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(b) Visitors.

If found admissible, a B-2 shall be admitted for 6 months. The district director may delegate individual review of the minimum admission period no lower than a supervisory inspector. Referral of individual cases to the supervisor may occur when it is evident that the alien is admissible, but does not have sufficient resources available to maintain a 6 months visit. The Service does not require that an applicant for admission have with him or her funds to maintain a 6-month stay, but the applicant mus t demonstrate that he/she has access to sufficient resources. A B-1 shall be admitted for a period of time which is fair and reasonable for completion of the purpose of the trip. Any decision to reduce a B-1's admission from the time requested shall be authorized by a supervisor. (TM 185)

An alien who is coming temporarily to the United States to fill a position of a permanent nature is generally not admissible as a B or H-2 nonimmigrant. However, personnel of foreign airlines engaged in international transportation of passengers and freight who seek to enter the United States for employment with the airline in an executive, supervisory or highly technical capacity may be admitted as B-1 nonimmigrants, unless a treaty of commerce and navigation is in effect between the United States and the country of the applicant's nationality, in which case the alien should be documented as E-1 if he or she is otherwise qualified. Such B-1 airline personnel must meet the criteria established for employees of treaty trades as described in 22 CFR 41.51 (c). The notes to that regulation in Volume 9--Visas, Foreign Affairs Manual, contain information concerning the various treaties of trade entered into by the United States, and important information concerning certain limitations of treaty provisions. T hese notes must be consulted in considering matters involving this category of B-1 nonimmigrants.

Personal and domestic servants may be classified as B-I nonimmigrants if they are accompanying or following to join:

(1) United States citizen employers who can establish (a) that they are subject to frequent international transfers lasting two years or more as a condition of their employment, and that they are returning to the United States from such an assignment, (b) their current assignment in the United States will not be for over 4 years, (c) the personal or domestic servant has been employed them abroad for at least six months prior to admission into the United States, (d) the servant will reside in their household and will be provided a private room and board, without cost to the servant, (e) the servant will work only for them; and (f) both the employer and employee have signed a contract which guarantees that the servant will receive at least the prevailing wage for domestics in the area of employment, that all other benefits normally given to U.S. workers in the area of employment will be granted to the servant; that round trip airfare will be provided to the servant; that the servant will not be required to giv e more than two weeks

notice of intent to leave the employment; that the employer will give at least two weeks notice of intent to terminate the employment. Evidence to establish qualifications under this subparagraph may include personnel records and statements from the citizen's employer, and must include a signed and dated copy of the contract between the employer and servant; or

(2) Nonimmigrant employers who seek admission to, or are already in the United States in B,E,F, H, I, J, or L nonimmigrant status, provided the employee can show he has a residence abroad he does not intend to abandon (notwithstanding the employer himself may be in a nonimmigrant status which does not require such a showing), and further provided the employee has been employed abroad by the employer as a personal or household domestic servant for at least one year prior to the date of the employer's admissi on to the United States, or that the employer-employee relationship has existed prior to the time of application and the employer can demonstrate that he has regularly employed (either year-round or seasonally) a personal or domestic servant over a period of several years immediately preceding the time of application, and the employee can demonstrate at least one year's experience as a personal or domestic servant.

Persons engaged in activities on the outer continental shelf are under the jurisdiction of the United States Coast Guard. Any person inquiring about his or her right to engage in employment on the outer continental shelf should be referred to the Coast Guard. Nonimmigrants destined to the outer continental shelf normally will be classified B-I, and consular officers will annotate such visas "OCS" (see OI 235 .1(m) (2)).

Each of the following may also be classified as a B-I nonimmigrant if he/she is to receive no salary or other remuneration from a United States source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay):

(1) An alien, otherwise classifiable as an H-I nonimmigrant, who is coming to perform temporary services in the United States other than as an entertainer; however, an entertainer who is classifiable H-I may be classified B-I if coming to participate in a cultural program sponsored by his/her government, will be performing before a nonpaying audience, and all expenses, including per diem, will be paid by his/her government . (See Foreign Affairs Manual, Vol 9 visas, Note 4.2 at 22 CFR 41.25).

