

CRS Report for Congress



U.S. Immigration Policy on Temporary Admissions

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Summary

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, and 72 specific types of nonimmigrant visas issued currently. These visa categories are commonly referred to by the letter and numeral that denotes their subsection in the Immigration and Nationality Act (INA), e.g., 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.

Interest in nonimmigrant visas soared immediately following the September 11, 2001 terrorist attacks, which were conducted by foreign nationals apparently admitted to the United States on legal visas. Since that time, policy makers have raised a series of questions about aliens in the United States and the extent that the federal government monitors their admission and presence in this country. Some of the specific visa categories are the focus of legislative activity (e.g., guest workers).

The U.S. Department of State (DOS) consular officer, at the time of application for a visa, as well as the Department of Homeland Security (DHS) immigration inspectors, at the time of application for admission, must be satisfied that the alien is entitled to nonimmigrant status. The burden of proof is on the applicant to establish eligibility for nonimmigrant status and the type of nonimmigrant visa for which the application is made. Both DOS consular officers (when the alien is petitioning abroad) and DHS inspectors (when the alien is entering the United States) must confirm that the alien is not ineligible for a visa under the so-called “grounds for inadmissibility” of the INA, which include criminal, terrorist, and public health grounds for exclusion.

Nonimmigrant visas issued abroad dipped to 5.0 million in FY2004 after peaking at 7.6 million in FY2001. The FY2005 data inched back up to 5.4 million nonimmigrant visas issued. Over the past 12 years, DOS has typically issued around 6 million nonimmigrant visas annually. The growth in the late 1990s has been largely attributable to the issuances of border crossing cards to residents of Canada and Mexico and the issuances of temporary worker visas. Combined, visitors for tourism and business comprised the largest group of nonimmigrants in FY2005, about 3.42 million, down from 5.7 million in FY2000. Other notable categories were students and exchange visitors (9.4%) and temporary workers (17.9%).

The law and regulations usually set strict terms for nonimmigrant lengths of stay in the United States, typically have foreign residency requirements, and often limit what aliens are permitted to do in the United States (e.g., gain employment or enroll in school), but many observers assert that the policies are not uniformly or rigorously enforced. Achieving an optimal balance among major policy priorities, such as ensuring national security, facilitating trade and commerce, protecting public health and safety, and fostering international cooperation, remains a challenge.

Contents

Overview	1
Introduction	1
Broad Categories of Nonimmigrants	2
Diplomats and Other International Representatives	2
Visitors as Business Travelers and Tourists	3
Multinational Corporate Executives and International Investors	3
Temporary Workers	3
Cultural Exchange	3
Foreign Students	4
Family-Related	4
Law Enforcement-Related	4
Aliens in Transit and Crew Members	4
Exclusion and Removal	4
Inadmissibility	4
Termination of Status	5
Periods of Admission	5
Length of Stay	5
Duration of Visa	6
Employment Authorization	6
Permission to Work	6
Labor Market Tests	6
Statistical Trends	7
Current Issues	12
Temporary Workers	13
Temporary Skilled and Professional Workers	13
Guest Workers	13
Foreign Medical Graduates	13
Foreign Investors	14
Foreign Students	14
Enforcing Current Law	15

List of Figures

Figure 1. Nonimmigrant Visas <i>Issued</i> by Region, FY2005	7
Figure 2. Nonimmigrant Visas <i>Issued</i> by Category, FY2005	8
Figure 3. Nonimmigrant <i>Admissions</i> by Region, FY2005	9
Figure 4. Nonimmigrant <i>Admissions</i> by Category, FY2005	10
Figure 5. Nonimmigrant Visas <i>Issued</i> by Region, FY1996-FY2005	11
Figure 6. Nonimmigrant <i>Admissions</i> by Region, FY1996-FY2005	12

List of Tables

Table 1. Periods of Stay and Foreign Residency Requirements for Nonimmigrant Visas	16
Table 2. Employment Authorization, Numerical Limits, and FY2002 Issuances for Nonimmigrant Visas	21

U.S. Immigration Policy on Temporary Admissions

Overview

Introduction

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. Nonimmigrants include a wide range of people, such as tourists, foreign students, diplomats, temporary agricultural workers, exchange visitors, internationally-known entertainers, foreign media representatives, intracompany business personnel, and crew members on foreign vessels.

Legislative activity usually focuses on specific visa categories, and legislative revisions to temporary visa categories have usually occurred incrementally. Interest in nonimmigrant visas as a group, however, soared immediately following the September 11, 2001 terrorist attacks, which were conducted by foreign nationals admitted to the United States on temporary visas. Since that time, policy makers have raised a series of questions about aliens in the United States and the extent that the federal government monitors their admission and presence in this country. The Enhanced Border Security and Visa Entry Reform Act (P.L. 107-173), provisions in the Homeland Security Act (P.L. 107-296), and the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) are examples of broad reforms of immigration law to tighten procedures and oversight of aliens temporarily admitted to the United States.

Foreign nationals may be admitted to the United States temporarily or may come to live permanently.¹ Those admitted on a permanent basis are known as immigrants or legal permanent residents (LPRs), while those admitted on a temporary basis are known as nonimmigrants. Aliens who are in the United States without authorization (i.e., illegal aliens) are not discussed in this report.

U.S. immigration policy, embodied in the Immigration and Nationality Act (INA), presumes that all aliens seeking admission to the United States are coming to

¹ For background and analysis of visa issuance policy, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

live permanently.² As a result, nonimmigrants must demonstrate that they are coming for a temporary period and for a specific purpose. The U.S. Department of State (DOS) consular officer, at the time of application for a visa, as well as the Department of Homeland Security (DHS) immigration inspectors, at the time of application for admission, must be satisfied that the alien is entitled to a nonimmigrant status.³ The burden of proof is on the applicant to establish eligibility for nonimmigrant status and the type of nonimmigrant visa for which the application is made. The law exempts only the H-1 workers, L intracompany transfers, and V family members from the requirement that they prove that they are not coming to live permanently.⁴

This report begins with a synthesis of the nonimmigrant categories according to the purpose of the visa. It discusses the periods of admission and length of stay and then summarizes grounds for inadmissibility and removal as well as reasons for termination of status. It describes the circumstances under which nonimmigrants may work in the United States and follows with an analysis of nonimmigrant admissions. The narrative concludes with a discussion of concern issues, followed by two detailed tables analyzing key admissions requirements across all nonimmigrant visa types.

