

Instructions for Completing

Form I-129



Form I-129, Petition for a Nonimmigrant Worker

NOTE: You may file Form I-129 electronically. Go to our internet website at www.uscis.gov and follow the detailed instructions on e-filing.

Instructions

Please read these instructions carefully to properly complete this form. If you need more space to complete an answer, use a separate sheet (s) of paper. Write your name and Alien Registration Number (A #), if any, at the top of each sheet and indicate the number of the item to which the answer refers. NOTE: The U.S. Citizenship and Immigration Services (USCIS) is comprised of offices of the former Immigration and Naturalization Service (INS).

Purpose of This Form.

This form is used by an employer to petition the U.S. Citizenship and Immigration Services (USCIS) for an alien to come as a nonimmigrant to the United States temporarily to perform services or labor, or to receive training, as an:

- **H-1B**, specialty occupations; an alien coming to perform services of an exceptional nature relating to a project administered by the U.S. Department of Defense; a fashion model who has national and international acclaim; an alien coming in accordance with a trade agreement with Chile or Singapore.
- **H-2A**, agricultural worker.
- **H-2B**, temporary nonagricultural worker.
- **H-3**, trainee.
- **L-1**, intracompany transferee.
- **O-1**, alien of extraordinary ability in arts, science, education, business or athletics.
- **O-2**, accompanying alien who is coming to the United States to assist in the artistic or athletic performance of an O-1 artist or athlete.
- **P-1**, internationally recognized athlete/entertainment group.
- **P-1S**, essential support personnel for a P-1.
- **P-2**, artist or entertainer in reciprocal exchange program.
- **P-2S**, essential support personnel for a P-2.
- **P-3**, artist/entertainer coming to the United States to perform, teach or coach under a program that is culturally unique.
- **P-3S**, essential support personnel for a P-3.
- **Q-1**, alien coming temporarily to participate in an international cultural exchange program.

This form is used also by an employer to request an extension of stay or change of status for the following nonimmigrants:

- **E-1**, treaty trader.
- **E-2**, treaty investor.
- **Free Trade Nonimmigrants, H-1B1s and TNs.**
- **R-1**, religious worker.

NOTE: A petition is not required to apply for an E-1, E-2 or R-1 nonimmigrant visa or admission as a TN nonimmigrant from Canada or Mexico. A petition is also not required for an H-1B1 Free Trade Nonimmigrant from Chile or Singapore. These persons may apply directly to a U.S. consulate or embassy abroad.

A petition is required only to apply for a change or extension of stay in such status.

NOTE: The Form I-129 consists of a basic petition, individual supplements relating to specific classifications, and for H-1B petitions, the H-1B Data Collection and Filing Fee Exemption Supplement with its particular instructions (formerly issued separately as Form I-129W).

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Who May File.

General. A U.S. employer may file this form and applicable supplements to classify an alien in any nonimmigrant classification listed in **Part 1** and **Part 2** of these instructions. A foreign employer may file for certain classifications as indicated in the specific instructions.

Agents. A U.S. individual or company in business as an agent may file for types of workers who are traditionally self-employed or who traditionally use an agent to arrange short-term employment with numerous employers. A petition filed by an agent must include a complete itinerary of services or engagements, including dates, names and addresses of the actual employers, and the locations where the services will be performed. A petition filed by a United States agent must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

Including more than one alien in a petition. Multiple aliens who will seek admission in H-2A, H-2B, H-3, P-1, P-2, P-3, O-2 or Q-1 classification may be included on the same petition provided:

- They will all be employed for the same period of time;
- They will all perform the same services, receive the same training or participate in the same international cultural exchange program; and
- If the petition is for aliens seeking H-2A classification, they will apply for a visa at the same consulate or, if visa exempt, will apply for admission at the same port-of-entry.

NOTE: If the employer includes more than one alien on the petition (other than those seeking H-2A classification) and needs to request USCIS to notify more than one consulate or embassy concerning the processing, the employer should file a Form I-824, Application for Action on an Approved Application or Petition, with appropriate fee, for each embassy or consulate that must be notified.

Multiple locations. A petition for alien(s) to perform services or labor or receive training in more than one location must include an itinerary with the dates and locations where the services or training will take place.

Unnamed aliens. All aliens in a petition for an extension of stay or change of status must be named in the petition. All aliens included in any other petition must be named, except:

- An H-2A petition for more than one worker may include unnamed aliens if they are unnamed on the labor certification;
- An H-2B petition for more than one worker may include unnamed aliens in emergent situations where it is established on the petition that the names cannot be provided due to circumstances that cannot be anticipated or controlled.

Where some or all of the aliens are not named, specify the total number of unnamed aliens and total number of aliens in the petition. Where the aliens must be named, petitions naming subsequent beneficiaries may be filed later with a copy of the same labor certification. Each petition must reference all previously filed petitions using that certification.

General Filing Instructions.

Complete the basic form and any relating supplement. Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A."

If you need extra space to answer any item, attach a sheet(s) of paper with your name and your Alien Registration Number (A#), if any, and indicate the number of the item to which the answer refers. You must file your petition with the required initial evidence. The petition must be properly signed and filed with the proper fee.

NOTE: Submit the petition and all supporting documentation in duplicate if you checked block "a" in Question 5 of Part 2 of the form.

Classification - Initial Evidence.

These instructions are divided into two parts.

- The first part includes classifications requiring a petition for an initial visa or entry and any extension of stay or change of status.
- The second part includes classifications requiring only a petition for an extension of stay or change of status.

1. Petition always required.

The following classifications always require a petition. A petition for new or concurrent employment or for an extension where there is a change in previously approved employment must be filed with the initial evidence listed below, and with the initial evidence required by the separate instructions for a change of status or extension of stay.

However, a petition for an extension based on unchanged, previously approved employment should only be filed with the initial evidence required in the separate extension of stay instructions.

H-1B.

An H-1B is an alien coming temporarily to perform services in a specialty occupation.

