous worker protections and employer requirements with respect to wages and working that do not apply to nonagricultural programs.

Included within ETA's jurisdiction are such issues as whether positive recruitment was conducted, whether there was a strike or lock-out, the methodology for establishing adverse effect and prevailing wage rates, whether workers' compensation insurance will be provided, and other similar matters. The Employment Standards Administration's is responsible for enforcing provisions of worker contracts and for ensuring that employers' comply with terms and conditions of employment under the INA.

Any employer who has been certified for a specific number of H-2A jobs must have initially attempted to recruit U.S. workers to fill these slots. Even after H-2A workers are recruited employers must continue to engage in "positive recruitment" of U.S. workers. In addition, after the H-2A workers have commenced work, the employer must agree to accept U.S. workers until 50% of the certified contract period has been completed.

Every worker must be provided a copy of the worker contract or, as a substitute for the worker contract, a copy of the job clearance order. If worker contracts are provided, they must specify at least those benefits required by the regulations. The job clearance order is the "official" document since it is the one submitted by the employer and approved by the Department of Labor.

In every H-2A employment situation the employer must agree to pay to all workers working in certified jobs a wage rate of the higher of either: (a) the Adverse Effect Wage Rate (AEWR); (b) the Prevailing Rate for a given crop/area; or the legal State minimum wage. None of these rates may be less than the Federal minimum wage. Wages may be calculated on the basis of hourly or "piece" rates of pay. However computed, they must not be less than the rate specified in the job offer/worker contracts.

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required and that the employer pays for same; and, that workers' compensation insurance will be provided per State law of the State where work is performed.

Employers certified for H-2A must agree to provide each worker employed an offer of at least 75 percent of the hours in the contract period — called the “three-fourths guarantee.” For example, if a contract is for a 10-week period, during which a normal workweek is specified as 6-days a week, 8-hours per day, the worker would have to be guaranteed employment for at least 360 hours (e.g., 10 weeks x 48 hours/week = 480 hours x 75% = 360). Wages for the guaranteed 75% period would be calculated at not less than the average hourly piece rate or the Adverse Effect Wage Rate for the State in which the work was being done, whichever is higher.

Every non-local worker employed on an H-2A contract is entitled to be paid for all transportation costs related to travel from the place where the worker was recruited to the site of the job, and then back to the worker's area of residence. This includes both foreign and U.S. workers. Workers are “non-local” if they cannot reasonably return to their permanent residence every night. Expenses must be reimbursed according to the following schedule: for transportation to the place of employment, the employer must repay the worker when 50 percent of the contract period has been completed; for transportation “home” the worker must complete the agreed upon contract period. The employer has no obligation to pay return expenses should an employee abandon the employment unless some special provision in the Worker's Contract otherwise provides.

Employers certified under H-2A must keep records of the hours each worker actually works. In addition the employer must retain a record of time “offered” to the worker but which the worker “refused” to work. Each worker must be provided a wage statement showing hours of work, hours refused, pay for each type of crop, the basis of pay (i.e., whether the worker is being paid by the hour, per piece, “task” pay, etc.). The wage statement must indicate total earnings for the pay period and all deductions from wages (along with an explanation as to why deductions were made).

Employers must maintain records concerning any worker who was terminated and the reason for such termination. The employer, in order to negate a continuing liability for wages and benefits to workers, must notify the local Job Service Office by providing a report on any termination(s), the date of the termination, giving the reason for each. The employer should also indicate if replacement(s) will be sought for such worker(s).

Violation of H-2A requirements may result in the assessment of civil money penalties, an order to pay back-wages, an injunction

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against future violations, and prohibitions from future participation in the H-2A program.

There is a \$110 employer filing fee for application form filed.

H-2B Workers in Non-Agricultural Occupations Temporary Labor Certification Program

Under the H-2B nonimmigrant visa classification, aliens may come temporarily to the United States to engage in nonagricultural work which is: seasonal; intermittent; to meet peak load need; or for a one-time occurrence if qualified U.S. workers capable of performing such service or labor can not be found in the United States.