Broad Categories of Nonimmigrants

There are 24 major nonimmigrant visa categories, and 72 specific types of nonimmigrant visas issued currently.⁵ Most of these nonimmigrant visa categories are defined in §101(a)(15) of INA. These visa categories are commonly referred to by the letter and numeral that denotes their subsection in §101(a)(15), e.g., 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. These temporary visas may be grouped under the broad labels described below.

Diplomats and Other International Representatives. Ambassadors, consuls, and other official representatives of foreign governments (and their immediate family and servants) enter the United States on A visas. Official representatives of international organizations (and their immediate family and

² §214(b) of INA.

³ 22 CFR §41.11(a).

⁴ §214(b) of INA. Nonimmigrant visas are commonly referred to by the letter and numeral that denotes their subsection in §101(a)(15), hence “H-1” workers, “L” intracompany transfers, and “V” family members.

⁵ Law on nonimmigrants dates back to the Immigration Act of 1819. An immigration law enacted in 1924 defined several classes of nonimmigrant admission. The disparate series of immigration and nationality laws were codified into INA in 1952. Major laws amending INA are the Immigration Amendments of 1965, the Refugee Act of 1980, the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The newest nonimmigrant visa — known as the V visa — was folded into the District of Columbia FY2001 appropriations conference agreement (H.R. 4942, H.Rept. 106-1005), which became P.L. 106-553.

servants) are admitted on G visas. Those nonimmigrants entering under the auspices of the North Atlantic Treaty Organization (NATO) have their own visa categories. Aliens who work for foreign media use the I visa.

Visitors as Business Travelers and Tourists. B-1 nonimmigrants are visitors for business and are required to be seeking admission for activities other than purely local employment or hire. The difference between a business visitor and a temporary worker depends also on the source of the alien's salary. To be classified as a visitor for business, an alien must receive his or her salary from abroad and must not receive any remuneration from a U.S. source other than an expense allowance and reimbursement for other expenses incidental to temporary stay.

The B-2 visa is granted for temporary visitors for "pleasure," otherwise known as tourists. Tourists, who are encouraged to visit as a boon to the U.S. economy, have consistently been the largest nonimmigrant class of admission to the United States. A B-2 nonimmigrant may not engage in any employment in the United States.

Many visitors, however, enter the United States without nonimmigrant visas through the Visa Waiver Program. This provision of INA allows the Attorney General to waive the visa documentary requirements for aliens coming as visitors from 28 countries, e.g., Australia, France, Germany, Italy, Japan, New Zealand, Switzerland, and the United Kingdom.⁶

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. Aliens who are treaty traders enter as E-1 while those who are treaty investors use E-2 visas.

Temporary Workers. The major nonimmigrant category for temporary workers is the H visa. Professional specialty workers (H-1B), nurses (H-1C) agricultural workers (H-2A) and unskilled temporary workers (H-2B) are included.⁷ Persons with extraordinary ability in the sciences, arts, education, business, or athletics are admitted on O visas, while internationally recognized athletes or members of an internationally recognized entertainment group come on P visas. Aliens working in religious vocations enter on R visas. Temporary professional workers from Canada and Mexico may enter according to terms set by the North American Free Trade Agreement (NAFTA) on TN visas.

⁶ See CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

⁷ See CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*; CRS Report RL30852, *Immigration of Agricultural Guest Workers: Policy, Trends, and Legislative Issues*, both by Ruth Ellen Wasem; CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno, and CRS Report RS20164, *Immigration: Temporary Admission of Nurses for Health Shortage Areas (P.L. 106-95)*, by Joyce Vialet.

Cultural Exchange. The broadest category for cultural exchange is the J visa. The J visa includes professors and research scholars, students, foreign medical graduates, teachers, camp counselors and au pairs who are participating in an approved exchange visitor program. Participants in special international cultural exchange programs from the former Soviet Union and Eastern bloc countries enter on Q-1 visas. Q-2 visas are for Irish young adults from the border counties who participate in approved cultural exchange programs.

Foreign Students. The most common visa for foreign students is the F-1 visa. It is tailored for international students pursuing a full-time academic education. Those students who wish to pursue a non-academic, e.g., vocational, course of study apply for an M visa. Foreign students are just one of many types of aliens who may enter the United States on a J-1 visa for cultural exchange.⁸

Family-Related. Fiances and fiancées of U.S. citizens come in on K visas. The 106th Congress added a transitional nonimmigrant visa — the V visa — for immediate relatives (spouse and children) of LPRs who have had petitions to also become LPRs pending for three years.

Law Enforcement-Related. The law enforcement-related visas are among the most recently created. The S visa is used by informants in criminal and terrorist investigations.⁹ Victims of human trafficking who participate in the prosecution of those responsible may get a T visa. Victims of other criminal activities, notably domestic abuse, who cooperate with the prosecution are eligible for the U visa.

Aliens in Transit and Crew Members . Two miscellaneous nonimmigrant categories are some of the earliest nonimmigrant categories enacted. The C visa is for aliens traveling through the United States en route to another destination, and the D visa is for alien crew members on vessels or aircraft.

Exclusion and Removal

Inadmissibility. Both DOS consular officers (when the alien is petitioning abroad) and INS inspectors (when the alien is entering the United States) must confirm that the alien is not ineligible for a visa under the so-called “grounds for inadmissibility” of the INA.¹⁰ These criteria categories are:

- health-related grounds;
- criminal history;
- security and terrorist concerns;
- public charge (e.g., indigence);
- seeking to work without proper labor certification;

⁸ For further discussion and analysis, see CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by Chad C. Haddal.

⁹ For more information, see CRS Report RS21043, *Immigration: S Visas for Criminal and Terrorist Informants*, by Karma Ester.

¹⁰ §212(b) of INA.

- illegal entrants and immigration law violations;
- lacking proper documents;
- ineligible for citizenship; and
- aliens previously removed.¹¹

The law provides waiver authority of these grounds (except for most of the security and terrorist-related grounds) for nonimmigrants on a case-by-case basis.¹²

Termination of Status. Consistent with the grounds of inadmissibility, the legal status of a nonimmigrant in the United States may be terminated based upon the nonimmigrant's behavior in the United States. Specifically, the regulations list national security, public safety and diplomatic reasons for termination. If a nonimmigrant who is not authorized to work does so, that employment constitutes a failure to maintain a lawful status. A crime of violence that has a sentence of more than one year also terminates nonimmigrant status.¹³

Periods of Admission

Length of Stay. Congress has enacted amendments and the executive branch has promulgated regulations governing areas such as the length and extensions of stay. For example, A-1 ambassadors are allowed to remain in the United States for the duration of their service, F-1 students to complete their studies, R-1 religious workers for up to three years, and D crew members for 29 days. Many categories of nonimmigrants are required to have a residence in their home country that they intend to return to as a stipulation of obtaining the visa. The law actually requires J-1 cultural exchange visa holders to go home for two years prior to returning to the United States (with some exceptions).