Write **H-1B1** in the classification requested block.

A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The petition must be filed by the U.S. employer and must be filed with:

- Evidence that a labor condition application has been filed with the U.S. Department of Labor;
- Evidence showing that the proposed employment qualifies as a specialty occupation;
- Evidence showing that the alien has the required degree by submitting either:
 - A copy of the person's U.S. baccalaureate or higher degree as required by the specialty occupation;
 - A copy of a foreign degree and evidence that it is equivalent to the U.S. degree; or
 - Evidence of education and experience that is equivalent to the required U.S. degree.
- A copy of any required license or other official permission to practice the occupation in the state of intended employment; and
- A copy of any written contract between you and the alien or a summary of the terms of the oral agreement under which the alien will be employed.

An H-1B is also an alien coming to perform services of an exceptional nature relating to a cooperative research and development project administered by the U.S. Department of Defense (DOD).

Write **H-1B2** in the classification requested block.

A U.S. employer may file the petition. The petition must be filed with:

- A description of the proposed employment;
- Evidence that the services and project meet the above conditions;

- A statement listing the names of all aliens who are not permanent residents, and who are or have been employed on the project within the past year, along with their dates of employment; and
- Evidence that the beneficiary holds a baccalaureate or higher degree in the field of employment.

An H-1B is also a fashion model, who has national or international acclaim and recognition, coming to be employed in a position requiring such a level of acclaim and recognition.

Write **H-1B3** in the classification requested block.

A U.S. employer or agent or foreign employer may file the petition.

On October 21, 1998, Congress enacted the American Competitiveness and Workforce Improvement Act ("ACWIA"), Public Law 105-277, that modified the H-1B nonimmigrant program. On December 8, 2004, Congress enacted the H-1B Visa Reform Act of 2004.

Because of these two Acts, an H-1B or H-1B1 Free Trade Nonimmigrant petitioner must complete the H-1B supplement form which is part of this petition. The supplement is used to collect additional information about the H-1B nonimmigrant worker and the H-1B petitioner (U.S. employer). It will also be used to determine whether the H-1B or H-1B1 Free Trade Nonimmigrant petitioner is exempt from the additional ACWIA filing fee and, if not exempt, the appropriate fee. (The supplement was formerly issued separately as Form I-129W).

The H-1B Visa Reform Act of 2004 also imposed an additional fee of **\$500.00** for certain H or L petitions. On or after **March 8, 2005**, a U.S. employer seeking initial approval of H-1B or L nonimmigrant status for a beneficiary, or seeking approval to employ an H-1B or L nonimmigrant currently working for another U.S. employer, must submit this additional **\$500.00** fee. **There are no exemptions from this fee.** This form will serve as the vehicle for collection of the **\$500.00** fee.

H-1B and H-1B1 Data Collection and Filing Fee Exemption.

Who is required to file? A U.S. employer seeking to classify an alien as an H-1B or H-1B1 Free Trade Nonimmigrant nonimmigrant worker must file this supplement concurrently with Form I-129 and the appropriate fee. (See "Fee" for additional information regarding the appropriate fee.)

Completing Part A of the Supplement Form.

All U.S. employers seeking to classify an alien as an H-1B or H-1B1 Free Trade Nonimmigrant nonimmigrant worker must complete **Part A** of the supplement form. An employer must answer all of the questions in the "Employer Information" Section

- **H-1B Dependent employer.** An "H-1B dependent employer" means an employer that:
 - Has 25 or fewer full-time equivalent employees who are employed in the United States and employs more than seven H-1B nonimmigrants;
 - Has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States and employs more than 12 H-1B nonimmigrants; or
 - Has at least 51 full-time equivalent employees who are employed in the United States and employs H-1B nonimmigrant in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.
 - **Willful Violators.** A willful violator is an employer whom the Secretary of Labor has found, after notice and opportunity for a hearing, to have willfully failed to meet a condition of the labor condition application described in section 212(n) of the Immigration and Nationality Act.
 - **Exempt H-1B nonimmigrant.** An "exempt H-1B nonimmigrant" means an H-1B who:
 - Receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least \$60,000; or
 - Has attained a master's degree or higher (or its equivalent) in a specialty related to the intended employment.
 - **Highest education level.** Place an "X" in the appropriate box of **Part A, Number 3 ("a" through "i")** of the supplement form that is most closely related to the highest formal education level attained by the beneficiary. **DO NOT** consider work experience in determining the beneficiary's equivalency.
 - **Major/Primary field of study.** Use the beneficiary's degree transcripts to determine the primary field of study. Once the beneficiary's major is determined, fill in the boxes with one character per box. Thirty (30) characters maximum. **Do not** consider work experience to determine the beneficiary's major education level.
 - **Master's or higher degree from a U.S. institution of higher education.** Indicate whether or not the beneficiary has earned a master's or higher degree from a U.S. institution of higher education, as defined in 20 U.S.C. section 1001(a).
 - **Rate of pay per year.** The "rate of pay" is the salary or wages paid to the beneficiary. Salary or wages must be expressed in an annual full-time amount and do not include non-cash compensation or benefits. For example, an H-1B worker is to be paid \$6,500 per month for a four-month period including a health benefits package and transportation. The yearly rate of pay if he or she were working for a full year would be 12 times the monthly rate or \$78,000. This amount does not include health benefits or transportation costs. The figure \$78,000 should be entered on this form as the rate of pay.
 - **LCA Code.** The LCA Code is a three-digit occupational group for professional, technical, and managerial occupations and fashion models that can be obtained from Appendix 2 of the Dictionary of Occupational Titles printed on Department of Labor ETA Form 9035, Labor Condition Application for H-1B Nonimmigrant.
 - **NAICS Code.** The North American Industry Classification System (NAICS) code can be obtained from the Department of Commerce, U.S. Census Bureau (www.census.gov/epcd/www/naics.htm). Enter the code from left to right, one digit in each of the six boxes. If you use a code with less than six digits, enter the code left to right and then add zeros in the remaining unoccupied boxes. For example the code sequences 33466 would be entered as:
- | | | | | | |
|---|---|---|---|---|---|
| 3 | 3 | 4 | 6 | 6 | 0 |
|---|---|---|---|---|---|
- The code sequences 5133 would be entered as:
- | | | | | | |
|---|---|---|---|---|---|
| 5 | 1 | 3 | 3 | 0 | 0 |
|---|---|---|---|---|---|
- Completing Part B of the Supplemental Form.**
- A U.S. employer seeking an exemption from the **\$1,500.00** or **\$750.00** filing fee must complete Part B. A U.S. employer is exempt from payment of the additional **\$1,500.00** or **\$750.00** filing fee if:
- The employer is an institution of higher education as defined in the Higher Education Act of 1965, section 101 (a), 20 U.S.C. section 1001 (a); or
 - The employer is a nonprofit organization or entity related to, or affiliated with an institution of higher education. Institutions of higher education are defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C., section 1001(a). Such a nonprofit organization or entity includes but is not limited to hospitals and medical research institutions. "Related to" or "affiliated with" means the entity is:
 - (a) Connected or associated with the institution of higher education through shared ownership or control by a board or federation operated by the institution of higher education, or
 - (b) Attached to the institution of higher education as a member, branch, cooperative or subsidiary.
- "Nonprofit organization or entity" means the organization or entity is **(a)** defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6), and **(b)** has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service; or