The H-2B visa classification requires a temporary labor certification from the Secretary of Labor advising the Immigration and Naturalization Service (INS) whether or not U.S. workers capable of performing the temporary services or labor are available and whether or not the alien's employment will adversely affect the wages or working conditions of similarly employed U.S. workers or a notice that such certification can not be made, prior to filing an H-2B petition with INS.

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Every temporary application shall include: documentation of any efforts to recruit U.S workers the employer may have made before filing the application; a statement explaining why the job opportunity is temporary and why the employer's need for work to be done meets the standard of either a one time occurrence, a seasonal need, a peak load need, or an intermittent need. The employer shall document that unions and other recruitment sources, appropriate for the occupation and customary in the industry, were unable to refer qualified U.S. workers and the employer must explain the lawful job-related reasons for not hiring each U.S. worker who applied. Also, employer must place a three-day advertisement in a newspaper of general circulation (or professional or trade journal if more appropriate) and a ten-day job order must be placed in the ES system.

An employer may request on a single application form as many aliens as employer has job openings if the number of aliens being requested are to do the same work under the same terms and conditions and in the same occupation in the same area(s) of employment during the same period. [Multiple openings of the same job may be posted on same application.] Moreover, an H-2B application for more than one worker may simply stipulate, "unnamed aliens" when the employer cannot yet provide names. If, for example, an employer has a thousand job openings, which the employer intends to fill with alien workers, employer may simply state/request "1,000 unnamed aliens" on a single application form.]

The rate of pay, paid by the employer must not be below the prevailing wage for the occupation and the employer must offer prevailing working conditions. U.S. workers responding to employer recruiting, may not be offered wages, terms or conditions of employment which are less favorable to that offered to the alien(s).

Employer must explain lawful job-related reason(s) for not hiring each U.S. worker by name.

Special H-2B Building Trades Requirement: When State Employment Service Agencies receive requests for 10 or more construction workers in the same occupation for the same employer at any one time or within a 6-month period, the SESA shall contact unions representing construction workers in same or substantially same job classification as those for which labor certification is requested to determine availability of U.S. workers. Before making a determination, the DOL regional alien labor certifying officer will contact, by fax or by phone, the *AFL-CIO Working for America Institute* and send the following: name and address of company requesting certification; location of worksite; dates of prior certification requested by company; total number of aliens requested; duration of employment of aliens; job classification, special qualifications and wages offered; assistance offered (e.g. housing, subsistence, transportation) and reason for requesting alien labor. If the AFL-CIO Working for America Institute knows of available U.S. workers, the Institute will provide this information to the certifying officer along with the name of the appropriate union local for the contact. The AFL-CIO Working for America Institute, along with or on behalf of, adversely affected U.S. workers and their representatives, will formally challenge employer applications where it identifies qualified, out of work, U.S. workers.

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The H2-B labor certification may be issued for a period of up to 1 year, renewable for a maximum of 3 years. The Immigration and Nationality Act places an annual limit (currently 66,000 per year) on the number of aliens who can be admitted to the U.S. on H-2B visas. There is a filing fee of \$110 per application [form] filed.

D-1 Crewmembers Certification

With three exceptions, the Immigration Act of 1990 prohibits alien crewmembers from performing longshore work on foreign vessels at U.S. ports. One such exception allows alien crew to engage in longshore activities where that is the prevailing practice. This may be demonstrated by a collective bargaining agreement that allows foreign crewmembers to engage in such practices. Where there is no such agreement, the law requires the ship owner to file an attestation with the Department of Labor stating that it is the prevailing practice for the activity at that port, that there is no strike or lockout at the

place of employment, and that notice of the attestation has been given to U.S. longshore workers or their representatives at the local port. The attestation must be filed at least 14 days before the work is performed. Such attestations must be renewed on a yearly basis. Violations may produce penalties of up to \$5,000 for each alien crewmember wrongfully performing longshore work, and would bar vessels owned or chartered by the employer from entering all U.S. ports for up to one year.

