I Am an Employer...

E1

How Do I...Hire a Foreign National for Short-Term Employment in the United States?

U.S. Citizenship and Immigration Services

M-582 (01/07)

Employers may sometimes need to hire foreign labor when there is a shortage of available United States (U.S.) workers to fill certain jobs. Under certain conditions, restrictions and/or limitations, U.S. immigration law may allow a U.S. employer to file a **Form I-129**, *Petition for a Nonimmigrant Worker*, with USCIS on behalf of a prospective foreign national employee. Upon approval of the petition, the prospective employee may apply for admission to or for a change nonimmigrant status while in the U.S. to **temporarily** perform services or labor or to receive training.

For most employment-based nonimmigrant visa categories, the employer starts the process by filing the Form I-129 with USCIS. The Form I-129 is available on our website at **www.uscis.gov**. Please note that in some cases the employer must file a *Labor Condition Application or Application for Alien Employment Certification*, with the Department of Labor (DOL) and/or obtain certain consultation reports from labor organizations **before** filing a petition with USCIS.

There are numerous nonimmigrant, employment-based visa categories. Under all of these categories, listed below, the foreign national must meet specific requirements related to the occupation for which the employer is petitioning.

What are the various types of visa classifications under which a foreign national may temporarily engage in employment?

The following is a list of the most common visa classifications under which a foreign national may temporarily engage in employment-related activities:

- **E-1** – Treaty traders and their spouses
- **E-2** – Treaty investors and their spouses
- **E-3** – Australian specialty occupation workers and their spouses
- **H-1B** – Specialty occupations in field requiring highly specialized knowledge, fashion models of distinguished merit and ability, or certain services of an exceptional nature relating to Department of Defense cooperative research and development projects or coproduction projects
- **H-1B1** – Specialty occupations for certain nationals of Singapore and Chile
- **H-2A** – Temporary agricultural workers
- **H-2B** – Temporary workers performing other services or labor, skilled or unskilled
- **H-3** – Trainees or special education exchange visitors
- **I** – Representatives of information media
- **J** – Certain exchange visitors
- **L-1A** – Intra-company transferees (executives, managers)
- **L-1B** – Intra-company transferees (employees with specialized knowledge)
- **L-2** – Spouse of an L-1A or L-1B
- **O-1** – Foreign Nationals who have extraordinary ability in the sciences, arts, education, business or athletics
- **O-2** – Essential support personnel for O-1
- **P-1** – Internationally recognized athletes (or athletic team) or members of an entertainment group
- **P-2** – Artists or entertainers under a reciprocal exchange program
- **P-3** – Foreign Nationals who perform, teach, or coach under a program that is culturally unique
- **P-4** – Essential support personnel for P-1, P-2, and P-3
- **Q-1** – International cultural exchange visitors
- **Q-2** – Irish peace process cultural and training program visitors
- **R-1** – Religious workers
- **TN** – Canadian or Mexican professionals pursuant to North American Free Trade Agreement (NAFTA)

For specific information regarding each nonimmigrant classification or qualifying occupation, please refer to our website at **www.uscis.gov**, or call customer service at **1-800-357-2099**.

Am I required to file an application or other request with the U.S. Department of Labor for every foreign national employee?

For the H-1B, H-2A and H-2B nonimmigrant classifications, it is necessary to first request certain types of certification from the U.S. Department of Labor (DOL). For H-1B nonimmigrants, a **Labor Condition Application**, and for H-2A and H-2B nonimmigrants, an **Application for Alien Employment Certification** must be filed in accordance with the DOL instructions. For filing instructions and other information related to this process, please see the DOL website at **www.lca.doleta.gov**.

It is not necessary to file an application or attestation with the DOL for the other nonimmigrant, employment-based or investor-based visa classifications previously listed.

What happens after I have filed a Form I-129, Petition for a Nonimmigrant Worker?