- The employer is a nonprofit research organization or governmental research organization that is primarily engaged in basic research and/or applied research.
"Nonprofit organization or entity" means the organization or entity is:
 - (a) Defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c) (6); 26 U.S.C. 501(c)(3), (c)(4), or (c)(6), and
 - (b) Has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.A government research organization is a U.S. Federal government entity whose primary mission is the performance or promotion of basic research and/or applied research; or
- This petition is the second or subsequent request for an extension of stay filed by the employer regardless of when the first extension of stay was filed or whether the **\$1,500.00 or \$750.00** filing fee was paid on the initial petition or the first extension of stay; or
- This petition is an amended petition that does not contain any requests for extension of stay filed by the employer; or
- This petition is to correct a USCIS error; or
- The employer is a primary or secondary education institute; or
- The employer is a nonprofit entity which engages in an established curriculum-related clinical training or students register at the institution.

What evidence is required under Part B?

U.S. employers claiming exemption from payment of the **\$1,500.00 or \$750.00** filing fee on the basis of status as **(a)** a nonprofit organization or entity related to, or affiliated with an institution of higher education, or **(b)** as a nonprofit research organization must submit evidence of tax exempt status under the Internal Revenue Code of 1986, section 501(c)(3), (4), or (6), 26 U.S.C. 501(c)(3), (c)(4), or (c)(6); or

All other U.S. employers claiming exemption from payment of the **\$1,500.00 or \$750.00** filing fee must submit a statement describing why the organization or entity is exempt.

Completing Part C of the Supplemental Form.

All U.S. employers must complete **Part C** even if they are not claiming the fee exemption in **Part B**.

H-2A.

An H-2A is an alien coming temporarily to engage in temporary or seasonal agricultural employment.

Write **H-2A** in the classification block on the petition.

The petition must be filed by a U.S. employer or an association of U.S. agricultural producers named as a joint employer on the certification. The petition must be submitted with:

- A single valid temporary agricultural labor certification or, if U.S. workers do not appear at the work-site, a copy of the U.S. Department of Labor's denial of a certification and appeal, and evidence showing that qualified domestic labor is unavailable; and
- Copies of evidence showing that each named alien met the minimum job requirements stated in the certification at time the application was filed.

H-2B.

An H-2B is an alien coming temporarily to engage in non-agricultural employment that is seasonal, intermittent, to meet a peak load need, or a one-time occurrence.

Write **H-2B** in the classification block on the petition.

The petition must be filed by a U.S. employer with either:

- A temporary labor certification from the U.S. Department of Labor, or the Governor of Guam if the proposed employment is solely in Guam, stating that qualified U.S. workers are not available and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers; or
- A notice from such authority that the temporary labor certification cannot be made, along with evidence of the unavailability of U.S. workers and of the prevailing wage rate for the occupation in the United States, and evidence overcoming each reason why the certification was not granted; and
- Copies of evidence, such as employment letters and training certificates, showing that each named alien met the minimum job requirements stated in the certification at the time the application was filed.

NOTE: Employers filing H-2B petitions for employment to commence on or after October 1, 2005 must submit an additional fee of **\$150.00**. The Save Our Small and Seasonal Businesses Act of 2005 authorized this **\$150.00 Fraud Prevention and Detection Fee**.

NOTE: For additional information see the U.S. Department of Labor Internet website at www.ows.doleta.gov/foreign.

H-3. (Two types)

An H-3 is an alien coming temporarily to participate in a special education training program in the education of children with physical, mental or emotional disabilities.

Write **H-3** in the classification block on the petition.

Custodial care of the children must be incidental to the training program. The petition must be filed by the U.S. employer with:

- A description of the training, staff and facilities, evidence that the program meets the above conditions, and details of the alien's participation in the program; and
- Evidence showing that the alien is nearing completion of a baccalaureate degree in special education, or already holds such a degree or has extensive prior training and experience in teaching children with physical, mental or emotional disabilities.

An H-3 is also an alien coming temporarily to receive training from an employer in any field other than graduate education or training.

Write **H-3** in the classification block on the petition.

The petition must be filed by the U.S. employer with:

- A detailed description of the structured training program, including the number of classroom hours per week and the number of hours of on-the-job training per week;
- A summary of the prior training and experience of each alien in the petition; and
- An explanation stating why the training is required, whether similar training is available in the alien's country, how the training will benefit the alien in pursuing a career abroad, and why the petitioner will incur the cost of providing the training without significant productive labor.

