

# UNITED STATES

## ENTRY VISA INSTRUCTIONS

### U.S. CONSULATE ABROAD

### APPROVED I-129 PETITION

### (FORM I-797 APPROVAL NOTICE)

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#### ENTRY VISA APPLICATION STEPS:

- PREREQUISITE TO VISA ISSUANCE: THE APPROVED U.S. EMPLOYER PETITION
- IDENTIFYING THE CORRECT U.S. CONSULATE
- SCHEDULING AN APPOINTMENT AND DETERMINING LOCAL U.S. CONSULAR REQUIREMENTS
- COMPLETING THE NONIMMIGRANT VISA APPLICATION FORM (DS-160)
- ASSEMBLING THE VISA APPLICATION PACKAGE AND DETERMINING THE VISA FEES
- FILING THE VISA APPLICATION: INTERVIEWS, APPROVAL, AND POSSIBLE DELAYS
- USING THE VISA TO ENTER THE U.S.
- SENDING COPIES OF U.S. ADMISSION DOCUMENTS TO BAL



## VISA INSTRUCTIONS

These instructions explain how to obtain an entry visa and enter the U.S. after USCIS has approved the employment-based petition on your behalf and issued the Form I-797 approval notice. Examples of visas that can be applied for in this manner include H-1B, L-1, O-1, TN-2, and E-3.


## STEP 1 – PREREQUISITE TO VISA ISSUANCE: THE APPROVED U.S. EMPLOYER PETITION

Before the consulate can issue you an employment-based entry visa, your U.S. employer must file a petition with U.S. Citizenship and Immigration Services (USCIS) in the U.S., and the petition must be approved. Here is an example of an approval notice (Form I-797) issued by USCIS:

Department of Homeland Security  
U.S. Citizenship and Immigration Services

I-797A, Notice of Action

**FREE UNITED STATES OF AMERICA**

REGISTRATION NO. RAC- 11-146-12345	PRIORITY April 20, 2011	PERMITS July 26, 2011	CLASSIFICATION PETITION FOR A NONIMMIGRANT WORKER	CLASSIFICATION US EMPLOYER
JEREMY FUDGE BERRY APPLEMAN & LEIDEN LLP 3232 MCKINNEY AVE STE 500 DALLAS TX 75204			Notice Type: Approval Notice Class: L1A Valid from 08/18/2011 to 08/17/2013	
The above petition and extension of stay have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization stems from the filing of this petition, separate employment authorization documentation is not required. Please contact the IRS with any questions about tax withholding.				
The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the copy with him or her for Form I-94, Arrival/Departure Record. This should be carried in with the I-94 when departing the U.S. The left part is for his or her records. A person granted an extension of stay who leaves the U.S. must normally obtain a new visa before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with the other required documentation, when applying for Form I-94, Application for Advance or an Approved Application of Person, at this office to request that we notify a consular, port of entry, or civil aviation inspection officer of this approval.				
The approval of this visa petition does not guarantee that the alien beneficiary will subsequently be admitted to the United States and does not guarantee that the alien beneficiary will be granted an extension, change, or adjustment of status. This notice is not a visa nor may it be used in place of a visa.				
Please see the additional information on the back. You will be notified separately about any other cases you filed.				
U.S. CITIZENSHIP & IMMIGRATION SVCS VERMONT SERVICE CENTER 25 LOWER WELCH STREET SAINT ALBANS VT 05479-0001 Customer Service Telephone: (800) 375-5283 Form I-797A (Rev. 09/07/93)N				

PLEASE TEAR OFF BORDERS PRINTED BELOW, AND RETURN TO ORIGINAL ISSUE OFFICE

Detach This Half for Personal Records	551925597 11
Receipt # RAC- 11-146-12345	Receipt Number RAC- 11-146-12345
L-94# 551925597 11	Immigration and
NAME TRAVELER,JOE	Naturalization Service
CLASS L1A	I-94
VALID FROM 08/18/2011 UNTIL 08/17/2013	Departure Record
PETITIONER: US EMPLOYER	Petitioner: US EMPLOYER
EMPLOYER'S ADDRESS	TRAVELER JOE UNITED KINGDOM

Form I-797A (Rev. 10/31/05) N

After USCIS approves the petition and we send you the original Form I-797, you can apply for an entry visa at a U.S. consulate. Depending upon the consulate, the order of Steps 3–5 outlined below may vary.

