



MEMORANDUM

December 14, 2015

To: Senate Judiciary Subcommittee on Immigration and the National Interest
[REDACTED]

From: [REDACTED], Specialist in Immigration Policy, [REDACTED]

Subject: Foreign Nationals Authorized to Work in the United States

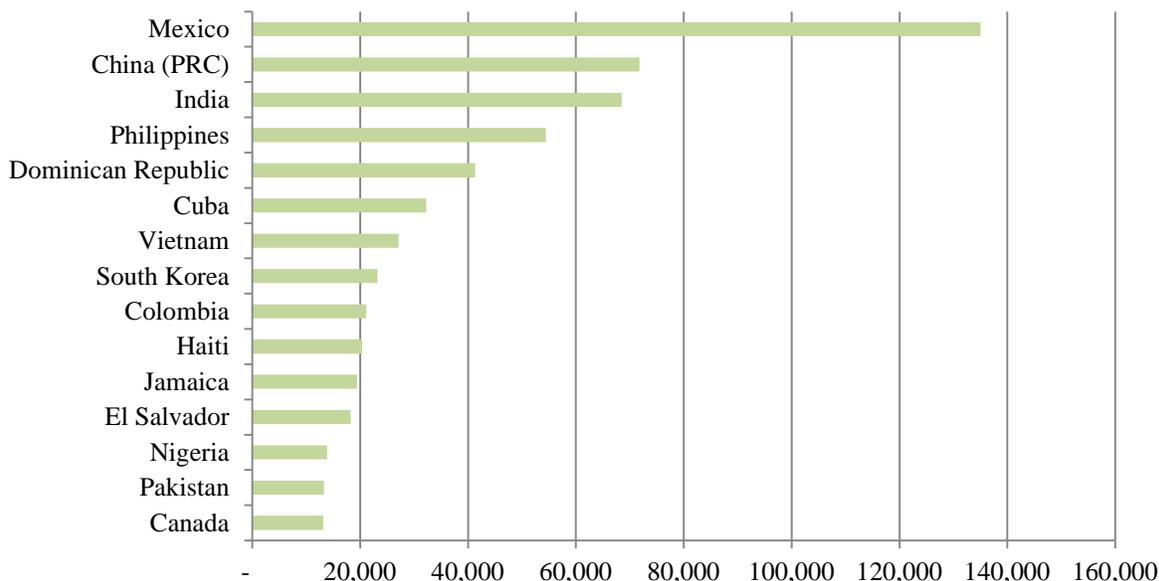
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Authorization for foreign nationals to work in the United States varies greatly by the immigration status of the foreign national, and whether the employment authorization is permanent, inherent in a temporary resident's visa category, linked to a particular employer, or time-limited because of specific circumstances. These factors make a cumulative total of foreign nationals issued work authorizations problematic. The memorandum organizes the classes and categories of foreign nationals who obtained employment authorization into three broad groups: lawful permanent residents, employment-based nonimmigrants, and foreign nationals seeking temporary permission to work through the I-765 application.

Lawful Permanent Residents

All foreign nationals who gain lawful permanent resident (LPR) status in the United States are eligible to work, regardless of what preference category or class they entered through. The most recent available *Yearbook of Immigration Statistics* is FY2013, when just under 1 million (990,553) LPRs were admitted or adjusted status. The top 15 source countries for FY2013 are presented in **Figure 1**. Not all LPRs would be in the labor force, as the total number includes children, elderly, and homemakers.¹

¹ CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*, by Ruth Ellen Wasem.

Figure 1. LPR Admissions/Adjustments for Top 15 Source Countries, FY2013

Source: U.S. Department of Homeland Security, Office of Immigration Statistics, U.S. Legal Permanent Residents: 2013.

Employment-based Nonimmigrants²

U.S. law provides for the temporary admission of various categories of foreign nationals, who are known as nonimmigrants. Nonimmigrants are admitted for a designated period of time and a specific purpose. They include a wide range of visitors, including tourists, foreign students, diplomats, and temporary workers. There are 24 major nonimmigrant visa categories. These visa categories are commonly referred to by the letter and numeral that denotes their subsection in the Immigration and Nationality Act (INA); for example, B-2 tourists, E-2 treaty investors, F-1 foreign students, H-1B temporary professional workers, J-1 cultural exchange participants, or S-4 terrorist informants.³ The general groupings of employment-based nonimmigrant visas are temporary workers, cultural exchange participants, multinational corporate executives and international investors.