L-1A.

Write **L-1A** in the classification requested block on the petition.

An L-1A is an alien coming temporarily to perform services in a managerial or executive capacity for the same corporation or firm, or for the branch, subsidiary or affiliate of the employer who employed him or her abroad for one continuous year within the three-year period (six months within the previous three years if the employer is eligible and has filed for a blanket L-1 approval and meets the requirements for expedited processing), immediately preceding the filing of the petition, in an executive, managerial or specialized knowledge capacity.

L-1B.

Write **L-1B** in the classification requested block on the petition.

An L-1B is an alien coming temporarily to perform services that entail specialized knowledge for the same corporation or firm, or for the branch, subsidiary or affiliate of the employer that employed him or her abroad for one continuous year

within the three-year period (six months within the previous three years if the employer is eligible and has filed for a blanket L-1 approval and meets the requirements for expedited processing), immediately preceding the filing of the petition, in an executive, managerial or specialized knowledge capacity. Specialized knowledge is special knowledge of the employer's product or its application in international markets or an advanced level of the knowledge of the employer's processes and procedures.

L Petition Requirements.

A U.S. employer or foreign employer must file the petition, but a foreign employer must have a legal business entity in the United States. The petition must be submitted with:

- Evidence of the qualifying relationship between the United States and foreign employer, based on ownership and control, such as an annual report, articles of incorporation, financial statements or copies of stock certificates;
- A letter from the alien's foreign qualifying employer detailing his or her dates of employment, job duties, qualifications and salary; and
- A description of the proposed job duties and qualifications, and evidence showing that the proposed employment is in an executive, managerial or specialized knowledge capacity.

If the alien is coming to the United States to open a new office, also file the petition with copies of evidence showing that the business entity is located in the United States; and

- Already has sufficient premises to house the new office;
- Has or upon establishment will have the qualifying relationship to the foreign employer; and
- Has the financial ability to remunerate the alien and to begin doing business in the United States, including evidence about the size of the U.S. investment, the organizational structure of both firms, the financial size and condition of the foreign employer, and if the alien is coming as an L-1 manager or executive to open a new office, such evidence must establish that the intended U.S. operation will support the executive or managerial position within one year.

Blanket L Petition.

An L blanket petition simplifies the process of later filing for individual L-1A workers and L-1B workers who are specialized knowledge professionals employed in positions requiring the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requiring also completion of a specific course of education, culminating in a baccalaureate degree in a specific occupational specialty.

A blanket L petition must be filed by a U.S. employer who will be the single representative between USCIS and the qualifying organizations.

Write **LZ** in the classification requested block. Do not name an individual employee. File the petition with copies of evidence showing that:

- You and your branches, subsidiaries and affiliates are engaged in commercial trade or services;
- You have an office in the United States that has been doing business for one year or more;
- You have three or more domestic and foreign branches, subsidiaries or affiliates; and
- You and your qualifying organizations have obtained approved petitions for at least ten "L" managers, executives or specialized knowledge professionals during the previous 12 months or have U.S. subsidiaries or affiliates with combined annual sales of at least 25 million dollars; or
- You have a U.S. work force of at least 1,000 employees.

After approval of a blanket petition, you may file for individual employees to enter as an L-1A alien or L-1B specialized knowledge professional under the blanket petition. If the alien is outside the United States, file Form I-129S, Nonimmigrant Petition Based on Blanket L Petition. If the alien is already in the United States, file the Form I-129 to request a change of status based on this blanket petition. The petition must be submitted with:

- A copy of the USCIS approval notice for the blanket petition;
- A letter from the alien's foreign qualifying employer detailing his or her dates of employment, job duties, qualifications and salary for the three previous years; and
- If the alien is a specialized knowledge professional, a copy of a U.S. degree or a foreign degree equivalent to a U.S. degree.

O-1A.

An O-1A is an alien coming temporarily who has extraordinary ability in the sciences, education, business or athletics (not including the arts, motion picture or television industry).

Write **O-1A** in the classification block on the petition. The petition must be submitted with:

- A written consultation from a peer group or labor management organization with expertise in the field. If the above item cannot be obtained, the consultation can be from a person of your (the employer's) choosing with expertise in the alien's area of ability (see **General Evidence**);

- A copy of any written contract between you (the employer) and the alien or a summary of the terms of the oral agreement under which the alien will be employed;
- An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events and activities.
- Evidence of the alien's extraordinary ability, such as receipt of major awards or prizes, major published material by the alien or relating to the alien's work, evidence of the alien's contributions to the field, evidence of the alien's original scholarly work or contributions to the field, evidence of the alien's high salary within the field, evidence that the alien participated on a panel, judging the work of others in the field, or evidence of the alien's prior employment in one or more critical capacities.

NOTE: If the preceding forms of evidence do not readily apply to the alien's field of endeavor, you may submit other comparable evidence.

O-1B.

An O-1B is an alien coming temporarily who has extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry.

Write **O-1B** in the classification block on the petition. The petition must be submitted with:

- A written consultation from a peer group or a person of your (the employer's) choosing with expertise in the alien's area of ability (see **General Evidence**). If the petition is based on the alien's extraordinary achievement in the motion picture or television industry, separate consultations are required from the relevant labor and management organizations;
- A copy of any written contract between you (the employer) and the alien or a summary of the terms of the oral agreement under which the alien will be employed;
- Evidence that the alien has received or been nominated for significant national or international awards or prizes in the field, such as an Academy Award, Emmy, Grammy or Director's Guild Award, or at least three of the following:
 - Evidence that the alien has performed or will perform as a lead or starring participant in productions or events that have a distinguished reputation;
 - Evidence that the alien has achieved national or international recognition for achievements in the field;
 - Evidence that the alien has a record of major commercial or critically acclaimed successes, as evidenced by ratings, box office receipts, etc.;

- Evidence that the alien has received significant recognition from organizations, critics, government agencies or other recognized experts;
- Evidence that the alien commands or will command a high salary or other remuneration for services in relation to others in the field; or
- Evidence that the alien has performed in a lead or starring role for organizations that have a distinguished reputation.