(2) An alien entertainer, even though not of H-I caliber, who is a resident or national of Canada or Mexico and is coming to the border area of the United States to participate in a long-established religious festival or ceremony, or in a long established binational civic celebration.

(3) An alien, otherwise classifiable as an H-3 nonimmigrant, who is already employed abroad an

will continue to receive his/her salary from the foreign employer on whose behalf he/she is coming to undertake training in the United States.

(4) An alien, otherwise classifiable as an H-3 nonimmigrant, who is a student at a foreign medical school and is coming to taken an "elective clerkship" (practical experience and instruction in the various disciplines of the practice of medicine under the supervision and direction of faculty physicians) at a United States medical school's hospital as an approved part of the foreign medical school education.

(5) An alien coming to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the U.S. or to train U.S. workers to perform such service, provided: the contract of sale specifically requires the seller to perform such services or training, the alien possesses specialized knowledge essential to the seller's contractual obligation to provide services or training, the alien will receive no remuneration from a U.S. source, and the trip is to take place wit hin the first year following the purchase. (Revised)

(6) An alien member of a religious denomination coming temporarily and solely to do missionary work in behalf of that denomination, if such work does not involve the selling of articles or the solicitation or acceptance of donations.

(7) An alien coming temporarily to participate in a voluntary service program conducted by a recognized religious body. The alien shall present to the examining officer a written statement issued by the appropriate religious organization. The statement must contain the following items of information:

(i) Identity of the volunteer including name, date and place of birth;

(ii) name and address of initial destination in U.S.;

(iii) name and address of project in U.S. to which assigned; and

(iv) anticipated duration of assignment.

(8) An alien, who is coming temporarily to the United States to attend an executive seminar.

(9) An alien, who has been invited to participate in the training of Peace Corps Volunteers or

who is coming to the United States under contract pursuant to sections 9 and 10(a) (4) of the Peace Corps Act (75 Stat. 612). Aliens admitted under this provision may be paid a salary for service performed in accordance with the Peace Corps Act.

(10) An alien, coming temporarily to perform services for his foreign employer and a jockey, sulkey driver, trainer or groom.

The alien may not work in this country for any other foreign or United States employer.

(11) An alien, who is coming to the United States to seek an investment which would qualifying for status as an E-2 investor, provided that the alien does not perform productive labor or actively participate in the management of the business prior to receiving a grant or E-2 status.

(12) An alien, who is coming to the United States to open or be employed in anew branch, subsidiary, or affiliate of the foreign employer, if the alien will become eligible for status as an L-I upon securing the evidence required in 8 CFR 214.2(1) regarding proof of acquisition of physical premises.

(13) An alien athlete or team member who meets all of the following criteria:

"A" The player seeks to enter the U.S. as a member of a foreign based team in order to compete with another sports team.

"B" The foreign sports team and the foreign athlete have their principle place of business or activity in a foreign country.

"C" The income of the foreign based team and the salary of its players are principally accrued in a foreign country.

"D" The foreign based sports team is a member of an International Sports League or the sporting activities involved have an international dimension. (Added)

In all other instances, an alien classified as an H-2 nonimmigrant may not be classified as a B-I nonimmigrant even if the salary is paid by a source outside the United States. A visa petition must be filed on behalf of such nonimmigrant alien accompanied by a certification from the Secretary of Labor or designated representative or by a notice that such certification cannot be

made, to enable the Service to determine among other things whether any unemployed persons capable of performing the same serv ices are available in this country.

It has been determined that the provision of 8 CFR 248.3(b) apply to the B-2 spouse or children of B-I nonimmigrants; therefore, if a B-I nonimmigrant applies for extension of temporary stay, the status of the spouse and children will be changed without fee or application. Upon this change of status, the I-94's must be endorsed "B-I spouse" or "BI child".

Upon presentation of a canadian border crossing identification card issued pursuant to 22 CFR 41.129, a landed immigrant in Canada may be admitted from Canada or Mexico as a B-I or B-2 nonimmigrant visitor without requiring a nonimmigrant visa or Form I-94. On the landed immigrant's first application for admission with the border crossing card, his name shall be checked in accordance with OI 235 .8 and, if found admissible, his passport shall be stamped with the date and class of admission. If, subsequent to admission as a temporary visitor for business or pleasure, the bearer of a Canadian border crossing identification card is found by a district director to have violated the conditions of his admission into the United States, the border crossing identification card shall be voided as provided for in 22 CFR 41.129(f) and a report of the facts in the case shall be transmitted to the American consu late at which the card was issued.