## STEP 2 – IDENTIFYING THE CORRECT U.S. CONSULATE

### IF YOU LIVE OUTSIDE THE U.S.

Most people apply at their home consulate, meaning the consulate with jurisdiction over the place of residence. For example, a Dutch national living in Singapore could apply at the U.S. consulate in Singapore.

## VISA INSTRUCTIONS

### IF YOU LIVE IN THE U.S.

Many foreign nationals mistakenly think that they must have a valid visa in their passport at all times. This is not actually the case. A visa is only needed to apply for *admission* (entry) to the U.S. Therefore, if you are already in the U.S. and USCIS issues an I-797 approval notice that extends or changes your status automatically, you are **not required** to depart the U.S. to obtain a new visa.

However, if you leave the U.S. after your visa has expired or if you have changed to a different status while in the U.S., you will most likely need to apply at a U.S. consulate for a new visa before you can re-enter the U.S. There is a limited exception to this requirement for some individuals traveling to Canada or Mexico for less than 30 days. Please contact your BAL attorney *before you travel* if you are planning a brief trip to Canada or Mexico and believe this exemption (known as “automatic revalidation” of an expired visa) may apply to you.

Otherwise, to return to the U.S. after international travel, you will need a valid visa in the approved employment status. Therefore, you must apply for and obtain a visa at a U.S. consulate before you can re-enter the U.S. and be authorized to work there. You can apply for a visa while visiting your home country or another country, as long as the U.S. consulate there agrees to process your visa application. You may be eligible to apply at a U.S. consulate in Canada or Mexico. Please see the **Third Country National Visa Processing** in Canada and Mexico section for additional information.

**You should apply for a visa as early as possible in case of possible delays in visa issuance. If you are currently employed in the U.S. and are planning to secure a new visa during travel abroad, you must be willing to accept the risk of additional security clearances delaying visa issuance. As delays in visa issuance may impact your job, we strongly encourage you to discuss these risks with your manager and Human Resources representative, and learn the consequences of a prolonged delay in visa issuance before deciding to leave the U.S. See [Step 6](#) for more information on this important subject.**

## STEP 3 – SCHEDULING AN APPOINTMENT AND DETERMINING LOCAL U.S. CONSULAR REQUIREMENTS

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All U.S. consulates require you to schedule an appointment for visa processing. We recommend that you book an appointment well in advance of your planned travel in case of any backlogs in appointment availability. The average wait time for interview appointments and visa processing at each U.S. consulate can be found at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/wait-times.html>.

The procedures to obtain an appointment and apply for a visa vary at each U.S. consulate. Therefore, it is important that you refer to the Non-Immigrant Visa Section pages on your chosen consulate’s website to determine visa processing timeframes and instructions, find out how to pay the visa fees, learn about appointment scheduling, and determine if there are any additional documentation items required. Links to all U.S. consulates are available at <https://www.usembassy.gov/>.

## STEP 4 – COMPLETING THE NONIMMIGRANT VISA APPLICATION FORM (DS-160)

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U.S. consulates use an online form, the DS-160, to process all nonimmigrant visa applications. This form collects all of the relevant data about your visa application and submits it electronically to the Department of State. Also, completion of the DS-160 is often a prerequisite before you can book a visa appointment. The DS-160 form can be found at <https://ceac.state.gov/genniv/>. After you submit the DS-160, a confirmation page will appear. You should print this page and bring it to your visa appointment/interview at the U.S. consulate.

