

# COMING TO AMERICA – GETTING A VISA

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## Visiting the United States

Millions of foreign visitors travel to the United States each year for business or pleasure. They come as tourists, or to visit family and friends. ***Others come for specific purposes, such as business, scientific, educational, or professional conferences/conventions, training, or consulting with business associates.*** Most foreign visitors need visas to enter the United States.

## What is a Visa?

A visa is permission to apply to enter the United States. Foreign citizens must apply for a visa at an American embassy or consulate abroad, when desiring to travel to the United States. A consular officer decides whether the potential visitor is qualified for a visa. A visa allows a foreign citizen to travel to the United States port-of entry, and request permission from the Department of Homeland Security, Customs and Border Protection, U.S. immigration inspector to enter the United States. A visa does not guarantee entry into the United States. Citizens of certain countries may be able to travel without a visa on the Visa Waiver Program (VWP) if they meet certain conditions.

## Visa Processing Times - Information You Need to Know

Recent changes in United States visa policy and procedures may increase the amount of time it takes for foreigners to obtain a visa. It is important to apply early!

Changes introduced shortly after September 11, 2001 involve extensive and ongoing review of visa issuing practices as they relate to our national security. ***For many applicants, a personal appearance interview is required as a standard part of visa processing. Visa applications are now subject to a greater degree of scrutiny than in the past. This can cause longer processing times.*** The State Department is working hard with other government agencies to streamline clearance procedures in ways that continue to protect United States borders, while facilitating legitimate travel.

## Types of Visas

There are many types of visas – please note: we do not use all of them. Here is an overview of the major types of visas applicable to SAO purposes.

## B-1 or B-2 "Visitor" Visa (typically used for No-Fee Consultants)

***You provide to visitor: 'No-Fee Consultant' Letter***

***Visitor submits: Consults local consulate to determine necessary documentation.***

***Time frame: Time to obtain a consular appointment to obtain a visa will vary widely. Visa waiver participants will present documents at port-of-entry and receive determination there.***

The "visitor's" visa is a non-immigrant visa for persons desiring to enter the United States temporarily for business (B-1) or for pleasure or medical treatment (B-2). As examples, if the purpose of planned travel is to consult with business associates, ***travel for a scientific, educational, professional or business convention, or conference on specific dates,*** settle an estate, or negotiate a contract, then your visitor would apply for a visitor's visa. The visa allows a foreign citizen to travel to a United States port-of entry and request permission of the U.S. immigration inspector to enter the U.S.

## **When should your visitor contact the embassy/consulate?**

- As soon as travel to the United States is considered, and after identifying that a visa is needed, your visitor should contact the U.S. embassy or consulate for information about current visa processing time estimates and processes.
- Your visitor can contact the embassy or consulate via the Department of State internet site [here](#). Look for posted timeframes on the internet [here](#) or call the embassy/consulate to hear recorded information about visa requirements.

## **How long does it take to get a visa?**

- Processing times are difficult to predict for any individual applicant. For many applicants, a personal appearance interview is required as a standard part of visa processing. The need for an interview will mean additional coordination with the embassy or consulate, as is required to schedule an interview appointment. If additional processing is needed, visa applicants are informed at the time the application is submitted. While most additional processing takes 30 days or less, a small percentage may take considerably longer.
- Advance planning is a key ingredient for successfully having your visitor obtain his/her visa in time for the planned visit. Your visitor should submit his/her visa application well in advance of the proposed departure date.

## **Visa Waiver Program (VWP)**

### ***Overview***

The Visa Waiver Program (VWP) enables citizens of certain countries to travel to the United States for tourism or business without obtaining a visa. *They must be travelling to the U.S. for business or tourism for a period of not more than 90 days, hold a round trip ticket, fly on certain air carriers, and meet other requirements.* The visa waiver program allows a foreign citizen to travel to a port-of-entry in the United States, such as an international airport, a seaport, or a land border crossing. At the port-of-entry, an officer of the Department of Homeland Security decides whether to allow the visitor to enter, and how long the visitor can stay. Not all countries participate in the VWP.

### ***Which Are the Visa Waiver Program (VWP) Countries?***

Currently, 38 countries participate in the Visa Waiver Program. View participating countries [here](#).