NOTE: If the preceding forms of evidence do not readily apply to the alien's field of endeavor, you may submit other comparable evidence.

O-2.

An O-2 is an alien coming temporarily, solely as an essential and integral part of the artistic or athletic performance of an O-1 artist or athlete because he or she performs support services that are essential to the successful performance of the O-1. No test of the U.S. labor market is required.

Write **O-2** in the classification block on the petition.

This form must be filed in conjunction with an O-1 petition and submitted with:

- A written consultation (see **General Evidence**);
 - If it is for support of an athlete or an alien with extraordinary ability in the arts, the consultation must be from an appropriate labor organization; or
 - If it is for support of an alien with extraordinary achievement in motion pictures or television, the consultation must be from an appropriate labor organization and management organization.
- Evidence of the current essentiality, skills and experience of the O-2 with the O-1. In the case of a specific motion picture or television production, the evidence must establish that significant production has taken place outside the United States and that the continuing participation of the alien is essential to the successful completion of the production.

P-1A.

A P-1A is an alien coming temporarily, to perform at a specific athletic competition as an individual or as part of a group or team participating at an internationally recognized level of performance.

Write **P-1A** in the classification block on the petition. The petition must be submitted with:

- A written consultation (see **General Evidence**) with an appropriate labor organization;

- A copy of the contract with a major U.S. sports league or team or a contract in an individual sport commensurate with national or international recognition in the sport, if such contracts are normally utilized in the sport;
- Evidence of at least two of the following:
 - Substantial participation in a prior season with a major U.S. sports league;
 - Participation in international competition with a national team;
 - Substantial participation in a prior season for a U.S. college or university in intercollegiate competition;
 - A written statement from an official of a major U.S. sports league or official of the governing body for a sport that details how the alien or team is internationally recognized;
 - That the individual or team is ranked, if the sport has international rankings; or
 - That the alien or team has received a significant honor or award in the sport.

P-1B.

A P-1B is an alien entertainer coming temporarily to perform as a member of a foreign-based entertainment group, that has been recognized internationally as outstanding in the discipline for a substantial period of time, and who has had a sustained relationship (ordinarily for at least one year) with the group.

Write **P-1B** in the classification block on the petition. The petition must be submitted with:

- A written consultation (see **General Evidence**) from an appropriate labor organization;
- Evidence that the alien or group is internationally recognized in the discipline as demonstrated by the submission of evidence of the group's receipt or nomination for significant international awards or prizes for outstanding achievement, or evidence of at least three of the following:
 - The alien or group has performed or will perform as a starring or leading group in productions or events with a distinguished reputation;
 - The alien or group has achieved international recognition and acclaim for outstanding achievement in the field;
 - The alien or group has a record of major commercial or critically acclaimed success;

- The alien or group has received significant recognition for achievements from critics, organizations, government agencies or other recognized experts in the field; or
- The alien or group commands a high salary or other substantial remuneration for services, compared to other similarly situated in the field.

NOTE:

- By filing for a P-1 group, the petitioner certifies that the group has been established and performing regularly for a period of at least one year, and that at least 75 percent of the members of the group have been performing with the group for at least one year. This one-year period requirement does not apply to circus groups coming to perform with nationally recognized circuses.
- Use the "Supplementary Information" form to request a waiver of:
 - The one-year relationship requirement and the international recognition requirement based on emergent circumstances, or
 - The international recognition requirement because the group has been recognized nationally as outstanding in its discipline for a substantial period of time.

P-2.

A P-2 is an alien coming temporarily to perform as an artist or entertainer, individually or as part of a group, under a reciprocal exchange program between an organization in the United States and an organization in another country.

Write **P-2** in the classification block on the petition.

The petition must be filed by the sponsoring organization or U.S. employer with:

- A written consultation (see **General Evidence**) from an appropriate labor organization;
- A copy of the reciprocal exchange program;
- A statement from the sponsoring organization describing the reciprocal agreement as it relates to the petition;
- Evidence that the alien and the U.S. artist or group have comparable skills and that the terms of employment are similar; and
- Evidence that an appropriate labor organization in the United States was involved in negotiating or concurred with the exchange.

P-3.

A P-3 is an alien coming temporarily to perform, teach or coach, individually or as part of a group, in the arts or entertainment fields in a program that is culturally unique.

Write **P-3** in the classification block on the petition. The petition must be submitted with:

- A written consultation (see **General Evidence**) from an appropriate labor organization;
- Evidence that all performances will be culturally unique; and **either**
 - Affidavits, testimonials or letters from recognized experts attesting to the authenticity of the alien's or group's skills in presenting, coaching or teaching art forms; **or**
 - Documentation that the performance of the alien or group is culturally unique as evidenced by actual reviews in newspapers, journals or other published material.

Essential Support Personnel.

Accompanying support personnel are highly skilled aliens coming temporarily as an essential and integral part of the competition or performance of a principal P-1, P-2 or P-3, or because they perform support services that are essential to the successful performance or services of the principal P-1, P-2 or P-3. The accompanying personnel must have prior experience or critical skills with the principal P-1, P-2 or P-3. The petition must be filed in conjunction with a principal P-1, P-2 or P-3 petition.

Write **P-1S, P-2S or P-3S** as appropriate in the classification block on the petition.

The petition must be submitted with:

- A written consultation (see **General Evidence**) from an appropriate labor organization;
- A statement describing the alien's critical skills and prior experience with the principal P-1, P-2 or P-3;
- Statements or affidavits from persons with first hand knowledge that the alien has had substantial experience performing the critical skills and essential support services for the principal P-1, P-2 or P-3;
- A copy of any written contract between the employer and the alien or a summary of the terms of the oral agreement under which the alien will be employed.