A B-I Cuban alien seeking an extension that would extend his time in the United States beyond 30 days from the date of his entry shall not be granted an extension of stay, unless he has a permanent residence in some country other than Cuba. He may be granted voluntary departure for an indefinite period; in such a case, Form I-161 shall be prepared placing the alien under docket control (see AM 2798) and an A file opened when none exists.

The spouse or child of a Filipino enlistee in the United States Navy or Coast Guard shall not be granted an extension of stay but may be granted indefinite voluntary departure to the date of completion of service by the enlistee; a valid passport is not required in such a case.

When a Special Exchange Program (SPLEX) Soviet-bloc national requests an extension of stay, a change of nonimmigrant status, or deviation in itinerary, he/she should be advised to have his/her sponsor seek a recommendation from the Soviet and East European Exchange Staff, Department of State, Washington, DC, 20520. After obtaining such a recommendation, the sponsor will furnish it to the SPLEX alien to present to the appropriate field office with his/her application. If the SPLEX alien was admitted fo r 30 days or less, the Department of State will, instead of furnishing the sponsor with the recommendation, telephonically notify the officer in charge of the travel control section of the Service office adjudicating the SPLEX alien's application of the Department's recommendation. Normally no request should be initiated by a field office in behalf or a SPLEX alien. In an emergency, however, the District Director, Washington, DC, may be contacted by telephone or teletype to obtain the Department of State' s agreement as to the action to be taken. (Revised)

When a section 212(d) (3) order specifies that action may not be taken to grant any extension of stay or change in itinerary without the prior approval of a specific office, that office must be consulted before taking final action. In the case of a section 212(d)(3) (A) order, the alien's Form I-94 must be examined to determine whether prior approval of the District Director, Washington, DC, is required (see OI 212.4(a) ). In the case of a section 212(d)(B) order, the alien's copy of Form I-192 must be examined to determine wheth er prior approval of a specified Service office is required. It should be noted, however, that not all SPLEX aliens are excludable under section 212 (a) (28) of the Act. (Added)

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See 8 CFR 211 and OI 221 for special instructions regarding aliens who whom the consular officer has required the posting of a bond as a prerequisite for issuance of a B visa.

Pursuant to the United States-Canada Free-Trade Agreement (FTA), a Canadian citizen seeking entry for purposes set forth in Schedule 1 to Annex 1502.1 to Chapter 15 of the FTA may be classified as a B-1 if he/she is otherwise admissible and meets the requirements of section 101(a) (15) (B) of the Immigration and Nationality Act. Schedule 1 represents the phases of a normal business cycle and lists the business persons engaged in activities necessary for a continuous cycle. The listing of occupations and professions in Schedule 1 is not an exhaustive listing, and a Canadian citizen whose business activities do not appear in Schedule 1 may be eligible for admission as a B-1 if he/she meets the other statutory requirements for business visitors.

A Canadian citizen, who is determined to be admissible as a visitor for business pursuant to the FTA, may be admitted as a B-1 for a period of time not to exceed one year. A Canadian citizen B-1 who requests documentation may be issued an arrival/departure record, Form I-94, in order to facilitate reentry and to reduce any uneasiness he/she may feel about working in the United States as a B-1 without documentation.

In keeping with the spirit of the FTA, a Canadian citizen who is determined ineligible for B-1 classification should be advised that he/she may qualify under an alternate class of admission [i.e., 101(a) (15) (H) , 101(a) (15) (E) , 214(e) , etc.].