### ***What Does My Visitor Need to Enter the United States under the VWP?***

To enter the U.S. under the VWP, travelers must:

- be a citizen of a Visa Waiver Program country listed above;
- have a valid passport issued by the participating country that is valid for six months beyond the intended visit;
- have a machine-readable zone on the biographic page;
- have an electronic passport with a digital chip containing biometric information about the passport owner;
- be seeking entry for 90 days or less, as a temporary visitor for business or pleasure. Your visitor will not be permitted to extend his/her visit or change to another visa category under the VWP;
- have received authorization through the Electronic System for Travel Authorization (ESTA);
- have no visa ineligibility. This means that if your visitor has been refused a visa before, has a criminal record or is ineligible for a visa, he/she cannot travel on the Visa Waiver Program. He/she must apply for a visa to the U.S.

### ***When Does a Citizen of a VWP Country Need to Apply for a Visa?***

You must apply for a visa under the following circumstances, if you:

- want to work or study in the United States;
- have been refused a visa or admission to the U.S. before;
- have a criminal record; or
- are ineligible for a visa.

## **J-1 RESEARCHERS AND EXCHANGE VISITORS**

The Smithsonian Astrophysical Observatory (SAO) is authorized by the Department of State to be a designated sponsor of the J-1 Exchange Visitor Program. The J-1 Exchange Visitor Program provides countless opportunities for foreign nationals to come to the U.S. to teach, conduct research, demonstrate special skills, study or receive on-the-job training for periods ranging from a few weeks to several years. The broader objectives of the program are to facilitate the exchange of ideas and scholarly research in a variety of fields between people of the United States and people of other countries and to promote increased mutual understanding.

As a designated sponsor of the Department of State, SAO is authorized to issue the Certificate of Eligibility for Exchange Visitor (J-1) Status (Form "DS-2019"), the primary document used to support an application for a J-1 (Exchange Visitor) Visa. As a sponsor, it is also SAO's responsibility to work with the individuals or units across SAO in order to select and monitor prospective and current exchange visitors to ensure SAO's compliance with the criteria set forth in the Department of State's governing regulations (22 CFR Part 62) for this program.

**The following are categories of J-1 Exchange Visitors approved by Department of State to be hosted by the Smithsonian Astrophysical Observatory:**

### ***Research Scholar***

The exchange of research scholars promotes the exchange of ideas, research, mutual enrichment and linkages between research and academic institutions in the United States and foreign countries.

### ***Short-Term Scholar Program***

Professors, research scholars and other individuals with similar education or accomplishments travel to the United States on a short-term visit to lecture, observe, consult, train or demonstrate special skills at research institutions, museums, libraries, post-secondary accredited academic institutions or similar types of institutions.

### ***Specialists***

Specialists are experts in a field of specialized knowledge or skills, who provide opportunities to increase the exchange of ideas with American counterparts.

### **Learn more about the J-1 Exchange Visitor Program:**

- [J-1 Application Process](#)
- [J-1 Categories and Eligibility Requirements](#)
- [J-1 Restrictions](#)
- [J-1 Travel Information](#)
- [J-1 Steps and Timeframe Flowchart](#)

## H-1b Visa (typically used for Foreign Nationals SAO wishes to employ)

**You submit:** Completed 'Sponsor Data Sheet for Non-Immigrant Visa Status' with required documentation, check request for filing fees

**Visitor submits:** Completed 'Temporary Work Permitting Visa Status Data Sheet' with required documentation

**Time Frame:** Under ordinary circumstances, you should allow 1-2 weeks petition preparation time in HR, and then 12-16 weeks adjudication time. (We've seen a lot of variance in these times, though!) If time is of the essence, the division can request premium processing. The USCIS charges an extra \$1225 fee for premium processing, but promises a decision within 15 business days.

**H-1b** classification applies to persons in a specialty occupation that requires the theoretical and practical application of a body of highly specialized knowledge requiring completion of a specific course of higher education. This classification requires a labor attestation issued by the Secretary of Labor.

In order to be considered as a nonimmigrant under the above classifications, we, as the employer, must file Form I-129, *Petition for Nonimmigrant Worker*, with the United States Citizenship and Immigration Services in the Department of Homeland Security (USCIS). Once approved, we will receive a *Notice of Approval, Form I-797*. It should be noted that the approval of a petition does not guarantee visa issuance to an applicant found to be ineligible under provisions of the Immigration and Nationality Act.

