

Technical Advisory No. 5

B-1 Nonimmigrant Visa Classification and B-1 Visa Waiver Program

(Temporary Visitors for Business Purpose)

AUTHORITY

Section 101(a)(15)(B)(i) of the Immigration and Nationality Act (INA).

GENERAL INFORMATION

Individuals may enter the U.S. temporarily in B-1 status to engage in legitimate business activities of a commercial or professional nature. Authorized "business" activities refer to participation in scientific, educational, professional or business conventions or conferences, or undertaking independent research - provided certain conditions are met, including:

- **The individual must be entering the U.S. temporarily.**

This means that the B-1 applicant must have a foreign residence in his or her home country that he/she has no intention of abandoning. Furthermore, to be eligible for a B-1 visa, the applicant must be able to show ties to his or her home country in the form of such evidence as property, family, and a permanent job. It is up to the B-1 applicant to overcome the presumption by the U.S. Consular Official that he or she has immigrant intent.

- **The B-1 applicant must not be coming to the U.S. to provide services or engage in business activities that are primarily for the benefit of a U.S. employer.**

In most cases, B-1 visitors are admitted to the U.S. to conduct business for the principal benefit of their foreign employer.

- **B-1 visitors may not be paid a salary or other remuneration from a U.S. source.**

However, reimbursement for per diem, travel expenses, and, in limited circumstances, an honorarium, is permitted and discussed below, in detail.

- **B-1 visitors must depart the U.S. on or before the expiration date on their Forms I-94.**

There is no grace period for individuals in B-1 status. Therefore, failure by the B-1 visitor to depart will result in an unlawful overstay.



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Who Can Come to NIH in B-1 Status?

1. An individual who will be conducting laboratory research that could result in services or any benefit to NIH must meet one of the following criteria:
 - o He/she must have a foreign employer and be involved in collaborative research primarily for that employer.
 - o He/she must be the recipient of a foreign grant awarded for the specific research that will be conducted at NIH.
2. An individual that does not meet either of the criteria listed in 1. above but is coming to NIH to conduct independent research (research that clearly will not result in services or any benefit to NIH), such as a Guest Researcher.
3. An individual that does not meet either of the criteria stated above in 1. and 2. but is coming to NIH for observation only (such a scientist or a student coming to observe a technique in the lab).
4. A medical student who is studying at a foreign medical school and seeks to enter the U.S. temporarily in order to take an "elective clerkship" at a U.S. medical school's hospital, without remuneration from that hospital. As a Federal biomedical research agency with a clinical research hospital, NIH is considered by the Department of State as an appropriate institution for elective clerkships. [An "elective clerkship" affords practical experience and instructions in the various disciplines of medicine under the supervision and direction of faculty physicians at a U.S. medical school's hospital (e.g., NIH) as an approved part of the alien's foreign medical school education.]

One of the above criterion must be met whether or not the individual is being reimbursed for travel and/or per diem expenses.

Note: Only medical students coming for elective clerkships as discussed in item 4, above, are authorized to engage in supervised patient contact. Otherwise, physicians in B-1 status may only come for observation and consultation, where no element of patient contact is involved.

When Is B-1 Status Inappropriate?

1. **It is inappropriate to invite a foreign scientist to join NIH's intramural research program holding a B-1 visa with the intention of changing immigration status (e.g., to J-1).**

This is often interpreted by the U.S. Citizenship and Immigration Services (USCIS) as misrepresentation of intent and can be cause for denial of entry into the U.S. and a bar from future admissions to the U.S. or, for those who succeed in being admitted in B-1 status, a denial later by USCIS of a request for a change of status.



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2. It is inappropriate for an individual whose J-1 status at the NIH has expired to leave the U.S. and immediately return to the NIH in B-1 status to finish a project, if that individual does not have an employer in the home country who will be the principal beneficiary of the research.
3. As already mentioned, a student can come to NIH in B-1 status for informal observations, or medical students for elective clerkships. However, it is inappropriate to invite a student who does not have a foreign employer or grant, to conduct research as part of his or her thesis, or to work in a lab to gain experience that will result in a service or benefit to the NIH.
4. It is inappropriate to invite an individual to the NIH in B-1 status to do work that will displace a U.S. worker.

Funding for Individuals in B-1 Status

B-1 applicants must demonstrate to U.S. consular and USCIS officials that adequate financial arrangements exist to enable them to fulfill the purpose of their visit to the U.S., to avoid unlawful employment, and to ensure their departure from the U.S.

As previously discussed, B-1 visitors may not receive a salary or other remuneration from a U.S. source other than reimbursement for expenses incidental to the individual's temporary stay (i.e., per diem and travel) and honorarium in limited circumstances. If the scientist will be reimbursed for per diem expenses during his or her stay at NIH, discretion should be used to determine an appropriate per diem amount. It is important to remember that reimbursement for per diem cannot be used as a mechanism to pay someone a stipend or salary. If DOS or USCIS believes that the amount being paid to the scientist is comparable to a salary, the B-1 applicant will be denied the visa or denied entry into the U.S.