On April 12, 2002, the former INS proposed regulations on the length of stay for aliens on visitor visas (B-2) aimed at curbing abuses in that nonimmigrant visa category, such as working, enrolling in school, or overstaying. The rule would have eliminated the minimum six-month admission period and would have replaced it with "a period of time that is fair and reasonable for the completion of the purpose of the visit." The burden would have been on the alien to explain to the immigration inspector the nature and purpose of visit so the inspector can determine an appropriate time limit. In those cases where the inspector could not have determined the time needed to complete the visit, the visitors would have been limited to 30-day periods.¹⁴ Ultimately the Administration announced that it was not promulgating this regulation.

¹¹ For a fuller analysis, see CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia; and CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion of liens*, by Michael John Garcia and Ruth Ellen Wasem.

¹² §212(d)(3) and (4) of INA.

¹³ §214.1 of 8 CFR.

¹⁴ *Federal Register*, vol. 67, no. 71, Apr. 12, 2002, pp.18065-18069.

DHS recently announced plans to revise the regulations to expand the time restriction on BCCs used by Mexicans to enter the United States for temporary visits. This decision reportedly was coordinated between U.S. Secretary for Homeland Security Tom Ridge and Mexican Secretary of Government Santiago Creel. According to the DHS press release, the forthcoming rule would extend the time limit for BCC visitors from 72 hours to a period of 30 days. Laser visaholders planning to stay in the United States for more than 30 days are expected to be included in US-VISIT.¹⁵

Duration of Visa. Separate from the length of stay authorized for the various nonimmigrant visas is the validity period of the visa issued by DOS consular officers. These time periods are negotiated country-by-country and category-by-category, generally reflecting reciprocal relationships for U.S. travelers to these countries. For example, a B-1 and B-2 visitor visa from Germany is valid for 10 years while B-1 and B-2 visas from Indonesia are valid for five years. The D crew member visa is valid for five years for Egyptians, but only one year for Hungarians.

Employment Authorization

Permission to Work. With the obvious exception of the nonimmigrants who are temporary workers or the executives of multinational corporations, most nonimmigrants are not allowed to work in the United States. Exceptions to this policy are noted in **Table 2**, which follows at the end of this report. As stated above, working without authorization is a major violation of law and results in loss of nonimmigrant status.

Labor Market Tests. The H-2 visas require that employers conduct an affirmative search for available U.S. workers and that DOL determine that admitting alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. Under this process — known as labor certification — employers must apply to the U.S. Department of Labor for certification that unemployed domestic workers are not available and that there will not be an adverse effect from the alien workers' entry.

The labor market test required for H-1 workers, known as labor attestation, is less stringent than labor certification. Any employer wishing to bring in an H-1B nonimmigrant must attest in an application to the DOL that the employer will pay the nonimmigrant the greater of the actual compensation paid other employees in the same job or the prevailing compensation for that occupation; the employer will provide working conditions for the nonimmigrant that do not cause the working conditions of the other employees to be adversely affected; and, there is no strike or lockout. Employers recruiting the H-1C nurses must attest that their employment will not adversely affect the wages and working conditions of similarly employed registered nurses; the H-1C nurses will be paid the wage rate paid by the facility to similarly employed U.S. registered nurses; the facility is taking significant steps to

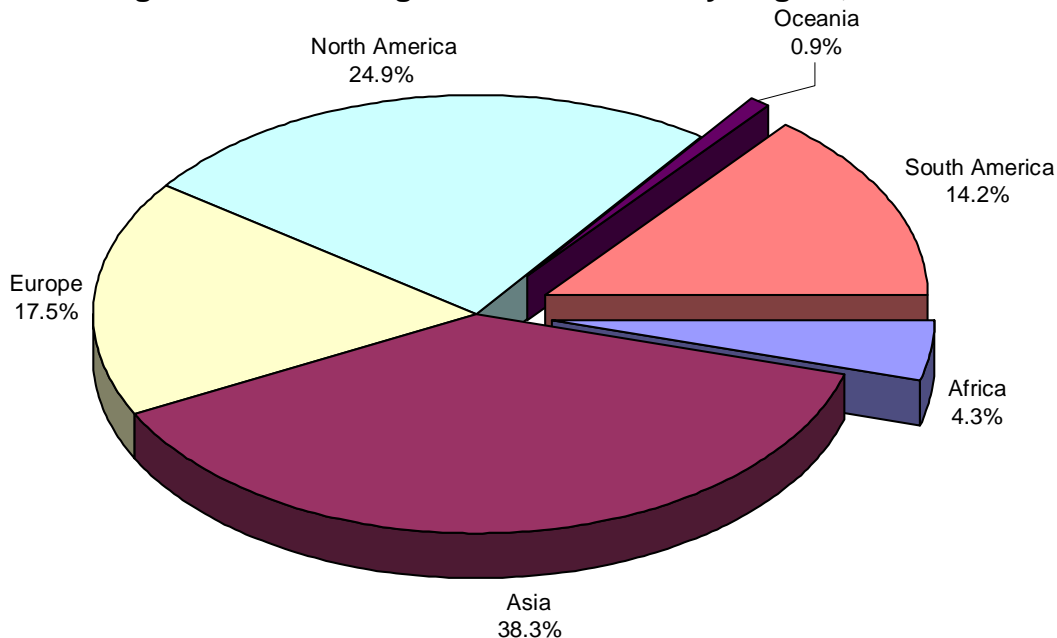
¹⁵ U.S. Department of Homeland Security, Office of the Press Secretary, *DHS Announces Expanded Border Control Plans*, Aug. 10, 2004; available at [<http://www.dhs.gov/dhspublic/display?content=3930>].

recruit and retain sufficient U.S. registered nurses; and the facility is abiding by specified anti-strike and layoff protections.

Statistical Trends

When analyzing the issuances of nonimmigrant visas issued by DOS and the admissions data issued by DHS, many of the same distributions that were present in recent years once again appeared.¹⁶ As **Figure 1** shows, there was a larger percentage of visas being distributed to Asia than to any other region, accounting for 38.3% of the roughly 5.4 million nonimmigrant visas the DOS issued in FY2005. North American nonimmigrants (which included nationals of countries in Central America) accounted for the next largest group of visa issuances at 24.9%, or approximately 1.34 million individuals. Europe and South America accounted for the third and fourth largest groups with 17.5% and 14.2% of the nonimmigrant visa issuances, respectively. Africa tallied 4.3% of the visas, while visa issuances for Oceania, The United Nations (UN) and individuals with no nationality combined for less than 1% of the total visa issuances in FY2005.