Q-1.

A Q-1 is an alien coming temporarily to participate in an international cultural exchange program for sharing the attitude, customs, history, heritage, philosophy and/or traditions of the alien's country of nationality.

The culture sharing must take place in a school, museum, business or other establishment where the public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program.

The work component of the program may not be independent of the cultural component, but must serve as the vehicle to achieve the objectives of the cultural component. An employer (U.S. or foreign firm, corporation, non-profit

organization, or other legal entity) or its designated agent may file the petition. If a designated agent is filing the petition, that agent must be employed by the qualified employer on a permanent basis in an executive or managerial capacity and must be either a U.S. citizen or lawful permanent resident.

Write **Q-1** in the classification block on the petition.

The petition must be submitted with evidence showing that the employer:

- Maintains an established international cultural exchange program;
- Has designated a qualified employee to administer the program and serve as liaison with USCIS;
- Is actively doing business in the United States;
- Will offer the alien wages and working conditions comparable to those accorded local domestic workers similarly employed;
- Has the financial ability to remunerate the participant(s).

To illustrate an established international cultural exchange program, submit program documentation, such as catalogs, brochures or other types of material.

To demonstrate financial ability to remunerate the participant (s), submit your organization's most recent annual report, business income tax return or other form of certified accountant's report.

However, if the proposed dates of employment are within 15 months of the approval of a prior Q-1 petition filed by you for the same international cultural exchange program, and that earlier petition was filed with the above evidence of the program, you may submit a copy of the approval notice for that prior petition in lieu of the evidence about the program required above.

2. Petition only required for an alien in the U.S. to change status or extend stay.

The following classifications listed in this **Section 2** do not require a petition for new employment if the alien is outside the United States. The alien should instead contact a U.S. embassy or consulate for information about a visa or admission.

Use this Form I-129 when the beneficiary is physically present in the United States and a change of status, concurrent employment, or an extension of stay is needed. Note, however, that the beneficiary must maintain legal status in the United States to remain eligible for the benefit sought.

Change of Status: A petition for change of status to one of the classifications described in this Section must be submitted with the initial evidence detailed below and with the initial evidence required by the separate instructions for all petitions involving change of status.

Extension of Stay: A petition for an extension of stay must be filed with the initial evidence listed below and with the initial evidence required by the separate instructions for all petitions for extension. However, a petition for an extension based on unchanged, previously approved employment need only be filed with the initial evidence required by the separate extension of stay instructions.

E-1.

An E-1 is a national of a country with which the United States maintains a qualifying treaty, who is coming to the United States to carry on substantial trade principally between the United States and the alien's country of nationality.

Qualifying trade involves the commercial exchange of goods or services in the international market place. Substantial trade is an amount of trade sufficient to ensure continuous flow of international trade items between the United States and the treaty country. Principal trade exists when over 50 percent of the E-1's total volume of international trade is conducted between United States and the treaty country.

E-2.

An E-2 is a national of a country with which the United States maintains a qualifying treaty, who is coming to the United States to develop and direct the operations of an enterprise in which he or she has invested or is actively in the process of investing a substantial amount of capital.

An E-2 must demonstrate possession and control of funds and the ability to develop and direct the investment enterprise. Capital in the process of being invested or that has been invested must be placed at risk and irrevocably committed to the enterprise. The enterprise must be a real, active, and operating commercial or entrepreneurial undertaking, which produces services or goods for profit. The investment must be substantial and the enterprise must be more than marginal.

E-1 or E-2.

An employee of an **E-1** or an **E-2** who possesses the same nationality may respectively be classified as E-1 or E-2. The employee must principally and primarily perform executive or supervisory duties or possess special qualifications that are essential to the successful or efficient operation of the enterprise.

E Petition Requirements.

The petition must be filed with evidence of:

- Ownership and Nationality, including but not limited to lists of investors with current status and nationality, stock certificates, certificate of ownership issued by the commercial section of a foreign embassy and reports from a certified personal accountant;

- Substantial Trade (E-1), including but not limited to copies of three or more of the following: bills of lading, customs receipts, letter of credit, trade brochures, purchase orders, insurance papers, documenting commodities imported, carrier inventories and/or sales contracts;
- Substantial Investment (E-2), including but not limited to copies of partnership agreements (with a statement on proportionate ownership), articles of incorporation, payments for the rental of business premises or office equipment, business licenses, stock certificates, office inventories (goods and equipment purchased for the business), insurance appraisals, annual reports, net worth statements from certified professional accountants, advertising invoices, business bank accounts containing funds for routine operations, funds held in escrow; or
- Executive or Supervisory Duties, or Special Qualifications Essential to the Enterprise (E-1 Employee or E-2 Employee), including but not limited to certificates, diplomas or transcripts, letters from employers describing job titles, duties, operators' manuals, and the required level of education and knowledge.

R-1.

An R-1 is an alien who for at least two years has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States, coming temporarily to work solely:

- As a minister of that denomination;
- In a professional capacity in a religious vocation or occupation for that organization; or
- In a religious vocation or, occupation for the organization or its nonprofit affiliate.

Write **R-1** in the classification block on the petition.

The petition must be filed by a U.S. employer with the following documentation:

- A copy of the tax-exempt certificate showing the religious organization, and any affiliate that will employ the person, is a bona fide nonprofit religious organization in the United States and is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 relating to religious organizations, or documents as is required by the Internal Revenue Service to establish eligibility for this tax exempt status.
- A letter or letters from the authorizing official of the religious denomination or organization that will be employing the alien or engaging the alien's services in the United States establishing that:
 - If the alien's religious membership was maintained in whole or in part outside the United States, the foreign and U.S. religious organizations belong to the same denomination;

- Immediately prior to the filing of the petition or application for admission to the United States, the alien has been a member in the religious denomination for at least two years;
- As appropriate:
 - If the alien is a minister, he or she is authorized to conduct religious worship services for that denomination and to perform other duties usually performed by members of the clergy of that denomination, including a detailed description of those duties;
 - If the alien is a religious professional, he or she has at least a U.S. baccalaureate degree or its foreign equivalent and that at least such a degree is required for entry into the religious profession; or
 - If the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation.
- The arrangements made, if any, for remuneration for services rendered by the alien, the amount and source of any salary, a description of any other types of remuneration to be received, and a statement whether such remuneration shall be in exchange for services rendered;
- The name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States; and
- If the alien is to work in a non-ministerial and non-professional capacity for a bona fide organization that is affiliated with a religious denomination, evidence of the existence of the affiliation.

