

UNCLASSIFIED (U)

9 FAM 400 NONIMMIGRANT VISAS

9 FAM 401 NONIMMIGRANT STATUS

9 FAM 401.1 INTRODUCTION TO NONIMMIGRANT VISAS AND STATUS

*(CT:VISA-2173; 08-05-2025)
(Office of Origin: CA/VO)*

9 FAM 401.1-1 STATUTORY AND REGULATORY AUTHORITY

9 FAM 401.1-1(A) Immigration and Nationality Act

(CT:VISA-1202; 01-12-2021)

INA 101(a)(15) (8 U.S.C. 1101(a)(15)); INA 101(a)(33) (8 U.S.C. 1101(a)(33));
INA 214(b) (8 U.S.C. 1184(b)); INA 221(g) (8 U.S.C. 1201(g)); INA 291 (8
U.S.C. 1361).

9 FAM 401.1-1(B) Code of Federal Regulations

(CT:VISA-277; 01-05-2017)

8 CFR Part 213; 22 CFR 40.6; 22 CFR 41.11; 22 CFR 41.26; 22 CFR 41.27.

9 FAM 401.1-1(C) United States Code

(CT:VISA-1202; 01-12-2021)

22 U.S.C. 611; 22 U.S.C. 612; 22 U.S.C. 613.

9 FAM 401.1-2 OVERVIEW- NONIMMIGRANT VISAS AND STATUS

(CT:VISA-2173; 08-05-2025)

- a. NIVs are for international travelers coming to the United States temporarily. The NIV allows the bearer to travel to a U.S. port of entry and request permission of the Department of Homeland Security (DHS) Customs and Border Protection (CBP) immigration officer to enter the United States. However, an NIV does not guarantee entry into the United States. CBP will decide if the NIV holder may be admitted and for how long the individual may remain in the United States in nonimmigrant status.
- b. International travelers come to the United States for a wide variety of reasons, including tourism, business, medical treatment and certain types of temporary work. NIV classifications are defined by immigration law and relate to the principal purpose of travel.

9 FAM 401.1-3 ELIGIBILITY FOR NONIMMIGRANT STATUS

9 FAM 401.1-3(A) Length of Stay and Permissible Activities

(CT:VISA-1389; 10-14-2021)

The Immigration and Nationality Act (INA) makes basic distinctions between immigrants and nonimmigrants regarding length of stay and permissible activities. A nonimmigrant may remain only for a specific period and may engage only in activities allowed for the assigned NIV classification under INA 101(a)(15). Nonimmigrants will be subject to removal or other measures if they fail to maintain nonimmigrant status, fail to depart at the end of the authorized period of stay, or engage in unauthorized activities.

9 FAM 401.1-3(B) Restrictions on Employment

(CT:VISA-2173; 08-05-2025)

- a. The most significant restriction on activities of nonimmigrants relates to employment. In certain NIV classifications, employment is prohibited. In others, employment of a specified, restricted kind may be authorized upon fulfillment of certain requirements. Therefore, an applicant expecting to be gainfully employed in the United States may not be classified as a nonimmigrant unless the intended employment is, or may be, authorized under a nonimmigrant classification. Refer to [9 FAM 402](#) for guidance on the NIV category for specific employment-related restrictions.

- b. An intention to accept employment is often tied with an intention to remain in the United States for an extended period. This need not, however, always be the case. For example, an applicant employed in an occupation subject to seasonal fluctuations might apply for a tourist visa to earn money in the United States during the slack season at home and then returning home to resume regular employment. He or she may not intend to remain in the United States longer than would be authorized but may intend to engage in unauthorized activities during the stay in the United States and may not qualify for certain NIVs for that reason.

9 FAM 401.1-3(C) Intent to Adjust Status

(CT:VISA-1389; 10-14-2021)

Generally, it is impermissible for an individual to enter the United States on an NIV to seek adjustment of status under INA 245. You must review the requirements of the specific visa classification sought to determine whether the residence abroad requirement applies. If the classification is subject to a residence abroad requirement, then travel to the United States with no intent to return to one's residence or for the specific purpose of adjusting status would be inconsistent with that visa classification. On the other hand, there are NIV classifications, such as those found at INA 101(a)(15)(H)(i)(b), (K), and (L), which hold no prohibition on residence in the U.S. or adjustment of status to LPR.