As represented in Schedule 1, the seven phases of a business cycle are:

Research and Design

Growth, Manufacture, and Production

Marketing

Sales

Distribution

After-Sales Services

General Service

Included in Schedule 1 (Growth, Manufacture and Production), is a provision for the admission of a Canadian citizen who is a harvester owner supervising a harvesting crew admitted under applicable law. The owner may qualify for admission to the United States ad B-1. Note that the crew must be admitted under applicable law (H-2A Agricultural workers) and are not classifiable as B-1. In this provision, "harvesting" means the gathering by machine of agricultural crops such as grain, fiber, fruits, and v egetables. This provisions does not include the harvesting of fish or seafood (for example, lobsters, clams, oysters).

Under Schedule 1 (Sales), the sale of goods and their delivery to the same United States buyer are precluded on the same business trip. However, a Canadian citizen is not precluded from selling on one trip and then delivering on a subsequent trip since such an arrangement involves two separate purposes for entry. Neither is a Canadian citizen in sales precluded from selling to an end-user (individual or entity).

A Canadian-citizen transportation operator (for example, a truck driver) coming to the United States to deliver or load merchandise may be classifiable as B-1 (Schedule 1, Distribution), provided there is no "point-to-point" loading and delivery of merchandise within the United States. In this same vein, Canadian-citizen taxi drivers or passenger-van operators may enter the United States to pick up passengers for delivery to Canada pursuant to an oral or written contract for services; however, no inter mediate loading and delivery of passengers within the United States is permissible.

In negotiating the FTA, the importance and desirability of facilitating the entry of Canadian citizen business persons was emphasized; however, it is necessary to be mindful that the

meaning of a business visitor has not been expanded or redefined for purposes of the FTA. Schedule 1 (After-Sales Service), however, extends the performance of after-sales service and training to the life of the warranty or service agreement and adds computer software to commercial and industrial equipment or machinery. T he computer software and commercial and industrial equipment or machinery must be purchased from an enterprise outside the United States and must not be of United States origin. The life of the warranty or service agreement may include a renewable service contract provided that such language was included in clear and definitive terms in the original contract at the point of sale. Nothing under the FTA precludes third party contracts for after-sales service as long as the third party agreement was contract ed at the time of sale. Similarly, nothing under the FTA precludes after-sales service of equipment which is rented out by the original purchaser to another U.S. entity as long as such equipment or machinery remains under ownership of the original purchaser and the warranty or service agreement is still in effect. On the other hand, the after-sales provision does not apply to warranties or service agreements on industrial equipment or machinery, or computer software leased from enterprises outside the Uni ted States.

As set forth in Schedule 1 (General Service), professionals who are otherwise classifiable under section 101(a) (15) (H) (i) may be admissible as B-1 if no salary or other remuneration is received from a United States source. This does not extend to professional entertainers, except those who are coming strictly to participate in a cultural program sponsored by the sending country to perform before a non-paying audience and who will be compensated for expenses by the sending country's government.

Under General Service, tourism personnel may be classified as B-1's to attend or participate in conventions or to conduct an international tour that either originates or terminates, or both, in foreign territory. The tour group must cross an international boundary, and the tour may not both begin and end at places within the United States even if an international boundary has been crossed during the course of the tour. The alien tour operator or tour driver must remain with the tour group throughout t he course of the tour. If a tour originates in the United States, a significant portion of the tour must take place in foreign territory in order to preserve the international nature of the tour. In the case of a tour originating in the United states, the alien tour operator or tour driver, if otherwise classifiable as B-1, may enter the United States with an empty conveyance or with another tour group.

Consistent with the Department of State notes to 22 CFR 41.31 in Volume 9 of the Foreign Affairs Manual, concerning classification of aliens as temporary visitors, the source of remuneration should be considered in determining whether an alien is classifiable as a B-1. If an alien is to receive an honorarium or other fee for services rendered, it must be determined that such is an incidental expense and not direct remuneration. The actural place of accrual of profits for services rendered by an alien should also be considered in determining whether an alien is qualified as a nonimmigrant visitor for business. There must also be a clear intent on the part of the alien to continue a residence outside the United States. The fine line between a temporary

visitor for business and an alien seeking local labor or employment is often a difficult one to draw, and these as well as other factors must be considered.

Several references to the term "commercial transactions" are contained in Schedule 1. Although the statute is silent as to the definition of "commercial transactions," any act (within the confine of the law), which is performed expressly to derive a profit may be construed as a commercial transaction. This includes, but is not limited to the purchase, sale, marketing, distribution, advertisement, negotiation, procurement, transmission, or transportation of goods or services.