Temporary Workers

The major nonimmigrant category for temporary workers is the H visa. The current H-1 categories include professional specialty workers (H-1B) and nurses (H-1C). Temporary professional workers from Canada and Mexico may enter according to terms set by the North American Free Trade Agreement (NAFTA) on TN visas. There are two visa categories for temporarily bringing in seasonal workers (i.e., guest workers): agricultural guest workers enter with H-2A visas, and other seasonal/intermittent workers enter with H-2B visas.

Persons with extraordinary ability in the sciences, the arts, education, business, or athletics are admitted on O visas. Extraordinary ability in the fields of science, education, business, or athletics means a level of

² CRS Report R44735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*, by Ruth Ellen Wasem; and CRS Report R42434, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*, by Andorra Bruno.

³ CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

expertise indicating that the person is one of a small percentage who has risen to the very top of the field of endeavor. Extraordinary ability in the field of arts means distinction (i.e., renowned, leading, or well-known in the field of arts).

Internationally recognized athletes or members of an internationally recognized entertainment group come on P visas. An athlete on a P-1 visa must have achieved significant international recognition in the sport. Those P-1 visas for a sports team must likewise be distinguished, and it requires the participation of athletic teams of international recognition. To qualify for P-1 visas for entertainment groups, the group must be internationally recognized, having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that encountered ordinarily.

Aliens working in religious vocations enter on R visas. Religious work is currently defined as habitual employment in an occupation that is primarily related to a traditional religious function and that is recognized as a religious occupation within the denomination.

Cultural Exchange Participants

The broadest category for cultural exchange is the J visa, which was also known as the Fulbright program. The J visa includes professors and research scholars, students, foreign medical graduates, teachers, resort workers, camp counselors, au pairs, and summer work/study who are participating in an approved exchange visitor program.

The Q visa is an employment-oriented cultural exchange program, and its stated purpose is to provide practical training and employment as well as share history, culture, and traditions.

Multinational Corporate Executives and International Investors

Intracompany transferees who are executive, managerial, and have specialized knowledge and who are continuing employment with an international firm or corporation are admitted on the L visas.

To qualify as an E-1 treaty trader or E-2 treaty investor, a foreign national first must be a citizen or national of a country with which the United States maintains a treaty of commerce and navigation. The foreign national then must demonstrate that the purpose of coming to the United States is one of the following: to carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country; or to develop and direct the operations of an enterprise in which the national has invested, or is in the process of investing, a substantial amount of capital.

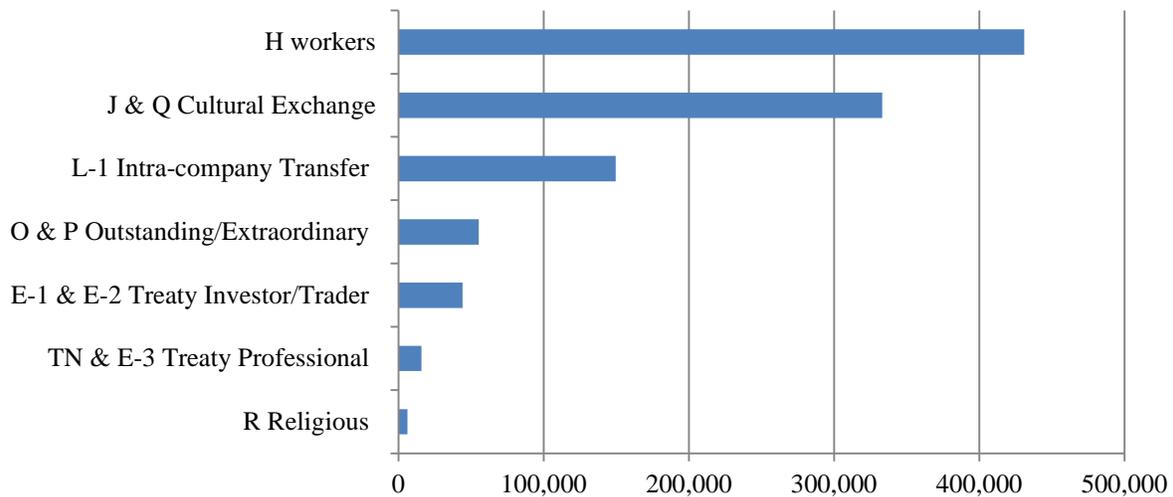
The E-3 treaty professional visa is a temporary work visa limited to citizens of Australia. It is usually issued for two years at a time. Occupationally, it mirrors the H-1B visa in that the foreign worker on an E-3 visa must be employed in a specialty occupation.

With the obvious exception of the nonimmigrants who are temporary workers (e.g., Hs, Js, Os, Ps, Rs, and Qs), treaty traders (e.g., Es), or the executives of multinational corporations (e.g., Ls), most nonimmigrants are not allowed to work in the United States. If a nonimmigrant who is not authorized to work does so, that employment constitutes a failure to maintain a lawful status. In other words, working without employment authorization is a violation of law and results in the termination of nonimmigrant status. Exceptions to this policy are discussed in the section below on I-765 applicants.