[There has been no activity under the prevailing practice exception since the enactment of legislation creating a separate exception for the performance of longshore work at locations in the State of Alaska whereby employers must file attestations with the Department attesting that they will comply with certain conditions relating to the longshore work to be performed.]

Permanent Labor Certification

An alien seeking to immigrate permanently to the United States *on the basis of employment* must obtain an offer of permanent full-time employment from an employer in the United States. The alien cannot be admitted as a permanent resident unless, among other things, the employer obtains a labor certification from the Department of Labor

that qualified U.S. workers are not available for the employment offered to the alien, and that the wages and working conditions offered will not adversely affect those of similarly employed U.S. workers.

The labor certification process requires the employer to recruit U.S. workers at prevailing wages and working conditions through the State Employment Service, by advertising, posting notice of the job opportunity, and by other appropriate means. *If unions are customarily used as*

a recruitment source in the area or industry, the employer must document such recruitment, clearly showing that they (the unions) were unable to refer U.S. workers. A Department of Labor regional certifying officer makes a decision to grant or deny the labor certification based on the results of the employer's recruitment efforts and compliance with Departmental regulations. (See Appendix C for more information on different types of permanent immigrant visas – “green cards”.)

The labor certification process requires the employer to recruit U.S. workers at prevailing wages and working conditions through the State Employment Service, by advertising, posting notice of the job opportunity, and by other appropriate means.

The Immigration and Nationality Act provides that certain aliens may obtain a visa for entrance into the United States in order to engage in permanent employment if the Secretary of Labor has first certified:

1. There are not sufficient United States workers who are able, willing, qualified, and available for the employment, and

2. The employment of the alien will not adversely affect the wages and working conditions of U.S. workers similarly employed.

The Department of Labor's regulations on permanent labor certifications are published in part 656 of Title 20 of the Code of Federal Regulations. The regulations require that an application for Alien Employment Certification be filed in every instance, to initiate this process. This application form includes a Part A "Offer of Employment" and a Part B "Statement of Qualifications of Alien". The regulations set forth, in detail, the application process for permanent labor certification.

To facilitate the processing of requests for labor certifications, the United States Employment Service, Department of Labor has established schedules with predetermined findings for specific occupations: Schedule A is a list of occupations for which the Administrator, United States Employment Service, has determined that there are not sufficient U.S. workers who are able, willing qualified, and available and that the wages and working conditions of U.S. workers similarly employed will not be adversely affected by the employment of aliens. The Schedule A list of *pre-certified* occupations is subject to revision from time to time, based on U.S. labor market conditions. Current information on specific occupational groups and qualification standards included in Schedule A should be obtained from State Employment Service Offices, the U.S. Department of State's Consular Offices abroad, and District Offices of the Immigration and Naturalization Service.

Schedule B is a list of occupations for which the Administrator, United States Employment Service, has determined that generally there are sufficient U.S. workers who are able, willing qualified, and available and that the wages and working conditions of U.S. workers similarly employed generally will be adversely affected by the employment of aliens. An employer filing an application for a Schedule B occupation, must petition the Department of Labor's regional certifying officer through the State employment service for a Schedule B waiver. A petition for a waiver of Schedule B must include all of the following:

- All "General Documentation Requirements";
- All recruitment documentation;
- Documentary verification, which the employer has obtained from the local employment service office serving the area of proposed employment that the employer has had a job order for the same job on file with the same local office for a period of 30 calendar days and that the local office and the employer, using the job order, were not able to obtain a qualified U.S. worker.

To facilitate the processing of requests for labor certifications, the United States Employment Service, Department of Labor has established schedules with predetermined findings for specific occupations.