Change of Status.

In addition to the initial evidence for the classification you are requesting, a petition requesting a change of status for an alien in the United States must be submitted with a copy of the employee's(s) Form I-94, Nonimmigrant Arrival/Departure Record.

NOTE: Family members should use Form I-539, Application to Change/Extend Nonimmigrant Status, to apply for a change of status.

A nonimmigrant, who must have a passport to be admitted, must keep that passport valid during his or her entire stay. If a required passport is not valid, include a full explanation with your petition.

The following nonimmigrants are **not eligible** to change status:

- An alien admitted under a visa waiver program;
- An alien in transit (C) or in transit without a visa (TWOV);
- A crewman (D);

- A fiancé(e) (K-1) or his or her dependent (K-2);
- A J-1 exchange visitor whose status was for the purpose of receiving graduate medical training (unless a waiver has been granted under section 214(l) of the Immigration and Nationality Act);
- A J-1 exchange visitor subject to the foreign residence requirement who has not received a waiver of that requirement; and
- An M-1 student to an H classification, if training received as an M-1 helped him or her qualify for H classification.

Change of status to Free Trade nonimmigrants.

A Free Trade Nonimmigrant is a citizen of Canada or Mexico coming to the United States as a TN or a citizen from Chile or Singapore coming to the U.S. as an H-1B1 Free Trade Nonimmigrant temporarily under the provisions of a Free Trade Agreement. A qualified employer may file this Form I-129 for a citizen of one of the above countries if that citizen has already been admitted to the United States in a nonimmigrant category eligible for change of status. Along with the Form I-129 and related supplement (Nonimmigrant classification based on a Free Trade Agreement Supplement), petitioners for Chile or Singapore H-1B1 nonimmigrants must also file the H-1B1 and H-1B1 Data Collection and Filing Fee Exemption Supplement to ensure accurate fee and data collection.

NOTE: Canadian or Mexican TN nonimmigrants can be petitioned for by either a U.S. employer or a foreign employer. However, for Chile or Singapore H-1B1 nonimmigrants, the petitioner must be a U.S. employer. In addition to the required information noted above under "Change of Status," submit the following:

- A letter from the employer stating the activity to be engaged in, the anticipated length of stay and the arrangements for remuneration;
- Evidence that the alien meets the educational and/or licensing requirements for the profession or occupation (including, for citizens of Chile, the post-secondary certificate for Agricultural Managers and Physical Therapists that is accepted by the U.S. Department of State if the citizen of Chile is receiving a nonimmigrant free trade visa overseas);
- For citizens of Chile and Singapore, a U.S. Department of Labor issued certified labor condition application.

Extension of Stay.

Extension of stay for all except Free Trade nonimmigrants.

A petition requesting an extension of stay for an employee in the United States must be filed with a copy of the employee's Form 1-94, Nonimmigrant Arrival/Departure Record, and a letter from the petitioner explaining the reasons for the extension. Consult the regulations relative to the specific nonimmigrant classification sought.

NOTE: Family members should use Form I-539 to file for an extension of stay.

A nonimmigrant, who must have a passport to be admitted, must keep that passport valid during his or her entire stay. If a required passport is not valid, include a full explanation with your petition. Where there has been a change in the circumstances of employment, submit also the evidence required for a new petition.

Where there has been no change in the circumstances of employment, file your petition with the appropriate supplement and with your letter describing the continuing employment, and:

- If the petition is for H-1B status, submit an approved labor condition application for the specialty occupation valid for the period of time requested.
- If the petition is for H-2A status, submit a labor certification valid for the dates of the extension, unless it is based on a continuation of employment authorized by the approval of a previous petition filed with a certification, and the extension will last no longer than the previously authorized employment and no longer than two weeks.
- If the petition is for H-2B status, submit a labor certification valid for the dates of the extension.

Extension of Free Trade stay.

NOTE: Canadian or Mexican TN nonimmigrants can be petitioned for by either a U.S. employer or a foreign employer. However, for Chile or Singapore H-1B1 nonimmigrants, the petitioner must be a U.S. employer.

An employer requesting an extension of stay for an alien with a nonimmigrant classification based on a Free Trade Agreement should follow the above instructions. Submit with your extension request:

- A letter describing the continuing employment,
- The newly requested length of stay,
- Continued valid licensing if required by the profession and/or the State, and
- In the case of a Chile or Singapore H-1B1 Free Trade Nonimmigrant, a currently valid labor condition attestation.

Along with the Form I-129 and related supplement (Nonimmigrant classification based on a Free Trade Agreement Supplement), petitioners for Chile or Singapore H-1B1 nonimmigrants must also file the H-1B Data Collection and Filing Fee Exemptions Supplement to ensure accurate fee and data collection.

If the extension is for a Chile or Singapore H-1B1 Free Trade Nonimmigrant and it is the sixth consecutive extension request for that person, a statement to that effect must be provided.

General Evidence.

Written consultation. Noted classifications require a written consultation with a recognized peer group, union and/or management organization regarding the nature of the work to be done and the alien's qualifications, before the petition may be approved.

To obtain timely adjudication of a petition, you should obtain a written advisory opinion from an appropriate peer group, union and/or management organization and submit it with the petition.

If you file a petition without the advisory opinion, you should send a copy of the petition and all supporting documents to the appropriate organization when you file the petition with USCIS, and name that organization in the petition.