After you file, we will send you a receipt so you know that we have received your petition. If your petition is incomplete, we may have to reject it and return your fee, or ask you for more evidence or information, which will delay processing. We will notify you when we make a decision. If the prospective employee is in the U.S. in a valid nonimmigrant status, he or she can begin working for the employer upon approval of the Form I-129 petition, *provided* that the Form I-129 contained a change of status or extension of stay request that was also approved; or, in cases where a **Form I-539**, *Application to Extend/Change Nonimmigrant*, is required, the foreign national has filed and obtained approval of the application for change of status or extension of stay. If the prospective employee is residing outside the U.S. or appears to be ineligible to change his/her status while in the U.S., the petition will be sent to the U.S. consulate nearest the prospective employee's foreign residence. The prospective employee can then apply at the U.S. consulate for a nonimmigrant visa. If the visa is issued, he or she will then be able to travel to the U.S. and apply for admission. For more information about nonimmigrant visa processing, please visit the U.S. State Department's website at **www.travel.state.gov**.

Can an employer request expedited adjudication of a Form I-129 Petition for a Nonimmigrant Worker?

An employer can file **Form I-907**, *Request for Premium Processing Service*, with the appropriate fee, concurrently with the Form I-129, or after receiving the receipt notice for the Form I-129, at the USCIS location where the Form I-129 was filed. For more information on premium processing, please see our website at **www.uscis.gov**. We also have a bulletin available to employers on our website to help explain premium processing. See Employer Information Bulletin 21, *Premium Processing Service and Expedite Processing*.

How long will it take USCIS to process my petition?

Processing time depends on a number of factors. You can check our current processing times on our website at **www.uscis.gov**. Once the petition is filed, you can receive an updated estimate by checking on our website at **www.uscis.gov**, or call customer service at **1-800-357-2099.**

How long may a nonimmigrant employee stay in the U.S.?

The initial period of stay granted to a temporary employee varies depending upon the specific visa category. Likewise, the maximum period of initial stay allowable varies depending upon the specific visa category and on the foreign national's intended employment. This information may be found on the Form I-94 that the employee received upon entering the U.S. or on the USCIS-issued approval notice, in the case of a change of status or extension of stay. As noted below, in certain cases, a foreign national may seek to remain in a nonimmigrant classification longer than the period for which he or she was initially admitted or granted, up to the maximum period allowable by law. For detailed information on the period of stay initially granted and the maximum period of stay allowable for a specific visa category, please see our website at **www.uscis.gov** or call customer service at **1-800-357-2099**.

How can an employee extend his/her status if it is about to expire?

If it appears that an employee may be needed longer than the period for which he/she was admitted in his/her current nonimmigrant status, an employer may be able to file a new Form I-129 petition on behalf of the employee. To avoid disruption of authorized employment, employers are encouraged to file a petition to extend the employee's status well **before** it expires. Note, however, that if the employee has already stayed for the maximum period of time allowable, an extension may not be granted.

If I filed for an extension of status for my employee, but have not received a decision by the time his/her status expires, can I continue to employ him/her?

If:

- USCIS receives a Form I-129 petition to extend an employee's status before his/her status expires and;
- The employee has not violated the terms of his/her status; and
- The employee meets the basic eligibility requirements;

then the employee may continue to be lawfully employed for a period of up to 240 days, or until USCIS makes a decision on your application, or until the reason for your requested extension has been accomplished – ***whichever comes first***. (Note: Under Section 105 of the American Competitiveness in the Twenty-First Century Act, this does not apply to H-1B portability. H-1B portability is discussed in further detail below.)

If the request for extension is denied and the employee's status has already expired while the employee is in the U.S., he/she will be considered to have been "out of status" as of the date his/her status expired. **If this should happen, the employee will be required to cease employment immediately and depart from the U.S. upon denial of the petition**. There is no appeal to a denial of a request for an extension of status. The period of time that the foreign national has been "out of status" may affect his/her ability to return to the U.S. following his/her required departure.

What is H-1B Portability?

Section 105 of the American Competitiveness in the Twenty-First Century Act (AC 21) provides that a nonimmigrant who was previously issued an H-lB visa, or provided H-1B nonimmigrant status, may begin working for a new H-lB employer as soon as that new employer files a "nonfrivolous" H-lB petition on the nonimmigrant's behalf, if:

- The nonimmigrant was lawfully admitted to the U.S.; and
- The nonfrivolous petition for new employment was filed before the end of their period of authorized stay; and
- The nonimmigrant has not been employed without authorization since his lawful admission to the U.S., and before the filing of the nonfrivolous petition.

The H-1B worker is authorized to work for the new employer until the petition is adjudicated.

What are employers liable for once a nonimmigrant is in their employ?