Application forms, instructions and information on occupations listed on Schedules A and B may be obtained from State employment service offices, Immigration and Naturalization Service District Offices, and Consular offices abroad. An employer must file an application with the local State employment service office serving the area where the alien will be employed.

As part of the recruitment process, the employer must submit documentation, to show clearly that the employer has been attempting to recruit U.S. workers for the job as required by the Department of Labor's regulations, i.e. the employer has been attempting to recruit U.S. workers for the job opportunity at the prevailing wage and at prevailing working conditions through the labor referral and recruitment sources normal to the occupation, without success, and has reason to think recruitment will continue to be unsuccessful. The job offer shown on the Application for Alien Employment Certification form and in advertisements, notices, and other recruitment methods used by the employer may not describe the job with

The job offer shown on the Application for Alien Employment Certification form and in advertisements, notices, and other recruitment methods used by the employer may not describe the job with unduly restrictive job requirements or requirements not normal to the occupation, unless the employer adequately documents that the requirements arise from business necessity.

unduly restrictive job requirements or requirements not normal to the occupation, unless the employer adequately documents that the requirements arise from business necessity. ["Business necessity" is not employer or customer preference or convenience, it is a requirement which, if absent, would actually undermine the employer's business. The employer must always document the business necessity for a language other than English.]

The employer must also post a notice of the job opportunity in bold letters in a conspicuous place within its organization. The notice must contain the same information required for the employment service advertisement, including the wage offer and other terms and conditions. The notice must be posted for at least ten consecutive business days where notices to employees, such as wage and hour and occupational safety and health notices, are normally posted. The employer must submit the notice posted, stating where and for how long the notice was posted, and whether it remained unobstructed for the entire period of posting. The employ-

er must report to the local employment service office the results of its recruitment through the employment service job order, the employment service advertisement, the notice posted within the employer's organization, and other post-application recruitment. Documentation of the results must include all of the following:

- The number of U.S. workers responding to the recruitment;
- The names, and the addresses, phone numbers, and resumes of all U.S. workers interviewed; and
- The lawful job-related reason for not hiring each applicant.

Employers and aliens may have agents apply for labor certification on their behalf. Each party (employer and/or alien) represented by an agent must sign a statement designating the agent and taking full responsibility for the accuracy of any representations made by the agent.

Any employer or alien, or their agent or attorney, who, in the labor certification application process, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, is subject to prosecution and a fine of not more than \$10,000 or imprisonment of not more than five years, or both. Whoever knowingly subscribes as true any false statement with respect to a material fact in any Application for Alien Employment Certification or knowingly presents any such application containing, any such false statement is subject to prosecution and a fine of not more than \$2,000 or imprisonment of not more than 5 years or both.

Whoever, in an Application for Alien Employment Certification willfully subscribes as true any material which he or she does not believe to be true is subject to prosecution for perjury and a fine of not more than \$2,000 or imprisonment of not more than five years, or both. This penalty applies whether the statement or subscription is made within or outside the United States. (Labor certifications, unless invalidated by the Immigration and Naturalization Service or by a Consul of the United States Department of State, are valid indefinitely. Invalidations are made in cases of fraud or willful misrepresentation of a material fact involving the labor certification application.)

Appendix A

General information: Visas are identified by letters and numbers, which refer to their applicable subsection in the Immigration and Nationality Act.