## VISA INSTRUCTIONS

The U.S. consulate in Bangkok has created a helpful Step-by-Step Guidebook to completing the DS-160, as well as a DS-160 video presentation, available in two parts on YouTube:

Guidebook: [https://th.usembassy.gov/wp-content/uploads/sites/90/2016/04/ds\\_160\\_step\\_by\\_step\\_guide.pdf](https://th.usembassy.gov/wp-content/uploads/sites/90/2016/04/ds_160_step_by_step_guide.pdf)

Presentation, Part 1: <http://www.youtube.com/watch?v=RXVYpMfg00U&feature=youtu.be>

Presentation, Part 2: <http://www.youtube.com/watch?v=Ff1rWazCRo&feature=youtu.be> (Note that the information at the end of this video on making an appointment and paying the application fees is specific to the U.S. Consulate in Bangkok and should be ignored unless you are applying there.)

If applicable, your spouse and children under 21 are eligible for dependent status (H-4, L-2, O-3, TD, or E-3D). Unless your dependents are Canadian citizens, they will require dependent visas to apply for entry to the U.S. Each family member applying for a visa must complete a DS-160 form. Please see the section entitled **Accompanying Immediate Family Members** in Step 5 for additional information.

## STEP 5 – ASSEMBLING THE VISA APPLICATION PACKAGE AND DETERMINING THE VISA FEES

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When applying for an employment-based entry visa, you should present the following documentation to the U.S. consulate:

- Valid passport. In general, your passport should be valid for at least six months beyond the contemplated initial period of stay in the U.S. In some cases, the consulate may issue a visa valid beyond your passport expiration date; however, CBP usually issues the I-94 Form valid to your passport expiration date. Since the I-94 Form controls the period of your stay in the U.S., this can have significant repercussions, including the need to file an extension of status with USCIS, shortened validity dates on U.S. driver's licenses, and hindered ability to execute financial and lease documents.
- The visa processing fee, and reciprocity fee if applicable, paid in the manner directed by the U.S. consulate. For more information on fees, see below.
- Confirmation page of the completed DS-160.
- The complete employment petition package from BAL including:
  - Original Form I-797 Approval Notice for the underlying H-1B, L-1, O-1, TN-2, or E-3 petition. Note: While USCIS electronically notifies the consulate of the approval, BAL recommends that you take the original Form I-797 to present at the visa appointment at the consulate and to CBP when entering the U.S.
  - Copy of the H-1B, L-1, O-1, TN-2, or E-3 petition filed with USCIS.
  - Some consulates may require documentation from your employer, such as an annual report or tax return, for smaller, privately held companies.
  - Copies of documentation showing your lawful status during prior stays in the U.S., if applicable.
  - Copies of your degrees and transcripts, if applicable.
- If you currently hold lawful employment status in the U.S. with the petitioning company, bring your latest paycheck stub and a basic **employment verification letter** (sample below).
- U.S. consulates have discretion to request additional supporting documentation, including but not limited to individual or corporate tax returns, original educational documents, and letters confirming prior employment.

### ACCOMPANYING IMMEDIATE FAMILY MEMBERS

Spouses and children under the age of 21 are eligible to accompany you to the U.S. as your dependent(s). If your spouse and/or children will accompany you and they are not Canadian citizens, they should also secure consular appointments for their visa processing. They should present the following documentation at their appointment:

- Valid passport. In general, the passport should be valid for at least six months beyond the contemplated initial period of stay in the U.S. In some cases, the consulate may issue a visa valid beyond the passport expiration date; however, CBP usually issues the I-94 Form valid to the passport expiration date. This can have significant repercussions, including the need to file an extension of status with USCIS, shortened validity dates on U.S. driver's licenses, and hindered ability to execute financial and lease documents.



## VISA INSTRUCTIONS

### IF DENIED

In the event of visa rejection, you should contact your BAL attorney as soon as possible and provide the consulate's written rejection form. BAL will follow up immediately.