Under immigration law, an employer is liable for the reasonable costs of return transportation abroad for a foreign national employee in the H-1B or H-2B visa categories if the employer dismisses the employee from employment before the end of the period of authorized admission. If employment is terminated for an employee in the O or P visa categories, for reasons other than voluntary resignation, the employer and the petitioner are jointly and severally liable for the reasonable costs of return transportation for the foreign national employee. Employers must keep USCIS informed of any firings, termination of employment, or changes in the employee's eligibility by submitting a letter to the USCIS office that has jurisdiction over the particular application/petition. Please note that the employee may only perform the duties described in the petition. As an employer, you also have many other labor-related responsibilities separate and apart from those required under the immigration laws. For information regarding these other responsibilities, please contact the appropriate U.S. Government or State agency.

All U.S. employers are required by law to verify the employment eligibility of all workers employed in the U.S. regardless of their immigration status through the **Form I-9**, *Employment Eligibility Verification*, process. For more information on completing and maintaining the Form I-9, please see **Fact Sheet E3**.

Can I file a Form I-129 petition even though I may wish to help this employee get permanent resident status?

When applying for the nonimmigrant visa at a consulate abroad, nearly all applicants must prove that their intention is to remain in the U.S. temporarily and to depart after they have fulfilled the purpose of their intended stay for which they are seeking a nonimmigrant visa, whichever is **shorter**. There are certain exceptions. For example, H-1B, L-1A and L-1B nonimmigrant workers may be able to maintain lawful nonimmigrant status and, at the same time, be beneficiaries of an immigrant visa petition, even if the workers themselves may have taken certain steps toward obtaining lawful permanent resident status without affecting their nonimmigrant status. In the case of other classifications, the mere filing of an immigrant visa petition on behalf of a nonimmigrant worker, without any action taken on the part of the worker himself or herself, may not necessarily have an adverse effect on the worker's nonimmigrant status. For more information on sponsoring a foreign national employee for lawful permanent resident status, please see **Fact Sheet E2**.

If I want to hire more than one employee, can I include all of them on one petition?

This depends on the particular nonimmigrant visa classification that you are seeking for the prospective employees.

- The H-1B, H-3, O, and R visa categories do not allow for multiple employees on one petition.
- For L-1 visa categories, although a prospective employer may file a single "blanket petition" to establish the requisite intracompany relationship, once the blanket petition has been approved, each individual employee seeking to work for the blanket petitioner must still file his or her own **Form I-129-S**, *Nonimmigrant Petition Based on Blanket L Petition*.
- For the H-2A, H-2B, P, and Q-1 nonimmigrant visa categories, a single petition may cover multiple workers if the workers meet certain specified conditions.

Can my employee change employers or work for more than one employer at the same time?

Yes, but each employer must file a separate Form I-129 petition and, where applicable, the appropriate Labor Certification, Labor Condition Application, or Labor Attestation with the DOL, and receive approval from USCIS before the employee may begin to work for a new or an additional employer. Please note that a foreign national who is eligible for H-1B portability may begin working for the new or additional employer once that employer has appropriately filed the Form I-129 petition with USCIS.

Key Information

Key forms referenced in this Fact Sheet	Form #
Petition for Nonimmigrant Worker	I-129
Application to Extend/Change Nonimmigrant	I-539
Request for Premium Processing Service	I-907
Employment Eligibility Verification	I-9
Nonimmigrant Petition Based on Blanket L Petition	I-129-S

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- **On the Internet at: www.uscis.gov**
  For more copies of this Fact Sheet, or information about other citizenship and immigration services, visit our website. You can also download forms, e-file some applications, check the status of an application, and more. It's a great place to start! If you don't have Internet access at home or work, try your library. If you can't find what you need, call customer service.
- **Customer Service: 1-800-357-2099**
- Hearing Impaired TDD Customer Service: 1-800-278-5732

Disclaimer: This Fact Sheet is a basic guide to help you become generally familiar with our rules and procedures. For more information, or the law and regulations, see our website. Immigration law can be complex, and it is impossible to describe every aspect of every process. You may wish to be represented by a licensed attorney or by a nonprofit agency accredited by the Board of Immigration Appeals.

Other U.S. Government Services–click or call		
In general	www.firstgov.gov	1-800-333-4636
U.S. Department of State	www.state.gov	1-202-647-6575