Figure 1. Nonimmigrant Visas Issued by Region, FY2005



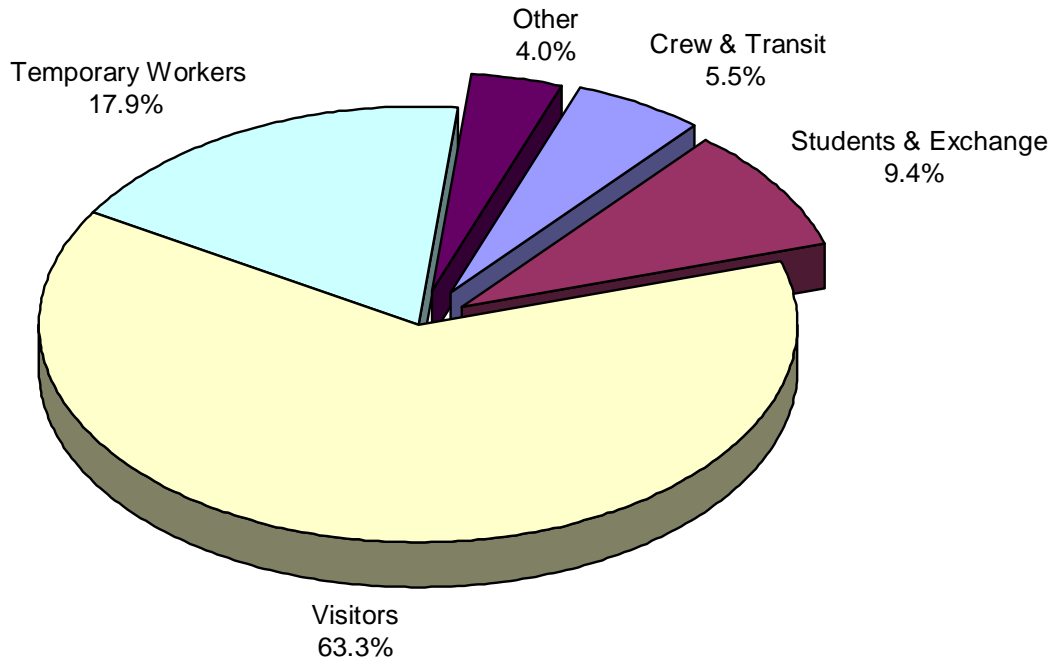
Source: CRS presentation of DOS Bureau of Consular Affairs data.

Further breaking down the visa issuance data for FY2005, **Figure 2** demonstrates that 63.3 % of the visas issued for entry into the United States was by individuals entering on visitor visas. Consequently, the volume of visitors visa was

¹⁶ Additional analysis of DHS data is provided in U.S Department of Homeland Security, Office of Immigration Statistics, *Temporary Admissions of Nonimmigrants to the United States: 2005*, July 2006.

at a rate 3.5 times higher than the next largest category. The subsequent two largest categories of issuances in FY2005 were for employee visas, which accounted for 17.9% of visas issued, and students, which represented 9.4% of issuances. In absolute terms, employees and students accounted for approximately 967,000 and 507,000 visas, respectively, out of a total of approximately 5.4 million in FY2005. Additionally, the visas issued for crew members and others in transit accounted for 5.5% of the visa issuances for FY2005. The remaining visas issued constituted 4% of the total.

Figure 2. Nonimmigrant Visas Issued by Category, FY2005



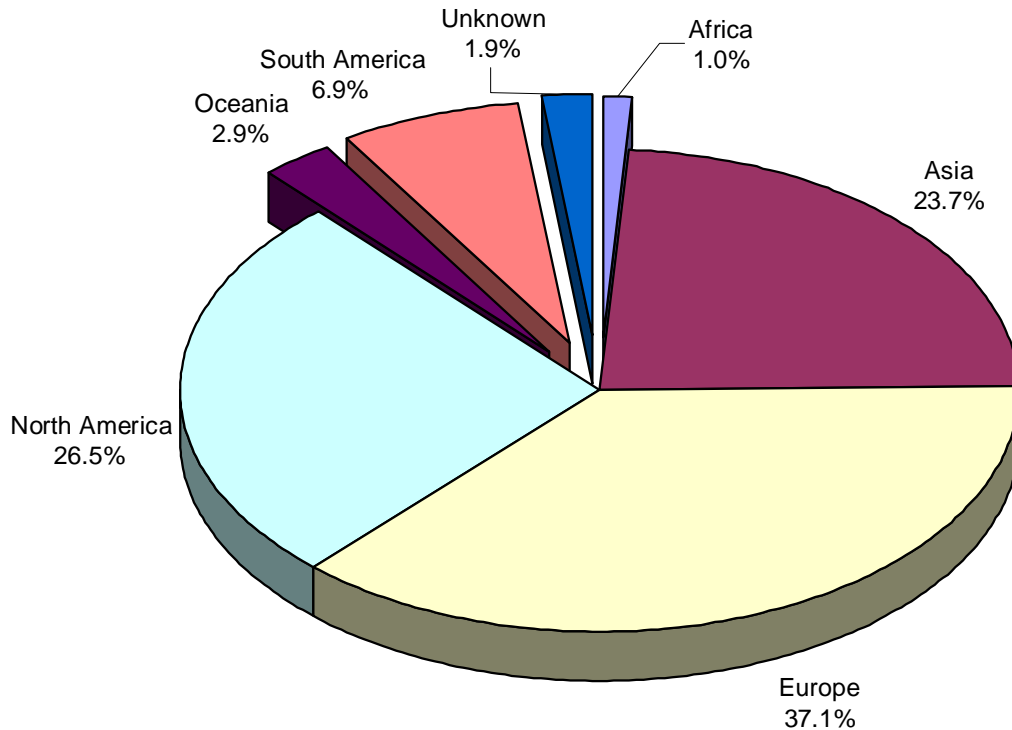
Source: CRS presentation of DOS Bureau of Consular Affairs data.