## O-1 Visa (typically used for Foreign Nationals SAO wishes to employ, who are considered outstanding in their field)

**You submit:** Completed 'Sponsor Data Sheet for Non-Immigrant Visa Status' with required documentation, PO for legal fees, check request for filing fees

**Visitor submits:** Completed 'Temporary Work Permitting Visa Status Data Sheet' with required documentation

**Time Frame:** Under ordinary circumstances, you should allow 2-4 weeks petition preparation time with the attorney, and then 4-12 weeks adjudication time. (We've seen a lot of variance in these times, though!) If time is of the essence, the division can request premium processing. The USCIS charges an extra \$1225 fee for premium processing, but promises a decision within 15 business days.

**O-1** classification applies to persons who have extraordinary ability in the sciences, arts, education, business, or athletics, or extraordinary achievements in the motion picture and television field. **O-1 petitions are prepared and filed by our immigration attorney, who will work with the potential employee to prepare the petition.** The potential employee will be asked to provide supporting evidence of his/her extraordinary ability or achievement. **Please note:** The USCIS standard for the O-1 category is very high.

**Length of Stay:** The individual may remain in the U.S. for the duration of the "event" (the USCIS states that an event could be a scientific project, conference, or academic year – an appointment term can also be considered an "event"). When filing the petition, the employer specifies the length of time requested for the employment. The first petition filed for the employee may be for any period up to three years. Following that, petitions may be filed for extensions of one year at a time. There is no maximum period of time for the total time spent in O-1 status. If the specified employment ends, then the individual's legal O-1 status also ends.

Unlike the H-1 status, there is no annual quota for the number of O-1 petitions that can be approved each year. **It is also possible for an individual to apply for an O-1 visa even when he/she is subject to the two-year home country residency requirement resulting from a J-1 visa.**

## **TN-1 Visa (typically used for Canadian Nationals SAO wishes to employ)**

**You submit:** Completed 'Sponsor Data Sheet for Non-Immigrant Visa Status' with required documentation, check request for filing fees

**Visitor submits:** Completed 'Temporary Work Permitting Visa Status Data Sheet' with required documentation

**Time Frame:** Visa is typically issued immediately, at the port of entry.

**TN-1** is the current designation for visas for Canadian citizens who intend to temporarily work in the United States. Both the intended activity and the applicant must qualify under Schedule 2 of the North American Free Trade Agreement (NAFTA). The TN-1 provides some major advantages over the H-1b. Although the TN-1 is granted initially up to 3 years, the number of renewals permitted is currently unlimited. There are no forms required for issuance of a TN-1, and TN-1 is obtained at the border, in person, without having to submit the visa application by mail as with other visas.

In order to prove these requirements, the following items should be a part of every application package presented at the port of entry. In some cases, additional information specific to the applicant's situation may be required.

- Filing fees of US: \$160
- A supporting letter written by an official of the applicant's intended employer (your HR Specialist will provide this). This letter should describe the nature of Petitioner's business, the revenues generated or volume of trade, proof of the temporary need for employee with applicant's qualifications, a job description, applicant's professional qualifications, amount of remuneration, and the temporary nature of the job.
- College transcripts, copy of degree
- Canadian passport
- Copies of any applicable licenses (i.e., lawyer, CPA, etc.), or in the alternative, an explanation of why no license is required to perform services in the intended state of employment.

## **Permanent Residency Status (a.k.a. "Green Card")**

**You submit:** Completed 'Sponsor Data Sheet for Permanent Resident Status' with required documentation, PO for legal fees, check request for filing fees

**Visitor submits:** Documentation required by attorney

**Time Frame:** Depending upon the eligibility of the petitioner, entire process can take anywhere from 2-4 years.

While all of the above visas are "non-immigrant" visas (the visitor has no intention to remain in the U.S.), petitioning for Permanent Residency status implies immigrant intent (the visitor wishes to remain in the U.S. indefinitely). In general, in order to be eligible to apply for an immigrant visa, a foreign citizen must be sponsored by a U.S. citizen relative(s) or by a prospective employer. Unlike most other immigrant categories, Immediate Relatives are not subject to numerical limits under immigration law. Major immigrant categories are:

- Immediate Relatives
- Special Immigrants
- Family-sponsored
- Employer-sponsored

Additionally the Diversity Visa Program provides a certain number of permanent resident visas annually. These visas are drawn from countries with low rates of immigration to the U.S.

SAO Human Resources would only be dealing with Employer-Sponsored petitions. **Permanent Residency petitions are prepared and filed by our immigration attorney, who will work with the potential employee to prepare the petition.**