Information on Obtaining B-1 Status to Collaborate at the NIH

When applying for the visa, the scientist should present to the U.S. Consulate an original letter from the NIH host, on NIH letterhead, stating that the scientist is coming for consultation or to do collaborative research. This letter should:

- Avoid using the term "volunteer" as this can result in the individual being given a B-2 visa by the U.S. Consulate and being admitted by the USCIS into the U.S. in B-2 status.
- Make it clear that the purpose of the visit is for collaborative reasons and NOT to work for NIH.
- Mention (1) the length of the proposed visit (for B-1s, usually no longer than six months; for WBs, no more than 3 months); (2) that no stipend or salary will be provided and, (3), if applicable, that only travel and/or per diem expenses and/or honorarium will be reimbursed.



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- A copy of this letter should be included with the request for assignment sent to DIS by the IC.
- If applicable, the scientist should also take to the U.S. Consulate a letter from his or her employer stating that the employer is aware that the scientist is coming to do collaborative research at NIH, and that his or her salary will continue to be paid by the employer or other home country sources.

When being admitted into the U.S., the foreign scientist should request that the Department of Homeland Security (DHS) Immigration Inspector indicate B-1 on the Form I-94 (Arrival-Departure Record) and include the period of admission specified in the NIH sponsor's letter of invitation. To assist the DHS Inspector, the scientist should present the letters from the NIH host, the home country employer (if applicable), and the Division of International Services, NIH.

Although DIS instructs the foreign scientist about entering the U.S. in B-1 status, the IC sponsor and Key Contact should also reinforce this, inasmuch as the visa stamp in the passport usually indicates B-1/B-2, and DHS officials may erroneously annotate B-2 rather than B-1 on the Form I-94. Such an error will prevent the scientist from participating in the collaborative activities until his or her status is changed to B-1 by the USCIS, a procedure which typically takes 2-3 months.

*** NOTE: Canadian citizens do not need to apply for a B-1 visa to enter the U.S. However, if they are coming to NIH, they must show proof that they were admitted in B-1 status. Therefore, when entering the U.S., Canadians must either obtain a Form I-94 marked B-1 or ask the Immigration Inspector to annotate their passports to indicate that they were admitted in B-1 status.**

REMINDER: A B-2 visa is NEVER appropriate for ANY foreign scientist carrying out research activities in NIH's laboratories for any period of time under any circumstances. An individual coming to NIH for an interview, who was admitted to the U.S. in B-2 status, CANNOT be reimbursed for travel or per diem expenses.

B-1/B-2 VISA WAIVER PROGRAM (VWP).As a result of the Immigration Reform and Control Act (IRCA) of 1986, provisions were made for nationals of eight countries to come to the United States without obtaining a B-1 (business) or B-2 (tourist) visa. Since then, other countries have been added to the VWP (see list of countries currently participating below). Eligible nationals who wish to come under this program do not need to obtain a B-1/B-2 visa to enter the U.S.

An individual who is a national of a participating country (regardless of place of residence or point of embarkation) may seek admission under this program provided that the individual:

1. Has obtained an approved authorization via the Electronic System for Travel Authorization (ESTA). Further information on ESTA is available at: http://www.cbp.gov/xp/cgov/travel/id_visa/esta.
2. Seeks admission to the U.S. for a period not to exceed 90 days;
3. Has a valid machine-readable passport (MRP) issued by a participating country (**NOTE:** if the individual does not have an MRP, then he/she is **not** eligible for the VWP and must instead obtain a B-1 visa stamp for entry into the U.S.);



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4. Has an onward or return trip ticket which will transport the individual out of the U.S. and the contiguous areas of Canada and Mexico, and adjacent islands in the Caribbean - unless the individual is a resident of the contiguous areas or adjacent islands; and
5. Arrives aboard a carrier that has signed an agreement with the U.S. Government to participate in the VWP.

The individual should specify, upon entry into the U.S., whether his/her purpose is business or tourism. The (green) Form I-94W will be noted as follows: WB for business or WT for tourism. An individual planning to enter the U.S. in WB status should present a letter from the NIH sponsor as discussed above. To conduct research at the NIH, the individual MUST enter the U.S. in WB status.

*** NOTE: WB visitors must depart the U.S. on or before the expiration date on their Forms I-94W. There is no grace period for individuals in WB status. Therefore, failure by the WB visitor to depart will result in an unlawful overstay.**

There are several very important restrictions which apply to those who come under the VWP. **Most important are that once in the United States an individual cannot apply for:**

- **A change of immigration status**
OR
- **For an extension of stay in the U.S. beyond the 90-day limit under the VWP.**
- **Therefore, if there is any intention that the individual will remain at NIH beyond 90 days, then he/she should apply for a B-1 visa at the U.S. Consulate in the home country and enter the U.S. in B-1 status.**



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COUNTRIES PARTICIPATING IN THE VISA WAIVER PROGRAM:

Nationals of the following countries are currently eligible to come to the United States under the VWPP:

Andorra
Australia
Austria
Belgium
Brunei
Czech Republic
Denmark
Estonia
Finland
France
Germany
Hungary
Iceland
Ireland
Italy
Japan
Latvia
Liechtenstein
Luxembourg
Malta
Monaco
Netherlands
New Zealand
Norway
Portugal
San Marino
Singapore
Slovakia
Slovenia
South Korea
Spain
Sweden
Switzerland
United Kingdom



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