The dependent spouse or unmarried minor children of a Canadian citizen classifiable under the FTA as B-1, shall be admitted as B-2 provided they meet all existing requirements for admission under section 212(a) of the Act. The B-2 spouse and children shall be admitted for a period of time commensurate with that of the principal alien but not to exceed one year. The spouse and children shall be eligible for an extension of temporary stay and shall be included in the application for extension filed by the B-1.

The spouse and unmarried minor children of a Canadian citizen who is classifiable as a professional (TC) pursuant to section 214(e) of the act and as set forth under the FTA shall be entitled to classification as B-2 if they are otherwise admissible. The dependent spouse and children of a TC nonimmigrant shall be entitled to a period of admission not to exceed one year and shall be provided documentation, Form I-94, for "multiple entries." The reverse side of the arrival stub of Form I-94 shall bear t he legend "TC Dep" and shall show the name of the principal alien.

The B-2 unmarried minor children of a TC Canadian citizen shall be eligible to attend school in the United States during the period of authorized temporary stay provided that such education is incidental to their status and is not the primary objective for entry.

For special instructions relating to Mexican nationals in possession of Forms I-186 who seek as visitors, see OI 235 .14

(c)Transits.

The open-face TWOV stamp prescribed in AM 2790.21 shall be affixed to the flight coupons presented by a TWOV passenger as evidence of his confirmed and onward reservations to the next country beyond the United States. A request by a carrier for permission to refund to TWOV passenger's ticket may be granted by the Service only when the Service has consented to the alien's remaining in the United States or to the alien's departure on another carrier or conveyance.

An alien who is seeking entry for the purpose of joining a vessel in the United States who is in possession of a valid D visa issued pursuant to a section 212(d) (3) (A) order may be admitted as a transit without a visa, provided he is otherwise admissible except for the grounds of excludability enumerated in the order.

An alien who is being deported by another country through the United States, either with or without an escort, shall not be admitted as a transit without a visa; in such case, he may be paroled for the purpose of transiting the United States.

Because of obligations undertaken by the United States pursuant to the United Nations Headquarters Agreement, applicants for admission as C-2 nonimmigrants are exempted from the grounds of inadmissibility listed in section 212(a) of the Act, except those listed in paragraph (26) (A), (27), (28) and (29) thereof. Unless otherwise indicated in the consular notation on the visa, in section 212(d) (3) authorization, or in an instruction from the Central Office in a specific case, the period of admission on the Form I-94 of a C-2 nonimmigrant shall be shown as "D/S at U.N.," meaning admitted for duration of status at the United Nations.

Airlines with sterile hold areas (in-transit lounges) approved for such use by the Commissioner, may, under individual agreements with the Commissioner, disembark the entire passenger content of an aircraft at a United States airport, place such passengers in the "intransit lounge" while the aircraft is being refueled, etc., and then reboard them on the aircraft for direct foreign departure, without physically presenting such passengers for inspection in the INS inspection area. Notwithstanding the for egoing, an applicant, who is precluded from transit without visa privileges by 8 CFR 212.1(e) may not be carried to the United States under the "in-transit lounge" agreement. Additionally, under individual agreement with the Commissioner, an airline with an approved "intransit lounge" facility may be authorized by the Commissioner to select passengers without visas from company-owned or operated aircraft, place them in 'in-transit lounges" for periods not exceeding 8 hours without presenting them for inspe ction by the Service. "In-transit" passengers in both cases shall be subject to immigration inspection at any time without advance notice to the airline, and must be admissible to the United States under section 212 of the Immigration and Nationality Act, except for those subsections pertaining to documentary requirements.

A C-2 nonimmigrant admitted pursuant to the United Nations Headquarters Agreement who wishes to depart from the 25 mile radius of Columbus Circle, New York City, New York during his or her stay in the United States shall make application to the District Office, New York City. (See OI 212.4(f) 92) for procedures in section 212(d) (3) waiver cases).

See OI 238.1(a) for procedure regarding a TWOV alien who absconded.