### IF APPLICATION IS PUT ON HOLD PENDING FURTHER PROCESSING:

When applying for a visa, you should be prepared for the possibility of a delay in visa issuance. Many visa applications require further "administrative processing" after the interview at the consulate. "Administrative processing" means that the federal government in Washington, D.C. must determine whether to grant you a security clearance before your visa can be issued.

Administrative processing is usually triggered when your name check or fingerprint scan reveals a potential match with someone listed in a U.S. government database. This can also occur if there is a match with someone who has had prior visa problems such as overstays or denials; or criminal arrests or convictions. Even a close name match or birthdate/birthplace match with someone who has a record can trigger administrative processing. Administrative processing can also be triggered due to certain answers on the DS-160 form, or based on the Technology Alert List, which lists sensitive technologies that are considered to have both civilian and military uses.

Unfortunately, there is usually no way to know in advance if administrative processing will be required and there is no way to speed up the process. Applicants are first advised whether they need administrative processing at the end of the visa interview. However, there are a few scenarios that often trigger administrative processing:

1. If you, or any accompanying family member, have been **arrested** previously, in any country, even if the arrest did not result in conviction, you will likely be subject to additional administrative processing, and you should be prepared to produce any court documents related to the incident. You must notify BAL in advance if you or any of your dependents have ever been arrested.
2. **Males ages 15 to 45 who were born in or are a citizen of the following countries** will likely be subject to additional administrative processing:

<b>Afghanistan</b>	<b>Algeria</b>	<b>Bahrain</b>	<b>Cuba</b>	<b>Djibouti</b>
<b>Egypt</b>	<b>Eritrea</b>	<b>Indonesia</b>	<b>Iran</b>	<b>Iraq</b>
<b>Jordan</b>	<b>Kuwait</b>	<b>Lebanon</b>	<b>Libya</b>	<b>Malaysia</b>
<b>Morocco</b>	<b>North Korea</b>	<b>Oman</b>	<b>Pakistan</b>	<b>Qatar</b>
<b>Saudi Arabia</b>	<b>Somalia</b>	<b>Sudan</b>	<b>Syria</b>	<b>Tunisia</b>
<b>United Arab Emirates</b>	<b>Yemen</b>			

Applicants from these countries should be prepared to provide additional information to comply with administrative processing requests, including but not limited to:

- Travel history during the last 15 years
  - Residence addresses during the last 15 years
  - Prior jobs and employers, including brief descriptions if applicable, during the last 15 years
  - Prior passport numbers
  - Any phone numbers, email addresses, and/or social media handles used in the last 5 years
  - Names of siblings, children, and/or former spouses not already recorded on Form DS-160
3. As of March 17, 2017, the Department of State has announced that it will check the social media accounts of any visa applicant who was ever **present in territory at the time it was controlled by the Islamic State (ISIS)**.
  4. Additionally, **Indian and Chinese nationals** are often subject to administrative processing.

## VISA INSTRUCTIONS

Most administrative processing is resolved within 90 days of the visa interview, but the timing will vary based on the individual circumstances of each case and can sometimes take much longer. Accordingly, you should make arrangements with your HR representative and manager to develop a contingency plan if your visa processing is delayed.

Finally, in some cases, minor delays may ensue while the consular officer verifies the underlying visa petition using USCIS' Petition Information Management System (PIMS), a database of approval notices and related documents. While most PIMS queries are supposed to receive a response within a few hours, there have been reports of technical failures as well as missing records. Please report back to BAL if a delay due to PIMS exceeds two days.