9 FAM 401.1-3(D) INA 214(b)

(CT:VISA-2173; 08-05-2025)

- a. INA 101(a)(15) defines an immigrant as an individual who does not meet the requirements of one of the nonimmigrant classifications listed in that section. To put this distinction into practice, INA 214(b) presumes all visa applicants (except for applicants for H-1B, L, or V visas) to be immigrants until they prove to you that they qualify for the NIV classification sought.
- b. Pursuant to INA 291, to be classified as a nonimmigrant, the applicant must prove to your satisfaction that he or she is entitled to a nonimmigrant status under INA 101(a)(15). The applicant must demonstrate that he or she is entitled to nonimmigrant status and that his or her intended activities are consistent with the status for which he or she is applying.
- c. You must assess the credibility of the applicant and the evidence submitted to determine qualifications under INA 101(a)(15). You must be satisfied that the applicant will engage in the activities authorized under the NIV classification and will abide by the conditions of that nonimmigrant classification and maintain lawful status.
- d. When adjudicating NIV applications, keep in mind that the standards for qualifying for an NIV are found in the relevant subsections of INA 101(a)(15) rather than in INA 214(b) or 291. Any questions of law regarding whether an

activity is permissible in the specific NIV classification must be addressed through the appropriate AO process.

- e. For further information on INA 214(b), see [9 FAM 302.1-2](#).

9 FAM 401.1-3(E) Residence Abroad

9 FAM 401.1-3(E)(1) When Residence Abroad Required

(CT:VISA-2173; 08-05-2025)

Some NIV classifications impose the requirement that the applicant maintain a residence abroad. These classes are B, F, H (except H-1), J, M, O-2, P, and Q. Like purpose of travel, maintaining a residence abroad is an essential part of eligibility for these NIVs. If an applicant fails to satisfy you of this requirement, he or she is not eligible for the requested NIV classification and you must refuse the application.

9 FAM 401.1-3(E)(2) Residence Abroad Defined

(CT:VISA-2173; 08-05-2025)

- a. The term "residence" is defined in INA 101(a)(33) as the place of general abode which means the person's principal, actual dwelling place in fact, without regard to intent. This does not mean that an applicant must maintain an independent household to meet the requirement of a residence abroad. If the applicant customarily resides in the household of another, that household is the residence in fact. Only the following visa categories are subject to residence abroad requirements: B, F, H (except H1), J, M, O2, P, and Q. When adjudicating this requirement, it is essential to view the requirement within the context of the visa classification. See the [9 FAM guidance](#) related to the visa classification for the relevant discussion.
- b. The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.
- c. The residence in a foreign country does not need to be the applicant's current residence. For example, an applicant who has been living in Germany may meet the residence abroad requirement by showing a clear intention to establish a residence in Canada after a temporary visit in the United States.
- d. Suspicion that an applicant, after admission, may be swayed to remain in the United States because of more favorable living conditions is not a sufficient ground to refuse a visa if the applicant's current intent is to return to a foreign residence.
- e. You may issue visitor visas to applicants with IV applications pending or, with IV petitions pending with the United States Citizenship and Immigration Services (USCIS). You must be satisfied that the applicant's intent in seeking

entry into the United States is to engage in activities consistent with B1/B2 classification for a temporary stay and that the applicant has a residence abroad which he or she does not intend to abandon. While an active IV application or petition is reflective of an intent to immigrate, unless you have reason to believe the applicant's true intent is to remain in the United States until such a time as an IV becomes available, you may issue the visa if the applicant is otherwise qualified.

9 FAM 401.1-4 MAINTENANCE OF STATUS AND DEPARTURE BOND

(CT:VISA-2173; 08-05-2025)

9 FAM 401.1-4(A) Bonds Should Be Used In Applicable Circumstances

(CT:VISA-2173; 08-05-2025)

22 CFR 41.11(b)(2) permits you to require a maintenance of status and departure bond in certain cases, but bonds should not be applied by a consular officer without an explicit policy directive from the Visa Office. During a visa bond pilot, certain nationals may be required to pay a maintenance of status and departure bond as Department policy. No applicant should be required to pay a bond unless the applicant already overcomes 214(b). The consular officer should have no doubt of the applicant's intent to depart the United States in a timely manner, nor have concerns of visa misuse.

9 FAM 401.1-4(B) Department Approval Required in Bond Cases

(CT:VISA-2173; 08-05-2025)

Unless an applicant has a nationality which is identified as requiring a maintenance of status and departure bond per Department policy, you must obtain approval from the Department (CA/VO/F) before requesting that an applicant post a maintenance of status and departure bond. In general, the Department does not require visa bonds unless set by a specific policy and does not require visa bonds for F visa recipients as these visa holders enter the United States for a duration of status, and do not have fixed departure dates.

9 FAM 401.1-4(C) Bond Requirement Determined by Department Policy or by Consular Officer

(CT:VISA-2173; 08-05-2025)

The third provision to INA 221(g) provides for the posting of the maintenance of status and departure bond only in cases of applicants for B or F visas.

