



UNIVERSITY OF RICHMOND
FOUNDED 1830

TO:
FROM: Nancy Colón
International Taxation Specialist
DATE:
RE: Explanation of the B-1 & B-2 Visa

A citizen of a foreign country who wishes to enter the United States as a visitor must first obtain a visa. The visitor visa is a nonimmigrant visa for persons desiring to enter the United States temporarily for business (B-1) or for pleasure (B-2). A NRA must have a residence in a foreign country, which he has no intention of abandoning, and who is visiting the United States temporarily (i.e. a period of specifically limited duration) for business or temporarily for pleasure.

To Explain:

1. B visa holders must declare what type of visa they are traveling under when they come through US Customs.
 - a. Foreign visitors who are traveling under a B-1 visa are considered “temporary visitors for business.”
 - b. Foreign visitors who are traveling under a B-2 visa are considered “temporary visitors for pleasure.”
2. Any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each. Multiple entries are allowed.
3. The B visa holder is considered an NRA for tax purposes:
 - a. Substantial Presence Test
 - b. The standard withholding rates apply:
 - i. Honoraria are taxed at 30%
 - ii. May be offered a tax treaty, if eligible
 - iii. There is not a payment maximum for honoraria
 - iv. Travel and expenses are reimbursable
 - v. FICA is not withheld
 - vi. Tax treaty, if eligible
4. Immigration has developed three tests to apply to an activity taking place in the US to distinguish the activity as employment (or not). If anyone of the three applies, the activity is deemed to be employment and, therefore, not a permissible activity for a B-1 visitor, unless immigration laws allow a specific exception:

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- a. The “US Income” test – is the income from a US source? Income is deemed to be from a US source if the costs are paid by a foreign business but then charged to a US business
 - b. The “But For” test – would the work be carried on by a US citizen or work authorized alien but for the B-1 visitor?
 - c. The “Who Benefits” test – who is benefiting from the activities of the alien? Is it a foreign company or a US company? A US company is benefiting if the activities satisfy the contractual obligations of a US company.
5. The purpose of obtaining a B-1 visa generally entails business activities other than the performance of skilled or unskilled labor. Thus, the issuance of a B-1 visa is not intended for the purpose of obtaining and engaging in employment while in the US.
6. The clearest legal definition that distinguishes between appropriate B-1 business activities, and activities that constitute skilled or unskilled labor, comes from the decision of the Board of Immigration Appeals in the Matter of Hira, affirmed by the Attorney General. Based on the Hong Kong tailor (Hira) legal case, pre-production and post-production are acceptable B-1 classifications. Express warranty work is also acceptable. The principal place of business and the actual place of accrual of profits must be in a foreign country. Work in the US must be incidental to work that will principally be performed outside of the US.
7. Examples of individuals who may travel on a B-1 visa, by following specific regulations spelled out in the US State Department’s Foreign Affairs Manual #9, are listed below. Quite often these individuals may be able to request another visa type, but under certain circumstances may travel on a B visa to conduct business to:
- a. engage in commercial transactions, negotiations, consultations, conferences
 - b. pursue employment incident to professional business activities
 - c. pursue religious or charitable activities
 - d. attend a board of directors meeting
 - e. work as personal/domestic employees of foreign nationals
 - f. participate in an athletic event
 - g. serve as a yacht crewman, coasting officer, outer continental shelf employee
 - h. participate in horse racing
 - i. work as a commercial or industrial contractor
 - j. work for a foreign airline
 - k. participate in a foreign assistance act program
 - l. work as a Peace Corps volunteer trainer
 - m. intern with the UN
 - n. work at an international trade fair or exposition
 - o. medical doctor on observation visit

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8. Artists traveling on the B-1 visa: Normally, B visa status is not appropriate for a member of the entertainment profession. Performers should travel on an appropriate visa (usually P), regardless of the amount or source of compensation, whether services will involve public appearance(s), or whether the performance is for charity or US-based ethnic society. This also includes the crew, technicians, etc.
 - a. A professional entertainer may be classified B-1 if the entertainer:
 - i. Is coming to the US to participate only in a cultural program sponsored by the sending country
 - ii. Will be performing before a nonpaying audience; and
 - iii. All expenses, including per diem, will be paid by the member's government.
 - b. Some examples:
 - i. Participants in international competitions for which there is no remuneration other than a prize and expenses
 - ii. Still photographers, provided they receive no income from a US source
 - iii. Musicians who come to the US to utilize recording facilities for recording purposes only where the recording will be distributed and sold only outside the US, and who will not give any public performances
 - iv. Artists coming to US to paint, sculpt, etc., who are not under contract with a US employer and who do not intend to sell such artwork in the US
9. An advisory opinion (AO) can be requested prior to the issuance of the B-1 visa in any case involving temporary employment in the US.
10. Honorarium Exception to the B-1 Tests: Visitors entering the US in B status are authorized to accept honorarium payments and incidental expenses for "usual academic activity or activities" paid by:
 - a. An institution of higher education or related or affiliated nonprofit entity
 - b. A nonprofit research organization, provided that the 9/5/6 conditions are met
11. 9/5/6 Rule for Honorarium Payments:
 - a. No more than 9 days stay at one institution
 - b. No more than 5 institutions making honorarium payments
 - c. Received in the prior 6 months
12. B-1 Visa:
 - a. Does not exceed the 9 / 5 / 6 Rule limitations:
 - i. May be paid an honorarium
 - ii. May be reimbursed for travel expenses (No withholding or reporting)
 - b. Exceeds the 9 / 5 / 6 rule limitations
 - i. May not be paid an honorarium
 - ii. Without a business purpose (i.e. no service) – study/training/research:

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1. Immigration rules allow for reimbursement of travel expenses as long as stay is less than 1 year and for academic activities.
 2. Tax rules state that expenses are in the nature of a travel grant and are taxable at 30% (F, J, M or Q recipients are taxed at 14%)
 3. May be excluded from taxation with a tax treaty (report on 1042-S)
 4. Accountable plan rules do not apply – 30% withholding
- iii. Payments and reimbursements that fail to meet the away-from-home, temporary, or accountable plan rules are taxable.
1. Employee recipients:
 - a. Subject to payroll taxes
 - b. Report in Form W-2 gross wages
 - c. May be exempt under a treaty, if wages of a teacher or researcher are exempt (Form 1042-S)
 2. Self-Employed recipients:
 - a. Resident alien:
 - i. Backup withholding if no SSN or ITIN
 - ii. Form 1099
 - b. Nonresident alien:
 - i. 30% withholding
 - ii. Form 1042-S
- iv. With a business purpose – employment or self-employment:
1. Primary benefit for the business purpose must be to the payer
 2. Immigration rules allow for reimbursement of travel expenses
 3. Tax rules allowing exclusion on travel reimbursements under an accountable plan require a business purpose (i.e. services)
 4. Travel reimbursement rules:
 - a. expenses must be substantiated
 - b. less than 1 year of time in US
 - c. for academic activities
 - d. travel is away from home
 - e. temporary visit to US
 - f. if travel is extended to beyond a year, expenses are income from date of extension
 5. Individuals tax home is their principle place of business
 6. Must have a substantial period of time between visits to restart the clock (seven months at least)
 7. M & I only allowed for independent contractors
 8. Excludable expenses do not apply to spouses and dependents

13. B-2 Visa:

- a. Does not exceed the 9 / 5 / 6 Rule limitations:
 - i. May be paid an honorarium

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- ii. May be reimbursed for travel expenses only if individual was conducting business on behalf of the University of Richmond and the individual complied with the accountable plan rule. (No withholding or reporting.)
 - b. Exceeds the 9 / 5 / 6 rule limitations
 - i. May not be paid an honorarium
 - ii. May not be reimbursed for travel expenses (Withhold 30% and report on a 1042 and 1042-S)

- 14. Travel Reimbursement for B-1 / B-2 Visa Holders (within 9/5/6 limitations):
 - a. Must be in the US conducting business – providing a service -- on the institution’s behalf (as opposed to personal business.)
 - b. Example #1: Ph.D. student comes to US to meet with a professor for advice on the student’s dissertation.
 - i. This is not a benefit for the university, so the student’s travel reimbursement becomes a taxable travel grant
 - ii. Withholdable at 30%.
 - c. Example #2: Student comes to US to meet with a professor to help the professor design the next academic year’s curriculum for professor’s UR class.
 - i. This is a benefit to the university, so it’s a business expense reimbursement.
 - ii. If he complies with UR’s internal accountable plan rules, no reporting or withholding is necessary.

- 15. Travel Reimbursement for B-1 / B-2 Visa Holders (not within 9/5/6 limitations):
 - a. In the nature of a travel grant
 - b. Not receiving the grant in return for services
 - c. Considered to be non-effectively connected income (non-ECI)
 - d. Cannot be offset against the personal exemption amount on the NRA tax return
 - e. Cannot be offset against the temporarily-away-from-home expenses
 - f. Non-ECI is reported and the tax on it calculated on page 4 of the 1040-NR, without benefit of the personal exemption amount.
 - g. A TIN is not required on the 1042-S when applying the personal exemption amount to nonqualified scholarships. (Obtain a W-8BEN from the payee as proof that the TIN was requested by was not given. Can assist payees in receiving an ITIN.)

- 16. If traveling for a job interview only, B-1 and B-2 may be reimbursed travel expenses. If only paying for travel expenses, the I-94 card is sufficient documentation.

- 17. Special Note: Canadians & the B-1 / B-2 Visa (per Lowell Hancock)
 - a. Canadians who enter the US without a visa are not allowed to be employed in the US or to receive any kind of payment for services or reimbursement of expenses.

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- b. Canadians who enter the US with a B-1 / B-2 visa are allowed to receive both an honorarium and reimbursement of expenses.
 - c. An I-94 is required for Canadians engaged in any nonimmigrant employment, without exception.
 - i. If a Canadian enters the US and does not get an I-94 card, he is a visitor.
 - ii. If he was issued an I-94 card, the card must be presented in order to make a determination of visa status.
18. Penalty for Unauthorized Employment
- a. US immigration law provides that any person or entity using a contract, subcontract or exchange to obtain the services of a foreign national knowing that they are not authorized to perform such services is deemed to have hired the individual for employment in the US. (8 CFR 274a.5)
 - b. From a law enforcement perspective, what is known by an employee is imputed to the employer.
 - c. This provision subjects persons or entities knowingly using the unauthorized services to employer sanctions.
19. An individual that requests that their honorarium be a contribution made on the individual's behalf to a non-profit (whether US or foreign) in lieu of direct payment to the individual for the services performed will find that the income is still considered to be the individuals and not that of the non-profit. Individuals who assign their income to other entities under our tax rules are still obligated for the taxes. Taxpayers are not allowed to assign away their income tax obligations by having their income paid to others.

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