The admissions data illustrated a different distributional pattern than the visa issuance data. **Figure 3** shows the plurality of foreign nationals admitted into the United States in FY2005 were nationals of a European state, which represented 37.1% of admissions. The second largest category of admitted individuals were foreign nationals from other North American countries with 26.5% of the admissions total. Foreign nationals from Asian countries, which constituted the largest visa issuance category, were the third largest regional admission group and account for 23.7% of admissions into the United States. These Asian admissions constituted 7.58 million entries into the United States, while by comparison the European entries accounted for 11.88 million admissions. The fact that 24 of the 27 countries participating in the Visa Waiver Program were European,¹⁷ in conjunction with the majority of all admissions being visitors, a plurality of European admissions was to be expected. South American entries accounted for 6.9% of FY2005 entries, or approximately 2.2 million persons, while the remaining categories of nationals

¹⁷ The exceptions being Singapore, Japan, and Brunei.

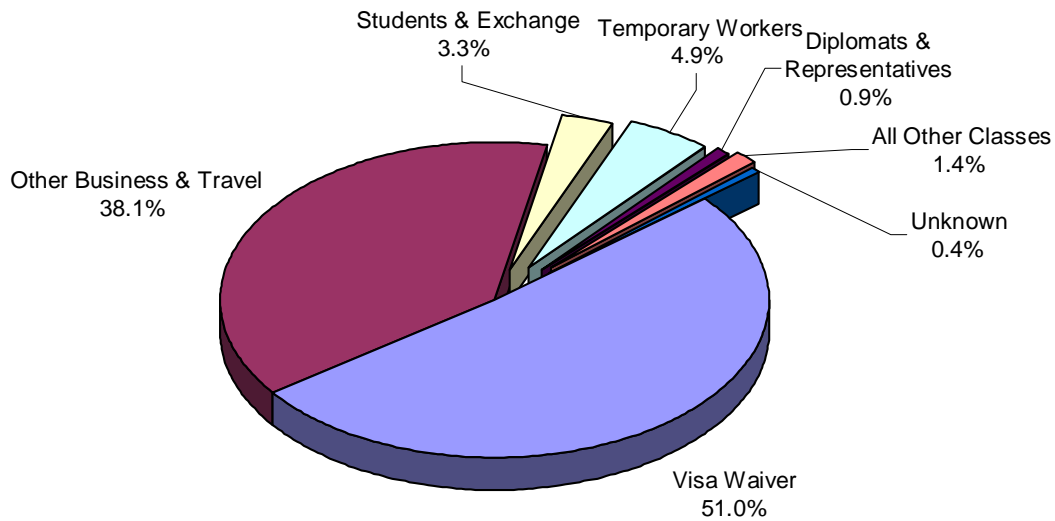
from African and Oceanic regions (and individuals of “unknown” classification) constituted 1.87 million persons with 5.8% of the admissions total.

Figure 3. Nonimmigrant Admissions by Region, FY2005



Source: CRS presentation of DHS Office of Immigration Statistics data.

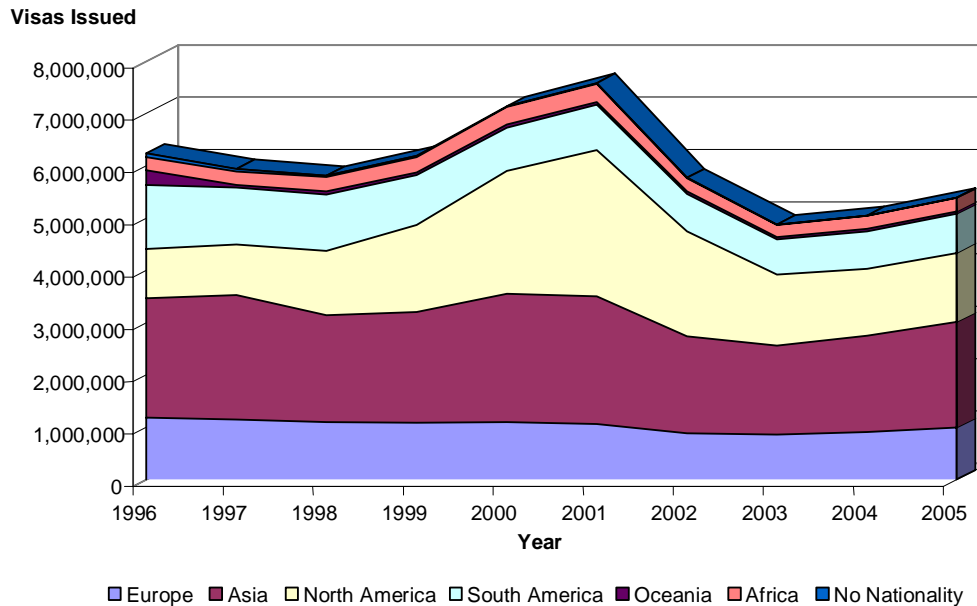
Figure 4 below shows that for FY2005, 89.1% of the foreign nationals admitted into the United States were classified into the visitor categories of visas (including the “Visa Waiver Program” and “other business and travel”). This figure depicts roughly 32 million persons admitted at various ports of entry. The only other category of admissions which constituted more than 4% of the admissions total were those of temporary workers, which when combined accounted for 4.9% of admissions, or approximately 1.57 million temporary worker admissions. Students and exchange admissions was the third largest category with 1.04 million arrivals, and accounted for 3.3% of the total. The remaining categories of nonimmigrant admissions all constituted less than 3 percent of admissions individually, but when combined represented 2.7% of foreign nationals admitted. Thus, foreign nationals categorized into any remaining categories (including unknown category) accounted for 2.2 million admissions into the United States.

Figure 4. Nonimmigrant Admissions by Category, FY2005

Source: CRS presentation of DHS Office of Immigration Statistics data.

When analyzing the longitudinal data for both the admissions and the visa issuances, certain patterns became apparent in the data. In terms of the visa issuances as depicted in **Figure 5** below, the number of visas issued by the DOS was lower than it was in the mid-1990s. However, this trend was reversed with the terrorist attacks of September 11, 2001, as security concerns resulted in more stringent criteria for visa issuances and a greater burden of qualification placed upon the nonimmigrant visa applicant. Consequently, the visa issuances declined from their FY2001 peak of approximately 7.6 million visas to the FY2005 level of 5.4 million visas issued.

The decline in these levels was largely due to the reduction of North American visas issued, which experienced its levels in FY2005 being reduced to half of its levels in FY2001. The growth in the late 1990s has been largely attributable to the issuances of border crossing cards (laser visas) to residents of Mexico and the issuances of temporary worker visas. Visa issuance levels for other regions remained approximately the same as they were in FY2001. The only other notable changes in the longitudinal data for the given time span were a slight decrease in visas for European nationals, a slight increase in visas for Asian nationals, and a decrease in the visas granted to nationals from countries in the Oceanic region.

Figure 5. Nonimmigrant Visas Issued by Region, FY1996-FY2005

Source: CRS presentation of DOS Bureau of Consular Affairs data.