Explain to the organization that USCIS will contact them for an advisory opinion. If an accepted organization does not issue an advisory opinion within a given time period, a decision will be made based upon the evidence of record.

If you do not know the name of an appropriate organization with which to consult, please indicate so on the petition. However, be advised that a petition filed without the actual advisory opinion will require substantially longer processing time.

Translations. Any foreign language document must be accompanied by a full English translation that the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate the foreign language into English.

Copies. If these instructions state that a copy of a document may be filed with this petition and you choose to send us the original, we may keep that original for our records.

Liability for Return Transportation.

The Immigration and Nationality Act makes a petitioner liable for the reasonable cost of return transportation for an H-1B, H-2B, O and P alien who is dismissed before the end of the authorized employment.

When to File.

Generally, a Form I-129 petition may not be filed more than six months prior to the date employment is scheduled to begin. Petitioners should review the appropriate regulatory provisions in 8 CFR which relate to the nonimmigrant classification sought.

File the petition as soon as possible before the proposed employment begins or before an extension of stay will be required. If the petition is not submitted at least 45 days before the employment begins, petition processing and subsequent visa issuance may not be completed before the alien's services are required or previous employment authorization ends.

Where to File.

Mail your Form I-129 to the following address (unless the beneficiary is seeking **L-1** admission under the North American Free Trade Agreement.) See instructions below.

USCIS Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

If the alien is seeking admission as an **L-1** under NAFTA, the petition should be filed in person at the port of entry upon arrival in the United States.

Fee.

The base fee for this petition is **\$190.00**.

A U.S. employer filing a **\$190.00** form I-129 for an H-1B nonimmigrant or for a Chile or Singapore H-1B1 Free Trade Nonimmigrant must submit the **\$190.00** petition filing fee and, unless exempt under Part B of the H-1B Data Collection and Filing Fee Exemption Supplement, an additional fee of either **\$1,500.00** or **\$750.00**.

A U.S. employer with a total of 25 or less full-time equivalent employees in the United States (including any affiliate or subsidiary of the employer) is only obligated to pay the **\$750.00** fee.

A U.S. employer filing a Form I-129 who is required to pay the additional fee may make the payment in the form of a single check or money order for the total amount due or as two checks or money orders, one for the additional fee and one for the petition fee.

NOTE: H-1B and L-1 petitioners required to pay the **\$500.00** Fraud Prevention and Detection Fee mandated by the H-1B Visa Reform Act of 2004 must submit a check or money order separate from the additional fee and petition fee. Petitioners for Chile or Singapore H-1B1 Free Trade Nonimmigrants do not have to pay this fee.

NOTE: Employers filing H-2B petitions for employment to commence on or after October 1, 2005 must submit an additional fee of **\$150.00**. The Save Our Small and Seasonal Businesses Act of 2005 authorized this **\$150.00** Fraud Prevention and Detection Fee.

The fee must be submitted in the exact amount. It cannot be refunded. **Do not mail cash.** All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in U.S. currency. The check or money order must be made payable to the **Department of Homeland Security**, except that:

- If you live in Guam and are filing this petition there, make your check or money order payable to the "Treasurer, Guam."

- If you live in the U.S. Virgin Islands and are filing this petition there, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

When preparing the check or money order, spell out Department of Homeland Security. Do not use the initials "DHS" or "USDHS."

Checks are accepted, subject to collection. An uncollected check will render the petition and any document issued invalid. A charge of \$30.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

How to check if the fee is correct. The fee on this form is current as of the publication date appearing in the lower right corner of this page. However, because USCIS fees change periodically, you can verify if the fee is correct by following one of the steps below.

- Visit our website at www.uscis.gov and scroll down to "Forms and E-Filing" to check the appropriate fee, or
- Review the Fee Schedule included in your form package, if you called us to request the form, or
- Telephone our National Customer Service Center at **1-800-375-5283** and ask for the fee information.

Processing Information.

Any petition that is not signed or accompanied by the correct fee, will be rejected with a notice that the petition is deficient. You may correct the deficiency and resubmit the petition. A petition is not considered properly filed until accepted by USCIS.

Initial processing. Once a petition has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility and we may deny your petition.

Requests for more information or interview. We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Penalties.

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this petition, we will deny the petition and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

Decision. The decision on a petition involves separate determinations of whether you have established that the alien is eligible for the requested classification based on the proposed employment, and whether he or she is eligible for any requested change of status or extension of stay. You will be notified of the decision in writing.

Privacy Act Notice.

We ask for the information on this form and associated evidence to determine if you have established eligibility for the immigration benefit you are seeking. Our legal right to ask for this information is in 8 U.S.C. 1154, 1184 and 1258. We may provide this information to other government agencies. Failure to provide this information and any requested evidence may delay a final decision or result in denial of your petition.

Information and Forms.

To order USCIS forms, call our toll-free forms line at **1-800-870-3676**. You can also get USCIS forms and information on immigration laws, regulations and procedures by telephoning our National Customer Service Center at **1-800-375-5283** or visiting our internet website at www.uscis.gov.

Use InfoPass for Appointments.

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our internet-based system, **InfoPass**. To access the system, visit our website at www.uscis.gov. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen. Print the notice and take it with you to your appointment. The notice gives the time and date of your appointment, along with the address of the USCIS office.

Paperwork Reduction Act Notice.

We try to create forms and instructions that are accurate, can be easily understood and that impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex.

The estimated average time to complete and file this petition is as follows: (1) 60 minutes to learn about the law and form; (2) 60 minutes to complete the form; and (3) 45 minutes to assemble and file the petition; for a total estimated average of 2 hours and 45 minutes per petition.

If you have comments regarding the accuracy of this estimate or suggestions for making this form simpler, you can write to the U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., Washington, D.C. 20529; OMB No. 1615-0009. **Do not mail your petition to this Washington, D. C. address.**