### STEP 7 – USING THE VISA TO ENTER THE U.S.

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The request for admission to the U.S. is made to Customs and Border Protection (CBP) at the airport (if arriving via airplane) or at the border (if driving). CBP will inspect your passport and visa, and if admission is granted, CBP will issue an I-94 Arrival/Departure Form to you. CBP has automated issuance of the I-94 Form for all entries by air or sea. If you arrive in the U.S. by airplane or boat, you must go to <https://i94.cbp.dhs.gov> to print your I-94 Form. The I-94 Form documents the date and visa classification in which you were admitted to the U.S., and lists the date up to which you may remain in the U.S. in that status. **Significantly, the visa allows you to apply for admission, but once you are admitted to the U.S., the I-94 Form gives you legal status and work authorization if you are admitted in a work-authorized category. Thus, it is the key and critical document once you enter the U.S. After every entry to the U.S., you must check the I-94 Form for accuracy.**

If entering the U.S. using a valid employment-based visa, you should always present your current employer's original Form I-797 Approval Notice to the CBP officer. The Form I-797 should be presented even if the officer does not ask for it. While the valid H-1B, L-1, O-1, TN-2, or E-3 visa in your passport is allowed to reflect the name of a prior employer, you should still be admitted into the U.S. as long as you present a Form I-797 Approval Notice valid for the same visa classification with your present employer.

We recommend that everyone making an entry using an employment-based visa compare the "Admit until Date" on the I-94 Form with the expiration date and the visa status on your visa. You should be sure that the "Admit until Date" on the I-94 Form reflects the full duration of your nonimmigrant validity, as noted on your Form I-797 Approval Notice, and that the visa classification is correct, as errors can be serious. If the end dates or visa classifications are different, you will need to go to a local CBP Deferred Inspection Site or port of entry to have the admission record corrected. Please contact BAL immediately if this occurs.

The CBP officer may limit your I-94 Form to the expiration date of your passport. Please be sure to check the I-94 Form and passport, and notify BAL immediately if the I-94 Form expiration date is earlier than the expiration of either your Form I-797 or your visa.

### STEP 8 – SENDING COPIES OF U.S. ADMISSION DOCUMENTS TO BAL

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After you enter the U.S., you should send a copy of your visa and Form I-94 to BAL, as well as the visas and I-94s for any accompanying family members. Please also send us your U.S. contact information. These documents enable BAL to confirm proper U.S. admission and to track your status expiration.

### SPECIAL ISSUES

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#### THIRD COUNTRY NATIONAL VISA PROCESSING IN CANADA AND MEXICO

You may be able to renew your visa in Canada or Mexico.

Third country national (TCN) visa applicants who seek to **renew** a visa (except for B1/B2 visa applicants) can apply at a U.S. consulate in Mexico **only** if the applicant's initial visa was issued in the applicant's home country. This means that the following TCN visa applicants **cannot** apply for a visa at a U.S. consulate in Mexico:

- Applicants for B1/B2 visas, including renewals;
- Applicants who entered the U.S. under the auspices of the Visa Waiver Program;
- Applicants who obtained their current visa in a country other than that of their legal residence;
- Applicants who initially entered the U.S. in one visa category and are seeking to re-enter the U.S. in a different visa category (e.g. applicants who changed from F-1 to H-1B status); and
- Applicants who have been out of status in the U.S., having violated the terms of their visas or having overstayed the validity indicated on their I-94s.

Please be advised that if you apply for your visa in Canada or Mexico, and the U.S. consulate refuses to issue a new visa or there is a delay in your visa processing, you will not be eligible to re-enter the U.S. In the event that your visa appointment in Canada or Mexico is unsuccessful, you will need to return directly to your home country and apply for a visa there. Additionally, applying for your visa as a third country national visa applicant may increase the risk that your application will be delayed due to **administrative processing**.

Please also note that U.S. consulates in Mexico and Canada do not accept visa applications from individuals who were born in or are citizens of Iran, Syria, Sudan, North Korea, and Cuba. Such individuals are also prohibited from re-entering the U.S. from Canada or Mexico solely on the basis of their Form I-94.

Other H-1B, L-1, O-1, TN-2, or E-3 employees (and their families) who are not planning visa appointments may be able to travel into Canada or Mexico for up to 30 days without obtaining a new visa, under the rule called "automatic revalidation." Please confirm with your BAL legal team if you believe this may apply to you.