FY2014 Statistics for Employment-based Nonimmigrants

In FY2014, the U.S. Department of State issued over 1 million (1,034,858) employment-based nonimmigrant visas. As **Figure 2** depicts, the largest portion were nonimmigrants obtaining H temporary worker visas, e.g., H-1B professionals and H-2A agricultural workers. A substantial number of employment-based nonimmigrant visas went to cultural exchange workers on J and Q visas.

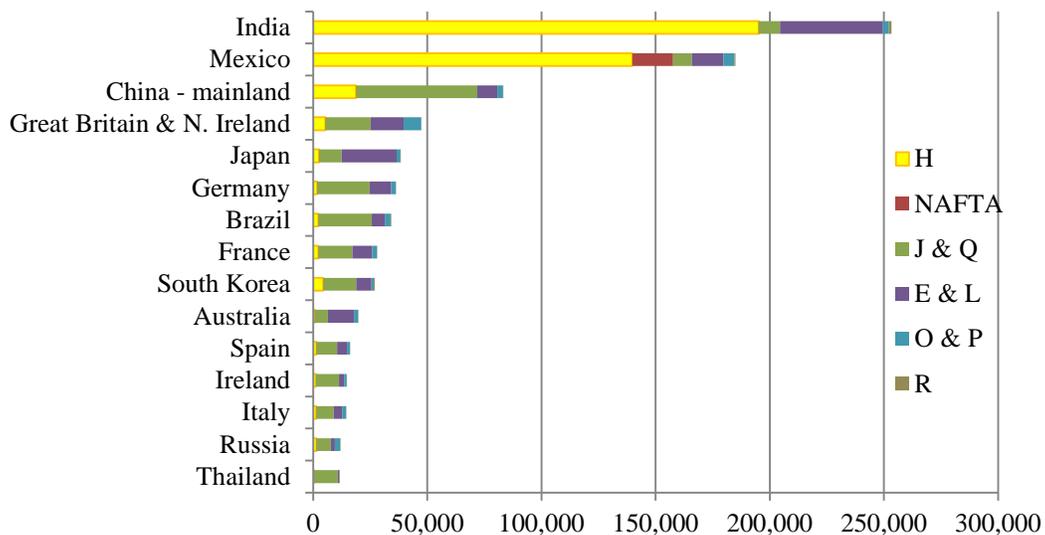
Figure 2. Employment-Based Nonimmigrants by Types of Visas, FY2014
 Visas Issued by U.S. Department of State



Source: CRS presentation of data from the annual reports of the U.S. Department of State Office of Visa Statistics.

Notes: Many H-1B workers are former F-1 foreign students who changed status within the United States; as a result, the Department of State data may undercount H-1B workers who changed status in the United States.

Figure 3. Top Fifteen Source Countries for Employment-based Nonimmigrants, FY2014
 By Types of Visas



Source: CRS presentation of data from the annual reports of the U.S. Department of State Office of Visa Statistics.

Foreign Nationals Who File I-765 Applications

There are several other classes and categories of foreign nationals who may be permitted to work in the United States temporarily, even if they are not holding an employment-authorized visa. To obtain

permission to work, they must file the proper paperwork, be members of very specific designated groups, and meet the particular requirements for their group. The germane paperwork is the “Application for Employment Authorization,” commonly known by its form number I-765. These classes and categories who may file an I-765 to request an employment authorization document (EAD) include:

- Asylee/Refugee categories (and their spouses and children)⁴
- Citizens of Micronesia, the Marshall Islands, or Palau
- Individuals with Deferred Enforced Departure (DED)⁵
- Individuals with Temporary Protected Status (TPS)⁶
- Individuals eligible for adjustment under section 203 of the Nicaraguan Adjustment and Central American Relief Act⁷
- F-1 student seeking optional practical training (OPT)⁸
- F-1 student offered off-campus employment under the sponsorship of a qualifying international organization
- F-1 student seeking off-campus employment due to severe economic hardship
- J-2 spouse or minor child of an exchange visitor
- M-1 student seeking practical training after completing studies
- Eligible dependents of employees of diplomatic missions, international organizations, or NATO
- Spouse of an E-1/E-2 Treaty Trader or Investor
- Spouse of an L-1 Intracompany Transferee
- Spouse of an H-1B nonimmigrant
- I-485 applicants who have filed for adjustment of status
- Individuals granted withholding of deportation or removal
- Individuals paroled in the public interest
- Individuals granted deferred action
- Individuals granted Deferred Action for Childhood Arrivals (DACA)⁹
- T and U nonimmigrants¹⁰

While these classes and categories of foreign nationals seem disparate, they share a common feature: they have official permission to be in the United States, albeit time-limited in many cases. Some are the spouses of employment-based nonimmigrants; some are individuals granted deferred action; some have

⁴ CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno; and, CRS Report R41753, *Asylum and “Credible Fear” Issues in U.S. Immigration Policy*, by Ruth Ellen Wasem.