Department policy will require applicants of certain nationalities to pay the bond during a pilot program. You should never rely on a bond as a substitute for a reasoned judgment with respect to the applicant's eligibility for a visa.

9 FAM 401.1-4(D) Amount, Validity Period, and Posting of Bond

(CT:VISA-2173; 08-05-2025)

For the purposes of the pilot program, the maintenance of status and departure bond payment is collected by the Department of Homeland Security via Department of the Treasury hosted Pay.gov website. Bonds for this pilot are required in amounts ranging from a minimum of \$5,000 to a maximum of \$15,000, in increments of \$5,000.

9 FAM 401.1-4(E) Bond Posted and Accepted Before Visa Issuance

(CT:VISA-2173; 08-05-2025)

After requiring the posting of a bond, you may not issue a visa to the applicant before the receipt of notification that the bond has been posted and accepted. For the duration of the visa bond pilot, this notification will come from the Kentucky Consular Center (KCC).

9 FAM 401.1-4(F) Forfeiture of Bond

(CT:VISA-2173; 08-05-2025)

The maintenance of status and departure bond is forfeited when the alien for whom the bond is furnished breaches the terms and conditions of the bond, which include prohibitions against violating any condition of his or her status, remaining in the United States after expiration of the temporary period of admission, or attempting to adjust status out of a nonimmigrant visa class. DHS will make all bond breach determinations.

9 FAM 401.1-4(G) Limitation on Visa Validity When Bond Posted

(CT:VISA-2173; 08-05-2025)

The validity for the duration of the visa bond pilot is a three-month, single-entry visa, unless the validity of the specified country is lower per the reciprocity table.

9 FAM 401.1-4(H) Procedures Relating to Bonds

(CT:VISA-2173; 08-05-2025)

- a. **Notification to Applicant:** When a bond is required of an applicant, you must notify the applicant in writing of the requirement and specify both the classification of the visa under consideration (B during a visa bond pilot) and the exact amount of the bond required. This notification must also include the applicant's full name and visa control number. If a bond is required of more than one member of a family group, your notification must include all the information for each person for whom a bond is required. The amount of the bond for each person is to be specified. The consular section will send an email to the applicant (or for each applicant if it is a family with the applicable bond amount) with a link to Pay.Gov and further instructions on how to post the bond.
- b. **Form of Collateral:** Payment of a bond must be made online through Pay.gov. Consular Officers must not accept bond funds in any other form (cash, checks, money orders, etc.)
- c. **Posting of Bond by Applicant:** The applicant is expected to use the appropriate Pay.gov link to post a cash bond.
- d. **Posting of Bond by Interested Person:** If the applicant has a friend, relative, or other interested person who is prepared to post the bond, this person may use the Pay.gov link and use the appropriate identifiers for the applicant.
- e. **Cancellation of Bond After Issuance of Visa:** If an applicant has posted a bond and later seeks to withdraw or cancel the bond instead of traveling to the United States, the applicant must visit the consular section for cancellation of his or her visa. Upon cancellation of the physical visa using the Cancelled Without Prejudice stamp, the consular officer will enter case notes detailing the cancellation of the bond, and follow the SOP to inform KCC of the visa cancellation so that the bond may be canceled, and the collateral returned to the payer of the bond.
- f. **Cancellation of Bond After Applicant's Departure from the United States:** In general, CA will use DHS data through the Arrival and Departure Information System (ADIS) to confirm when a bonded alien has departed from the United States to initiate bond cancellation. In some cases, when DHS has no record of the departure of an applicant for whom a bond was posted, the applicant may request to appear before a consular officer abroad to verify that he or she returned to a foreign country. In these cases, you must confirm that the applicant has departed the United States and provide the date of departure, as stated by the applicant, as well as any evidence verifying that date. The consular officer must inform KCC of the applicant's verified return so that the bond can be cancelled.
- h. **Notations to be Placed in Visa Issued to Applicant for Whom Bond Posted:** See [9 FAM 403.9-8\(B\)](#) paragraph (7).

9 FAM 401.1-5 FOREIGN AGENTS REGISTRATION ACT

(CT:VISA-2173; 08-05-2025)

- a. **Persons Subject to Act:** The Foreign Agents Registration Act (22 U.S.C. 611 - 613) requires persons within the United States acting as agents of a foreign principal to register with the Department of Justice (DOJ). The purpose of this Act is "to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities." If statements obtained from an applicant in connection with a visa application suggest that he or she may be subject to the registration requirement of the Act, you must so inform him or her and advise that registration forms may be obtained, after arrival in the United States, from the DOJ, Washington, DC.
- b. **Foreign Officials Exempted:** Accredited diplomatic or consular officers and other officials of a foreign government are exempted from the registration requirement of the Act.

UNCLASSIFIED (U)