Visa Series/ Category	Applicants
A	Representatives of a foreign government
B-1	Business visitors, entering for the purpose of engaging in international trade or commerce (not for employment)
B-2	Visitors for pleasure
C	Aliens in direct transit
D-1	Crewmembers aboard the aircraft or vessel of the foreign company by which the crewmembers are employed
E-1	Treaty traders
E-2	Treaty investors
F-1	Foreign students participating in curricular practical training
F-2	Dependents of F-1 aliens (student's spouse and/or children)
G	Foreign government employees
H-1B	Specialty workers
H-1C	Registered nurses
H-2A	Agricultural workers
H-2B	Non-agricultural workers
H-3	Trainees
H-4	Dependents of foreign workers
I	Journalists, and journalist's spouse and children
J-1	Exchange visitors: students, academic researchers and "au pairs"
J-2	Dependents of J-1 aliens (spouse and/or children)
K-1	Fiancés of U.S. citizens, coming to the U.S. to be married
L-1	Intracompany transferees having demonstrative "executive" or "managerial" ability
L-2	Intracompany transferees having demonstrative "specialized knowledge"
M-1	Technical and trade school students (nonacademic vocational studies)
N	Certain parents and children of special immigrants
O-1	Aliens of extraordinary ability or achievement and high acclaim
O-2	Certain critically indispensable personnel accompanying O-1 aliens
O-3	Dependents of O-1 or O-2 visa category aliens
P-1	Internationally known athletes (individually, or as part of a team), and entertainment groups (not individuals) and essential support personnel
P-2	Performing artists, under the auspices of a reciprocal exchange program, and essential support personnel
P-3	Culturally unique entertainers, in a reciprocal exchange program, and essential support personnel
P-4	Dependents of aliens in P-1, P-2, or P-3 visa status
Q	International cultural exchange visitors
R	Religious ministers and workers
S	Persons whose presence in the U.S. is required by the Attorney General
TN	Trade NAFTA visas (Canadian or Mexican professionals)
Immigrant Visas	"Green Card" holders entitled to permanent residency

Appendix B1

H-1B Visa-Identified Occupations

H-1B Visa-Eligible Skill Shortages Those skill shortage occupations identified by the Immigration and Naturalization Service (I&NS) for which employers are permitted to apply to bring into the United States foreign workers to meet demands when the supply of workers with such skills in the local labor market are insufficient. [A list of the occupations certified by the Department of Labor under the H-1B program for non-immigrant visas may be found on page 80246 of the Federal Register, Volume 65, Number 245, Wednesday, December 20, 2000 and immediately below.]

Three – Digit Occupational Groups

Professional, Technical, and Managerial Occupations and Fashion Models

Occupations in Architecture, Engineering, and Surveying

- 001 Architectural Occupations
- 002 Aeronautical Engineering Occupations
- 003 Electrical/Electronics Engineering Occupations
- 005 Civil Engineering Occupations
- 006 Ceramic Engineering Occupations
- 007 Mechanical Engineering Occupations
- 008 Chemical Engineering Occupations
- 010 Mining And Petroleum Engineering Occupations
- 011 Metallurgy And Metallurgical Engineering Occupations
- 012 Industrial Engineering Occupations
- 013 Agricultural Engineering Occupations
- 014 Marine Engineering Occupations
- 015 Nuclear Engineering Occupations
- 017 Drafters
- 018 Surveying/Cartographic Occupations
- 019 Other Occupations In Architecture, Engineering, And Surveying

Occupations in Mathematics and Physical Science

- 020 Occupations In Mathematics
- 021 Occupations In Astronomy
- 022 Occupations In Chemistry
- 023 Occupations In Physics
- 024 Occupations In Geology
- 025 Occupations In Meteorology
- 029 Other Occupations In Mathematics And Physical Sciences

Computer – Related Occupations

- 030 Occupations In Systems Analysis And Programming
- 031 Occupations In Data Communications And Networks
- 032 Occupations In Computer System User Support
- 033 Occupations In Computer System Technical Support
- 039 Other Computer-related Occupations

Occupations In Life Sciences

- 040 Occupations In Agricultural Sciences
- 041 Occupations In Biological Sciences
- 045 Occupations In Psychology
- 049 Other Occupations I Life Sciences

Occupations In Social Sciences

- 050 Occupations In Economics
- 051 Occupations In Political Science
- 052 Occupations In History
- 054 Occupations In Sociology
- 055 Occupations In Anthropology
- 059 Other Occupations In Social Sciences