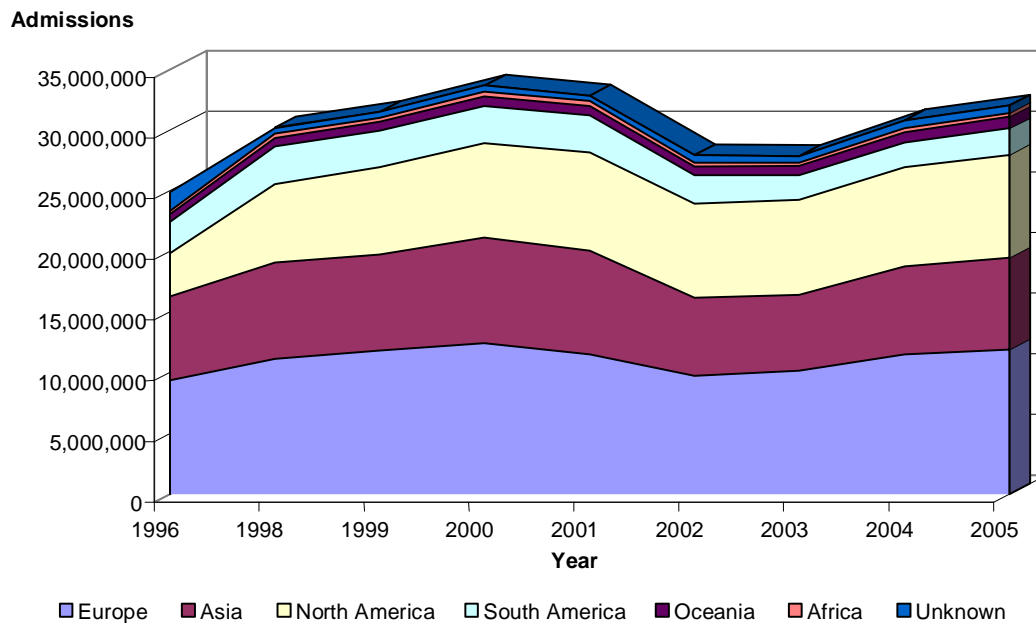
The data for **Figure 6**, which depicts the nonimmigrant admissions into the United States between FY1996-FY2005, offered a different picture of the temporary visitors to the United States. Unlike the data for **Figure 5**, the admissions data provided two periods of upward movement that increased the number of admissions of nonimmigrants by approximately 29% over the course of a decade. In FY1996 the number of nonimmigrants admitted at United States Ports of Entry was just under 25 million, but by FY2005 this number had increased to 32 million admissions. The most significant sources of the trend were increasing numbers of nonimmigrants from the European and North American region. Whereas other regions witnessed lesser increases in their admission levels, the European-based admissions increased from 9.39 million in FY1996 to 11.88 million in FY2005, an increase of 2.49 million nonimmigrants. Furthermore, the North American-based nonimmigration admissions increased from a level of 3.56 million in FY1996 to 8.47 million in FY2005. This change constituted an increase of 4.91 million in annual admissions or an a percentage increase of 237.9% over the course of the decade.

Although this increase was partly attributable to the new rule structure under the North American Free Trade Agreement (NAFTA), it is worth noting that the more significant upward trends in North American-based admissions occurred in FY1998, several years after NAFTA's implementation.¹⁸ Finally, in contrast to the visa issuances for North American-based nonimmigrants from **Figure 5**, the admission levels of nationals from North American countries was largely unchanged following the September 11 attacks, as **Figure 6** shows. This finding not only contrasted the visa issuances, but the admissions levels of nationals based out of

¹⁸ CRS Report RL32982, *Immigration Issues in Trade Agreements*, by Ruth Ellen Wasem.

other regions. Every other region experienced some reduction of admissions of their nationals in FY2002, but recovered to near FY2001 levels in FY2005.

Figure 6. Nonimmigrant Admissions by Region, FY1996-FY2005



Source: CRS presentation of DHS Office of Immigration Statistics data.

Note: DHS did not publish nonimmigrant data for FY1997.

Current Issues

Achieving an optimal balance among major policy priorities, such as ensuring national security, facilitating trade and commerce, protecting public health and safety, and fostering international cooperation, remains a challenge. Efforts to establish a comprehensive automated system that tracks the arrival and departure of nonimmigrants (US-VISIT) is well underway but remains incomplete.¹⁹ Requirements for individuals entering into the United States (including U.S. citizens and visitors from Canada and other Western Hemisphere countries) to bear passports or other documents sufficient to denote citizenship and identity are now going into effect. All the while, legislative revisions to specific temporary visa categories continue to arise incrementally.

This section of the report highlights several of the specific temporary visa concerns that are of legislative interest to Congress: temporary workers, foreign medical graduates, foreign investors, and foreign students.

¹⁹ CRS Report RL32234, U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program, by Lisa M. Seghetti and Stephen R. Viña.

Temporary Workers

Temporary Skilled and Professional Workers.²⁰ Many business people have expressed concern that a scarcity of labor in certain sectors may curtail the pace of economic growth. A leading legislative response to skills mismatches and labor shortages has been to increase the supply of temporary foreign workers. Proponents of raising the H-1B levels assert that H-1B workers are essential if the United States is to remain globally competitive. Some proponents argue that employers should be free to hire the best people for the jobs, maintaining that market forces should regulate H-1B visas, not an arbitrary ceiling.

Those opposing any further increases or easing of admissions requirements assert that there is no compelling evidence of a labor shortage in these professional areas that cannot be met by newly graduating students and retraining the existing U.S. work force. They argue further that the education of U.S. students and training of U.S. workers should be prioritized instead of fostering a reliance on foreign workers.

Guest Workers.²¹ There is ongoing pressure to increase unskilled temporary foreign workers, commonly referred to as guest workers. The admission of H-2B visas are numerically limited, and the ceiling has been exceeded the past few years as more sectors of the economy vie for the visas. The current discussion of guest worker programs takes place against a backdrop of historically high levels of unauthorized migration to the United States. Supporters of a large-scale temporary worker program argue that such a program would help reduce unauthorized immigration by providing a legal alternative for prospective foreign workers.

Critics reject this reasoning and instead maintain that a new guest worker program would likely exacerbate the problem of illegal migration. Some allege that employers prefer guest workers because they are less demanding in terms of wages and working conditions, and that expanding guest worker visas would have a deleterious effect on U.S. workers.