If you choose to go to Canada or Mexico to apply for a visa, you will need to ascertain and comply with the respective country's visa requirements for entry. Also, before applying at a U.S. consulate in Canada or Mexico, you will need to make an appointment to apply for your visa and confirm with the consulate that it will process your TCN visa application. To book an appointment for a U.S. consulate in Canada use <https://ais.usvisa-info.com/en-ca/niv>. To book an appointment for a U.S. consulate in Mexico use <https://ais.usvisa-info.com/en-mx/niv>.

#### SHORT VISA VALIDITY FOR SOME COUNTRIES

Due to international reciprocity schedules, applicants from some countries receive visas that are shorter than their authorized employment period, or only good for one to two uses. For example, while H-1B employment is approved in 3-year increments, Chinese nationals only receive H-1B visas valid for 12 months. Some of the most common restricted visas are:

Country	Visa Type	# Of Entries	Validity
China	O-1/O-3	One	90 days
China	H-1B/H-4	Multiple	1 year
China	L-1/L-2	Multiple	2 years
Brazil	L-1/H-1B	Multiple	2 years
Brazil	O-1/O-3	Multiple	90 days
Mexico	O-1/O-3	Multiple	180 days

## VISA INSTRUCTIONS

The full list of reciprocity schedules is available at <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html>.

### O-1, TN, AND E-3 VISA APPLICANTS WITH PENDING AOS APPLICATIONS

If you have an application for adjustment of status (AOS) pending while you are in O-1, TN, or E-3 status and you wish to depart the U.S., you must have a valid Advance Parole (AP) document in order to do so, and you will need to use the valid AP document in order to return to the U.S. In addition, you will need to have a valid (unexpired) Employment Authorization Document (EAD) card in order to work in the U.S. after you re-enter.

While H-1B and L-1 nonimmigrants may re-enter the U.S. using their H-1B and L-1 visa stamps after an AOS application has been filed, there is no such provision for O-1, TN, or E-3 nonimmigrants. After filing an AOS, they must obtain and use Advance Parole if they wish to re-enter the U.S. after foreign travel. Please note that if this applies to you, you will not be able to depart the U.S. without a valid AP document. If your current AP document expires before the renewal document has been issued, you will need to wait for the new AP documents to arrive before you can travel outside the U.S.

### VISA REVOCATION AFTER AN ARREST IN THE U.S.

Please be aware that the U.S. State Department has directed consular officials abroad to revoke an individual's nonimmigrant visa if he or she has been arrested or convicted on a charge of driving under the influence in the U.S. If your visa is revoked for this reason, you may not be notified of the revocation until you apply for re-entry to the U.S. following international travel. If you have been arrested for **any** reason, please contact your BAL attorney to discuss this matter immediately and before departing the U.S. for international travel.

### SAMPLE EMPLOYMENT VERIFICATION LETTER FOR VISA RENEWALS

If you currently hold lawful employment status with the petitioning company, you should present your latest paycheck stub and an employment verification letter at the visa interview. Below is a sample template for the employment verification letter.

If you are applying for your first H-1B, L-1, O-1, TN-2, or E-3 visa abroad to work for the petitioning company, the verification letter is not required. However, the sample shows how it can be adapted for that purpose. The letter should be printed on company letterhead and dated with the current date.

DATE

Officer in Charge  
Nonimmigrant Visa Unit  
U.S. Consulate in [LOCATION]

Re: [H-1B/L-1/O-1/TN-2/E-3] Visa Application on behalf of [NAME]

Dear Sir/Madam:

This is to verify that [COMPANY] employs/will employ [NAME] as a [JOB TITLE] in [H-1B/L-1/O-1/TN-2/E-3] status based upon an approved [H-1B/L-1/O-1/TN-2/E-3] petition. [NAME] earns/will earn an annual salary of at least \$[SALARY].

If you have any questions regarding this position, please do not hesitate to contact me.

Sincerely,

[HR CONTACT PERSON]  
[TITLE]