Occupations In Medicine And Health

- 070 Physicians And Surgeons
- 071 Osteopaths
- 072 Dentists
- 073 Veterinarians
- 074 Pharmacists
- 075 Registered Nurses
- 076 Therapists

- 077 Dieticians
- 078 Occupations In Medical And Dental Technology
- 079 Other Occupations In Medicine And Health

Occupations In Education

- 090 Occupations In College And University Education
- 091 Occupations In Secondary School Education
- 092 Occupations In Preschool, Primary School, And Kindergarten Education
- 094 Occupations In Education Of Person With Disabilities
- 096 Home Economists And Farm Advisers
- 097 Occupations In Vocational Education
- 099 Other Occupations In Education

Occupations In Museum, Library, And Archival Sciences

- 100 Librarians
- 101 Archivists
- 102 Museum Curators And Related Occupations
- 109 Other Occupations In Museum, Library, And Archival Sciences

Occupations In Law And Jurisprudence

- 110 Lawyers
- 111 Judges
- 119 Other Occupations In Law And Jurisprudence

Occupations In Religion And Theology

- 120 Clergy
- 129 Other Occupations In Religion

Occupations In Writing

- 131 Writers
- 132 Editors; Publication, Broadcast, And Script
- 139 Other Occupations In Writing

Occupations In Art

- 141 Commercial Artists: Designers And Illustrators, Graphic Arts
- 142 Environmental Product, And Related Designers
- 149 Other Occupations In Art

Occupations In Entertainment And Recreation

- 152 Occupations In Music
- 159 Other Occupations In Entertainment And Recreation

Occupations In Administrative Specializations

- 160 Accounts, Auditors, And Related Occupations
- 161 Budget And Management Systems Analysis Occupations
- 162 Purchasing Management Occupations
- 163 Sales And Distribution Management Occupations
- 164 Advertising Management Occupations
- 165 Public Relations Management Occupations
- 166 Personnel Administration Occupations
- 168 Inspectors And Investigators, Managerial And Public Service
- 169 Other Occupations In Administrative Occupations

Managers And Officials

- 180 Agriculture, Forestry And Fishing Industry Managers And Official
- 181 Mining Industry Managers And Officials
- 182 Construction Industry Managers And Officials
- 183 Manufacturing Industry Managers And Officials
- 184 Transportation, Commun
- 185 Wholesale And Retail Trade Managers And Officials
- 186 Finance, Insurance, And Real Estate Managers And Officials
- 187 Service Industry Managers And Officials
- 188 Public Administration Managers And Officials
- 189 Miscellaneous Managers And Officials

Miscellaneous Professional, Technical, And Managerial Occupations

- 195 Occupations In Social And Welfare Work
- 199 Miscellaneous Professional, Technical, And Managerial Occupations

Sales Promotion Occupations

- 297 Fashion Models

Miscellaneous

137	Interpreters And Translators
143	Occupations In Photography
144	Fine Artists
150	Occupations In Dramatics
151	Occupations In Athletics And Sports
191	Agents And Appraisers
193	Radio Operators
194	Sound, Film
196	Airplane Pilots
197	Ship Captains
198	Railroad Conductors

Technical Note:

The Act limits the number of foreign workers who may be assigned H-1B status in each fiscal year, however, there is no limit on the number of job openings that may be certified by the Department. Historically, the actual number of job openings certified by the Department each year far exceeds the number of available visas.

Appendix B2

H-1B Checklist/Description of Possible Violations

Examples of violations of the H-1B provisions of the October 2000 American Competitiveness In The 21st Act are:

Employer supplied incorrect or false information on the Labor Certification Application (LCA).

Employer failed to pay H-1B worker(s) the higher of the prevailing or actual wage.

Employer failed to pay H-1B worker(s) for time off due to a decision by the employer (e.g., for lack of work) or for time needed by the H-1B worker(s) to acquire a license or permit.