Foreign Medical Graduates²²

The J cultural exchange visa has become a gateway for foreign medical graduates (FMGs) to gain admission to the United States as nonimmigrants for the purpose of graduate medical education and training. As exchange visitors, FMGs can remain in the United States on a J visa until the completion of their training, typically for a maximum of seven years. After that time, they are required to return home for

²⁰ CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem.

²¹ CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno.

²² CRS Report RL31460, *Immigration: Foreign Physicians and the J-1 Visa Waiver Program*, by Karma Ester, and CRS Report RS22584, *Foreign Medical Graduates: A Brief Overview of the J-1 Visa Waiver Program*, by Karma Ester.

at least two years before they can apply to change to another nonimmigrant status or LPR status.

The authority to issue a waiver of the foreign residence requirement to a FMG based on the request of a state public health department currently applies to J-visa holders through June 1, 2008. More specifically, these J-visa holders do not have to leave the United States at the conclusion of their residencies if they agree to practice medicine for three years in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals.

The original intent underlying the foreign residency requirement for FMG is to encourage American-trained foreign doctors to return home to improve health conditions and advance the medical profession in their native countries. Some now argue that the J-1 visa waiver for FMGs should be made permanent or extended for a number of years to allow an evaluation of the use of foreign physicians to meet healthcare shortages and their impact on American physicians.

Foreign Investors

There are currently two categories of nonimmigrant investor visas: E-1 for treaty traders; and the E-2 for treaty investors. According to DHS statistics, there were 192,843 investor visa arrivals in the United States in FY2005.

The investor visas offered by the United States operate on the principal that foreign direct investment into the United States should spur economic growth in the United States. According to the classical theory, if these investments are properly targeted towards the U.S. labor force's skill sets, it should reduce the migration pressures on U.S. workers. To attract such investors, research indicates that temporary migrants are motivated most significantly by employment and wage prospects, while permanent migrants are motivated by professional and social mobility. Theoretically, it is unclear to what extent potential migration provides additional incentive for investment activity. Investors from developed countries may sometimes lack incentive to settle in the United States since they can achieve foreign direct investment (FDI) and similar standards of living from their home country. However, in cases where foreign investors have been attracted, the economic benefits have been positive and significant.

Foreign Students²³

In the wake of post-September 11 security reforms, the security concerns over foreign student visas are being weighed against competitiveness concerns. Potential foreign students, as well as all aliens, must satisfy Department of State (DOS) consular officers abroad and immigration inspectors upon entry to the United States that they are not ineligible for visas under the so-called "grounds for inadmissibility" of the Immigration and Nationality Act, which include security and terrorist concerns. The consular officers who process visa applicants are required to check the

²³ CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by Chad Haddal.

consolidated Terrorist Screening Database (TSDB) before issuing any visa. In part because of these security measures, student visa debates have expanded to include both security and market-based discussions.

Higher education institutions in the United States are concerned over their ability to attract the numbers and quality of foreign students, and whether the post-September 11 security measures impede the entry of potential students into the U.S. education system. The fields of science, technology, engineering and mathematics (STEM) increasingly rely on foreign students, and these fields hold a top priority with most research institutions. Furthermore, the U.S. economy has a high demand for the skill-sets produced in these fields of study, and the STEM students often provide a major link between the academic community and the labor market. Consequently, many groups in higher education and the private sector are seeking to expand pathways for foreign students to emigrate.

Enforcing Current Law

Currently the law and regulations usually set strict terms for nonimmigrant lengths of stay in the United States, typically have foreign residency requirements, and often limit what the aliens are permitted to do in the United States (e.g., gain employment or enroll in school). Many observers, however, assert that these policies are not uniformly or rigorously enforced. Some maintain that further legislation is not necessary if the laws currently in place are enforced.

The two tables that follow, among other things, illustrate the complexity and diversity of policy on temporary admissions, and the challenge for policy makers who may seek to revise it. **Table 1** indicates whether the INA or regulations set any limits or requirements on how long nonimmigrants may stay in the United States and whether they must maintain a residence in their home country for each of the 72 visa classifications. **Table 2** details whether there are any labor market tests or any limits on the numbers of aliens who can enter the United States according to each of the 72 visa classifications. **Table 2** also presents DOS data on the number of nonimmigrant visas issued in FY2000. *When a cell in the table is blank, it means the law and regulations are silent on the subject.*

Table 1. Periods of Stay and Foreign Residency Requirements for Nonimmigrant Visas

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required
A-1	Ambassador, public minister, career diplomat, consul, and immediate family	Duration of assignment		
A-2	Other foreign government official or employee, and immediate family	Duration of assignment		
A-3	Attendant, servant or personal employee of A-1/A-2, and immediate family	Up to three years	Up to two years intervals	
B-1	Visitor for business	Up to one year	Up to six months	Yes
B-2	Visitor for pleasure	Six months to one year	Up to six months	Yes
B-1/B-2	Business and pleasure	Six months to one year	Up to six months	Yes
BCC	Border Crossing Cards	72 hours [unless coupled with B-1 or B-2] proposed extension to 30 days		Yes
C-1	Alien in transit	Up to 29 days		
C-1/D	Transit/crew member	Up to 29 days		
C-2	Person in transit to United Nations Headquarters	Up to 29 days		
C-3	Foreign government official, immediate family, attendant, servant, or personal employee in transit	Up to 29 days		
D	Crew member	Up to 29 days		
E-1	Treaty trader, spouse and child, and employee	Up to two years	Up to two years	
E-2	Treaty investor, spouse and child, and employee	Same as E-1	Same as E-1	
F-1	Foreign student (academic or language training program)	Period of study (one year secondary students)		Yes

CRS-17

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required
F-2	Spouse or child of F-1	Same as F-1		
G-1	Principal resident representative of recognized foreign member government to international organization, staff, and immediate family	Duration of assignment		
G-2	Other representative of recognized foreign member government to international organization, staff, and immediate family	Duration of assignment		
G-3	Representative of non-recognized or nonmember foreign member government to international organization, staff, and immediate family	Duration of assignment		
G-4	International organization officer or employee, and immediate family	Duration of assignment		
G-5	Attendant, servant or personal employee of G-1 through G-4, and immediate family	Up to two years	Up to two-year intervals	
H-1A	Temporary worker — nurse (statutory authority expired)	Up to three years	Up to two-year intervals; up to five years max	
H-1B	Temporary worker — professional specialty occupation	Up to three years	Up to three-year intervals; up to six years max	
H-1C	Temporary worker — nurse (new category)	Three years		
H-2A	Temporary worker — agricultural workers	Up to one year	Up to one year; three years total	Yes
H-2B	Temporary worker — non-agricultural workers	Up to one year	Up to one year; three years total	Yes
H-3	Temporary worker — trainee	Up to two years		
H-4	Spouse or child of H-1A/B/C, H-2A/B, or H-3	Same as Principal		
I	Representative of foreign information media, spouse and child	Duration of employment		
J-1	Cultural exchange visitor	Period of program		Yes

