

VISA TALK

To 'B' or Not To 'B' — Temporary Visas For Business Visitors and Tourists

By Lawrence Lataif, Esq. of Fort Lauderdale, Fla.

The B visa is the most versatile and widely used nonimmigrant visa found in the U.S. immigration law. The B visa permits the temporary travel of foreign nationals to the United States for business or pleasure. In addition, the B visa classification has evolved over the last 40 years into a catchall category that is used by the INS to admit foreigners into the United States for diverse but permissible activities that do not fit precisely within the 30 or more specific nonimmigrant visa categories.

There are good reasons for maintaining the flexibility of the visa classification: it allows for the temporary admission of the millions of foreigners who enter the United States each year promoting the cultural and economic exchange between the United States and other countries.

Given the present day ethnic and business diversity of the United States, the B visa permits foreign family members and business people with short-term objectives and goals to enter the United States without undergoing a lengthy petition process with the INS.

B visa applications are made abroad at U.S. consular posts. Each application is assessed on its own merits by a consular officer. There are several elements that are taken into consideration by the consular officer when reviewing a B visa application:

It must establish a short-term and authorized purpose for entry into the United States;

- It must outline a specific and realistic plan for the duration of the applicant's stay in the United States such as a travel schedule;

- It must give a specific period of time which is temporary in duration (i.e., generally six months or less);

- It must demonstrate that the applicant has a residence that he or she is unlikely to abandon, usually aided by documentation of permanent employment and close family and financial ties; and

- It must give evidence that the applicant has sufficient funds, either from employment or savings at home or funds from friends abroad to ensure that the individual will not seek employment in the United States.

Documentation of support may be demonstrated by the completion of Form I-134, Affidavit of Support, by family or friends in the United States.

After the application has been favorably adjudicated, the applicant receives the B visa in his/her passport. B visas typically have a validity date varying from one to five years into the future. This does not mean that an individual who is granted a B visa is permitted to stay in the United States for years at a stretch. The main purpose of the B visa category is simply to facilitate international travel of individuals to the United States from other nations for temporary reasons.

Once the individual has been granted the visa and arrives in the United States, an Immigration Officer will review the individual's passport and I-94 Card (usually completed on the plane) and stamp the admission date of the foreign national on the I-94 Card. The Immigration Officer also determines whether the alien can enter the United States and how long the foreign individual may remain and records this on the I-94 Card directly. This date is the governing date for departure from the United States.

Many individuals mistakenly think that the visa guarantees them admission into the United States and that the validity date found on the visa is the duration of time they are permitted to remain in the United States, but this is not so. Some individuals

admitted in B status require additional time to complete the purpose of their visit. In this event, B status extensions are possible through an application filed with INS, though most are not granted B status beyond one year unless extraordinary circumstances can be documented.

There are two subclassifications within the B visa: B-1 and B-2. B-1 visas are designated for foreign nationals who come temporarily to the United States for business reasons and B-2 visas are for tourists and other visitors for pleasure. The types of activities permitted under the B-1 visa include commercial transactions, negotiation of contracts and consultations.

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Verification Pilot Uses Three-Step Process

Although the INS hopes eventually to replace the paper-based I-9 process for verifying employment eligibility, the automated employment verification pilot program currently is an addition to the existing I-9 process.

After a noncitizen employee has passed the I-9 process, the employer initiates "automated primary verification" by entering an access code, password and selected information about the new employee. Within seconds, an INS response indicates "Employment Authorized" or "Institute Secondary Verification."

Secondary verification requires the employer to input additional information. Within three days or less, the INS confirms work authorization or states that it is "unable to verify."

The third step gives new hires 30 days to resolve their immigration status by contacting the INS directly. The agency is beginning to test new software that will allow the contact to proceed via an 800 number rather than a personal visit.

Employers must pursue secondary verification and may not terminate an employee during the time he or she is allowed to resolve work authorization.

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Examples of Visitors for Business (B-1)

- Participants and voluntary service programs
- Certain types of services
- Professional athletes
- Yacht crewmen
- Investors
- Horse racing activities
- Certain commercial or industrial workers
- Foreign airline employees
- Clerkship participants
- Foreign exhibitors at international fairs or expositions
- Entertainers, photographers, musicians, medical doctors, participants in international competitions
- Aliens normally classifiable H-1 or H-3 Artists

Examples of Tourists And Visitors for Pleasure (B-2)

- Tourism and family visits
- Medical treatment
- Social events
- Armed forces dependents
- Dependents of crewmen
- Short course of study
- Amateur entertainers and athletes
- Alien fiancées
- Certain dependents of nonimmigrants
- Enrollees in avocational or recreational schools

The B visa classification should not be confused with the Visa Waiver Pilot Program (VWPP), a relatively new category under which individuals may enter the United States without any visa. Created in 1986 pursuant to the Immigration Reform and Control Act (IRCA), the INS and the Department of State have des-

ignated over 20 countries which participate in the program. The VWPP waives the normal nonimmigrant visa requirements, i.e., no visa application is required, for certain aliens who wish to visit the United States for 90 days or less. The restrictions of the VWPP require that the alien may not change or extend status after arrival in the United States under this classification. While this program is due to expire September 30, 1996, it is likely that Congress will pass an extension for another year.

In a following article, to appear in the next issue of *Immigration Advisor*, we will discuss in more detail the business-related B-1 visa and how to avoid the common mistakes and delays when applying for this visa.

Mr. Lataif has more than 20 years of employment-related immigration experience in Washington, D.C., Boston, Virginia and South Florida. He has headed up the business immigration practices of two national law firms, Jones Day and McDermott Will & Emery. Mr. Lataif regularly lectures to employers on topical immigration issues. His article "Canadians Entering the United States Under NAFTA: A Summary of Procedures You Need To Know" appeared in the June 1996 issue of Immigration Advisor.



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