Employer made illegal deductions from H-1B worker's wages (e.g., for H-1B petition processing; for food and housing expenses while the worker is traveling on employer's business; for tools and equipment necessary to perform employer's work).

Employer failed to provide fringe benefits to H-1B worker(s) equivalent to those provided to U.S. worker(s) (e.g., cash bonuses, stock options, paid vacations and holidays, health benefits, insurance, retirement and savings plans).

Employer does not afford H-1B worker(s) working conditions (hours, shifts, vacation periods) on the same basis as it does U.S. worker(s), or the employment of H-1B worker(s) adversely affects the working conditions of U.S. worker(s).

Employer failed to comply with "no strike/lock-out" requirement by: 1) placing or contracting out H-1B worker(s) during the validity period of the LCA to any place of employment where there is a labor dispute; 2) failing to notify the DOL, within 3 working days of the occurrence, of such a labor dispute; or 3) using an LCA for H-1B worker(s) to work at a site before the DOL has determined that a labor dispute has ended.

Employer failed to provide employees or their collective bargaining representative, either by hard copy posting or electronically, notice of its intentions to hire H-1B worker(s); or has failed to provide H-1B worker(s) with a copy of the LCA.

Employer required H-1B worker(s) to pay all or any part of the filing fee.

Employer imposed an illegal penalty on H-1B worker(s) for ceasing employment with the employer prior to a date agreed upon by the worker and employer.

Employer retaliated or discriminated against an employee, former employee, or job applicant for disclosing information, filing a complaint, or cooperating in an investigation or proceeding about a violation of the H-1B laws and regulations (i.e., whistleblower).

Employer failed to maintain and make available for public examination the LCA and necessary documents at the employer's principal place of business or worksite.

Employer laid off U.S. worker(s) and has replaced or seeks to replace U.S. worker(s) with H-1B worker(s) within 90 days before or after filing H-1B visa petitions.

Employer placed H-1B worker(s) at another employer's worksite where U.S. workers have been laid off; and/or has failed to inquire of the second employer whether it has or intends to lay-off U.S. worker(s) and replace them with H-1B worker(s).

Employer failed to recruit U.S. worker(s) for jobs for which H-1B worker(s) are sought.

Employer failed to hire a U.S. worker who applied and was equally or better qualified for the job for which the H-1B worker was sought. Complaints regarding this violation should be filed with the U.S. Department of Justice, 10th and Constitution Ave., NW, Washington, D.C., 20530.

Appendix C

General information on *Immigrant Visas*

Permanent visas/ immigrant visas/ “green cards” are for people who desire permanent residence in the United States. Permanent basis visas can be obtained through: (1) close family members, (2) employers, (3) asylum after one year, or (4) the diversity lottery.

Length of wait for a visa varies depending on the country of nationality and the type of family relationship or business visa. That is, there are visa preference categories. As example, with regard to family relationship, the spouse of a U.S. citizen would take precedence over the spouse of a permanent resident alien; with regard to employment-based visas, a DOL-certified (Schedule A) occupation requiring two or more years of experience takes precedence over a position in an occupation requiring less than two years experience.

Once the visa becomes available the alien must demonstrate admissibility; that is, the alien must have a sponsor so that the sponsored person (the alien) does not become a public charge. They must prove that they have passed a medical exam and have required vaccinations; demonstrate that they do not pose a security risk and prove that they cannot have committed crimes or engaged in immoral behavior. [Employment-based immigrants need a sponsoring U.S. Company.]

Family membership visas are available for:

- Spouse, son, daughter, parent and sibling of *U.S. citizens*
- Spouse, unmarried son/daughter and, parent of *lawful permanent residents*



The AFL-CIO Working for America Institute works with unions and their allies to create and retain good jobs and build strong communities through promoting high road economic strategies for individuals; employers and industrial sectors; and public economic and workforce development systems.

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