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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 as Visitors for Business in either B-1 or WB (B-1 Visa Waiver Program) 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 Business Visitor 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 Business Visitor must not be coming to the U.S. to provide services or engage in business activities that are <u>primarily</u> for the benefit of a U.S. employer.**

  In most cases, Business Visitors are admitted to the U.S. to conduct business for the principal benefit of their foreign employer.

- **Business 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.

- **Business Visitors must depart the U.S. on or before their expiration date.**

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

Who Can Come to NIH in B-1 or WB 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:

    - He/she must have a foreign employer and be coming to NIH on behalf of the foreign employer to consult with associates in the field.

    - He/she must be the recipient of a foreign grant awarded for the specific research that will be conducted at NIH (this may include students coming to conduct research as part of their dissertation).

2. An individual that does not meet 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 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. An individual that does not meet the criteria stated above in 1., 2., and 3., but is coming to NIH to participate in a scientific conference or seminar (such as a scientist giving a lecture).

5. 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 and/or honorarium. To assist in determining eligibility for B-1 or WB status, complete the B-1/WB Statement.

* ***NOTE:*** Only medical students coming for elective clerkships as discussed in item 5. above, are authorized to engage in supervised patient contact. Otherwise, physicians in B-1 or WB status may only come for observation and consultation, where no element of patient contact is involved.

When Is B-1 or WB Status Inappropriate?

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

    This is often interpreted by the U.S. Department of Homeland Security (DHS) 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 or WB status, a denial later by DHS of a request for a change of status.

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 or WB 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. It is inappropriate to invite an individual to the NIH in B-1 or WB status to do work that will displace a U.S. worker.

Funding for Individuals in B-1 or WB Status

B-1 or WB Visitors must demonstrate to U.S. Consular and/or DHS 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 or WB 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. Honorarium payments must meet strict guidelines. If honorarium is paid, the NIH Institute or Center (IC) needs to complete the following declaration at the time of the scientist's arrival.

If the scientist is reimbursed for per diem expenses or receives honorarium during his or her stay at NIH, discretion should be used to determine an appropriate amount. It is important to remember that reimbursement for per diem or honorarium cannot be used as a mechanism to pay the Business Visitor a stipend or salary. If DOS or DHS believes that the amount being paid to the scientist is comparable to a salary, the Business Visitor will be denied a B-1 visa and/or entry into the U.S. in B-1 or WB status.

Information on Obtaining B-1 or WB Status

When applying for the B-1 visa from a U.S. Consulate and/or obtaining entry to the U.S. by DHS officials, the scientist should present an original letter from the NIH host/sponsor, on NIH letterhead, stating the purpose of the visit (refer to "Who Can Come to NIH in B-1 or WB Status?"). This letter should:

- Avoid using the term "volunteer" as this can result in the scientist being given a tourist (B-2) visa by the U.S. Consulate and/or being admitted by the DHS into the U.S. in B-2 or WT (B-2 Visa Waiver Program) status.
- Make clear the purpose of the visit (e.g. to consult with associates in the field) 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 90 days); (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.
- Include this letter (with signature by the NIH host) with the request for assignment sent to the Division of International Services (DIS) by the NIH Institute or Center (IC). Refer to the DIS checklists for full documentation requirements. The DIS will send the scientist the NIH host letter, along with the official B-1 or WB invitation letter.
- If applicable, the scientist should also carry a letter from his or her employer stating that the employer is aware that the scientist is coming to consult with associates at NIH, and that his or her salary will continue to be paid by the employer or other home country sources.

Entry into the U.S. in B-1 Status

When being admitted into the U.S., the foreign scientist should request that the DHS Immigration Inspector indicate **"B-1"** on the Form I-94 (Arrival-Departure Record) and include the period of admission specified in the NIH letters of invitation. To assist the DHS Inspector, the scientist should present the letters from the NIH host, the DIS, and the home country employer (if applicable).

Although DIS instructs the foreign scientist about entering the U.S. in B-1 status, the IC sponsor and administrative 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 business activities until his or her status is changed to B-1 by the DHS, a procedure that could take 2-3 months.

B-1 Visitors must depart the U.S. or file an application for an extension of stay 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 Business Visitor to depart or timely submit an application for an extension of stay will result in an unlawful overstay.

See **"Links"** at the end of this advisory for the Department of State (DOS) web site for more details about the B-1, Visitor for Business.

* ***NOTE:*** Canadian citizens do not need to apply for a B-1 visa to enter the U.S**.** When coming to the NIH, however, they must undergo U.S. customs and immigration inspection and obtain evidence that they were admitted in B-1 status. Therefore, when entering the U.S., **Canadians must obtain either a Form I-94 OR an entry date-stamp in the passport marked "B-1" to indicate that they were admitted in B-1 status.**

REMINDER: **B-2 status 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.**

Entry into the U.S. in WB Status: 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 from a U.S. Consulate 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. Seeks admission to the U.S. for a period not to exceed 90 days;

2. Possesses a passport that meets VWP requirements (see **"Links"** at the end of this advisory to learn the full VWP passport requirements). **NOTE**: if the individual does not have a passport that meets VWP requirements, then he/she is **not** eligible for the VWP and must instead obtain a B-1 visa stamp for entry into the U.S.;

3. Has obtained approval via the Electronic System for Travel Authorization (ESTA) at least seventy-two (72) hours prior to travel to the U.S. (see **"Links"** at the end of this advisory to learn about the ESTA requirement). **NOTE**: if the individual does not receive ESTA approval, then he/she is **not** eligible for the VWP and must instead obtain a B-1 visa stamp for entry into the U.S.;

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 must still also meet all eligibility requirements, funding, and documents to obtain Business Visitor status, as discussed in this advisory.

When being admitted into the U.S., the foreign scientist should request that the DHS Immigration Inspector provide an entry date-stamp in the passport to indicate **"WB" (Visa Waiver for Business)** as his/her immigration status and include the period of admission specified in the NIH sponsor's letter of invitation (not to exceed 90 days). To assist the DHS Inspector, the scientist should present the letters from the NIH host, the DIS and the home country employer (if applicable). Please note that those admitted in WB status are not issued a Form I-94; the entry date-stamp from the passport is acceptable evidence of admission in WB status.

Although DIS instructs the foreign scientist about entering the U.S. in WB status, the IC sponsor and administrative Key Contact should also reinforce this, inasmuch as DHS officials may erroneously annotate "WT" rather than "WB." Such an error may prevent the scientist from participating in the business activities until his or her status is changed to WB by the DHS, a procedure that could take 2-3 months.

WB Visitors must depart the U.S. on or before the expiration date listed on their entry date-stamps in the passport. There is no grace period for individuals in WB status. Therefore, failure by the Business Visitor to depart will result in an unlawful overstay.

There are several very important restrictions that apply to those who come under the VWP. **Most important are that once in the United States an individual <u>cannot</u> 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, 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.

REMINDER: **WT status is <u>NEVER</u> appropriate for <u>ANY</u> 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 WT status, <u>CANNOT</u> be reimbursed for travel or per diem expenses.**

LINKS

For additional information on the B-1, Visitor for Business, click here.

Click here for full details on the Visa Waiver Program, including passport and ESTA requirements.

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
Chile
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Italy
Japan
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Monaco
Netherlands
New Zealand
Norway
Portugal
San Marino
Singapore
Slovakia
Slovenia
South Korea
Spain
Sweden
Switzerland
Taiwan
United Kingdom