⁵ CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Lisa Seghetti, Karma Ester, and Ruth Ellen Wasem.

⁶ *Ibid.*

⁷ CRS Report 97-810, *Central American Asylum Seekers: Impact of 1996 Immigration Law*, by Ruth Ellen Wasem.

⁸ CRS Report R44735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*, by Ruth Ellen Wasem, pp. 13-14.

⁹ CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*, by Andorra Bruno.

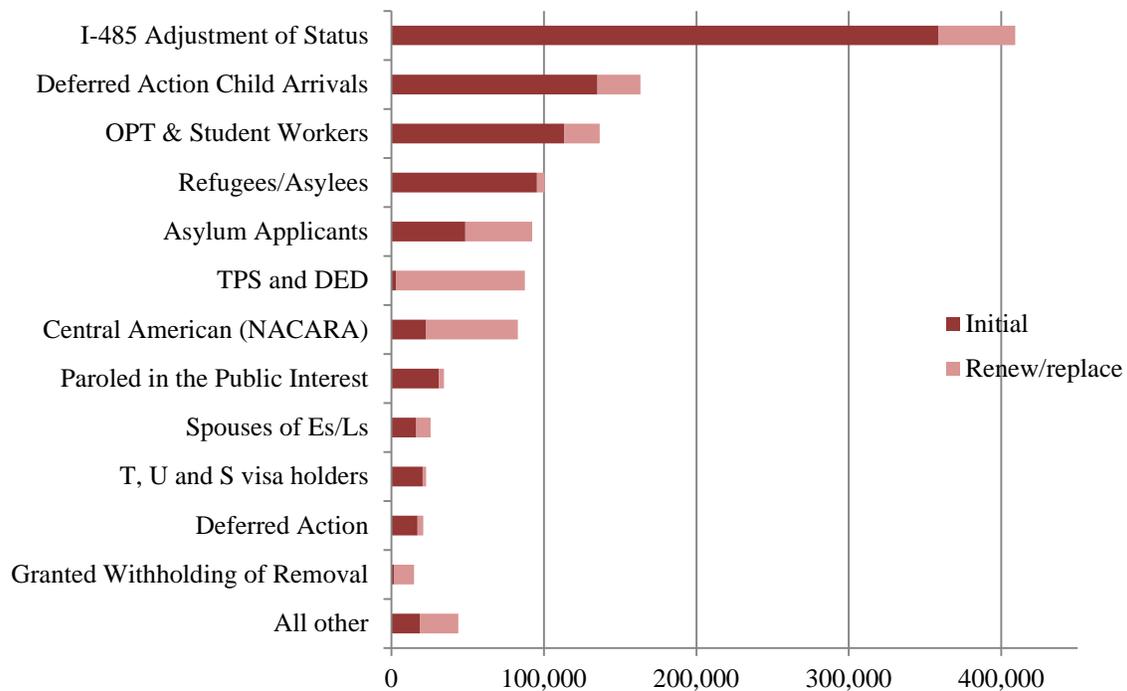
¹⁰ More information about all of these classes and categories can be found on the Instructions for I-765, Application for Employment Authorization, Department of Homeland Security U.S. Citizenship and Immigration Services, [OMB No. 1615-0040; Expires 02/28/2018], which is available at <http://www.uscis.gov/sites/default/files/files/form/i-765instr.pdf>.

Temporary Protected Status; some are foreign nationals eligible to adjust to lawful permanent residence (LPR); and, some are foreign students who are granted permission to receive optional practical training (OPT) in their field of study.

FY2014 Statistics for I-765 Applicants

Fully one-third of all foreign nationals who received employment authorization documents in FY2014 were individuals who were also filing I-485 applications to adjust to LPR status. At a distant second and third are young adults who gained deferred action for childhood arrivals (13%) and foreign students who obtained permission to work after graduation (11%). In total, over 1.2 million foreign nationals received EADs in FY2014.

Figure 4. Employment Authorizations (I-765) Approved, FY2014



Source: Unpublished data obtained by CRS from U.S. Citizenship and Immigration Services, CSICOR, Office of Performance and Quality, Performance Analysis and External Reporting.

The I-765 data are not available by country of origin.