CRS-18

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required
J-2	Spouse or child of J-1	Same as J-1		Yes
J-3	Au Pair	14 months		Yes
K-1	Fiancé(e) of U.S. citizen	Valid for 4 month; must marry within 90 days to adjust status		
K-2	Child of K-1	Same as K-1		
K-3	Spouse of U.S. citizen awaiting LPR visa			
K-4	Child of K-3			
L-1	Intracompany transferee (Executive, managerial, and specialized knowledge personnel continuing employment with international firm or corporation)	Up to three years	up to two-year extension: five years max; executives seven years	
L-2	Spouse or child of L-1	Same as L-1		
M-1	Vocational student	Duration of study		Yes
M-2	Spouse or child of M-1	Same as M-1		Yes
NATO-1	Principal permanent representative of member nations to NATO, high ranking NATO officials, and immediate family members	Tour of duty		
NATO-2	Other representatives of member states to NATO (including any of its subsidiary bodies), and immediate family members; dependents of member of a force entering in accordance with provisions of NATO agreements; members of such force if issued visas	Tour of duty		
NATO-3	Official clerical staff accompanying a representative of a member state to NATO, and immediate family	Tour of duty		
NATO-4	Officials of NATO (other than those classifiable as NATO-1), and immediate family	Tour of duty		

CRS-19

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required
NATO-5	Experts, other than NATO-4 officials, employed in missions on behalf of NATO, and their dependents	Tour of duty		
NATO-6	Civilian employees of a force entering in accordance with the provisions of NATO agreements or attached to NATO headquarters, and immediate family	Tour of duty		
NATO-7	Attendants, servants, or personal employees of NATO-1 through NATO-6, and immediate family	Up to three years	Two-year intervals	
N-8	Parent of certain special immigrants (pertaining to international organizations)	Up to three years	Up to three-year intervals until child becomes an adult	
N-9	Child of N-8 or of certain special immigrants (pertaining to international organizations)	Up to three years	Up to three-year intervals until child becomes an adult	
O-1	Person with extraordinary ability in the sciences, arts, education, business or athletics	Up to three years	Up to one year	
O-2	Person accompanying and assisting in the artistic or athletic performance by O-1	Up to three years	Up to one year	Yes
O-3	Spouse or child of O-1 or O-2	Same as O-1 or O-2	Up to one year	
P-1	Internationally recognized athlete or member of an internationally recognized entertainment group and essential support	Up to five years individual artist; up to one year group or team		Yes
P-2	Artist or entertainer in a reciprocal exchange program and essential supports	Up to one year	One-year increments	Yes
P-3	Artist or entertainer in a culturally unique program and essential support	Up to one year	One-year increments	Yes
P-4	Spouse or child of P-1, P-2 or P-3	Same as P-1, P-2 or P-3	One year increments	Yes
Q-1	International cultural exchange program participant	Duration of program; up to 15 months		

CRS-20

Visa	Class Description	Period of Stay	Renewal Option	Foreign Residence Required
Q-2	Irish Peace Process Program participant	Duration of program; up to three years		
Q-3	Spouse or child of Q-2			
R-1	Religious worker	up to three years	up to two-year intervals; up to five years max	
R-2	Spouse or child of R-1	same as R-1	same as R-1	
S-5	Criminal informant	up to three years		
S-6	Terrorist informant	up to three years		
S-7	Spouse or child of S-5 and S-6	same as S-5 and S-6		
T-1	Victim of human trafficking	If T-1 cooperates and is needed in prosecution of traffickers, may lead to adjustment to legal permanent residence		
T-2	Immediate family of T-1			
TN	NAFTA professional	one year	one year	
TD	Spouse or child of TN	one year	one year	
U-1	Victim or informant of criminal activity	May lead to adjustment to legal permanent residence if specified conditions are met.		
U-2	Spouse or child of U-1			
V-1	Spouse of Legal Permanent Resident (LPR) who has petition pending for three years or longer	Transitional nonimmigrant visa that leads to adjustment to legal permanent residence status when visa become available		
V-2	Child of LPR who has petition pending for three years or longer			
V-3	Child of V-1 or V-2			

Source: §101(a)(15), §212, and §214 of the Immigration and Nationality Act and §214 of 8 CFR.

Note: When a cell in the table is blank, it means the law and regulations are silent on the subject.

Table 2. Employment Authorization, Numerical Limits, and FY2002 Issuances for Nonimmigrant Visas

Visa	Class Description	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2005 Issuances
A-1	Ambassador, public minister, career diplomat, consul, and immediate family	Within scope of official duties			9,944
A-2	Other foreign government official or employee, and immediate family	Within scope of official duties			83,051
A-3	Attendant, servant or personal employee of A-1/A-2, and immediate family	Within scope of official duties			1,227
B-1	Visitor for business				52,649
B-2	Visitor for pleasure	No			245,816
B-1/B-2	Business and pleasure				2,709,468
BCC	Border Crossing Cards				732,566
C-1	Alien in transit				65,272
C-1/D	Transit/crew member				229,115
C-2	Person in transit to United Nations Headquarters				44
C-3	Foreign government official, immediate family, attendant, servant, or personal employee in transit				10,537
D	Crew member of vessel or aircraft	Only as employee of carrier			19,988

CRS-22

Visa	Class Description	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2005 Issuances
E-1	Treaty trader, spouse and child, and employee	Within the scope of treaty conditions			8,867
E-2	Treaty investor, spouse and child, and employee	Within the scope of treaty conditions			28,290
E-3	Australian specialty occupation professional	Within the scope of treaty conditions		10,500	4
E-3D	Spouse or child of Australian specialty occupation professional				3
F-1	Foreign student (academic or language training program)	Off campus work is restricted, with limited exceptions			237,890
F-2	Spouse or child of F-1				18,016
F-3	Border commuter academic or language student	No			42
G-1	Principal resident representative of recognized foreign member government to international organization, staff, and immediate family	Within scope of official duties			4,995
G-2	Other representative of recognized foreign member government to international organization, and immediate family	Within scope of official duties			13,703
G-3	Representative of nonrecognized or nonmember foreign government to international organization, and immediate family	Within scope of official duties			309
G-4	International organization officer or employee, and immediate family	Within scope of official duties			20,930

CRS-23

Visa	Class Description	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2005 Issuances
G-5	Attendant, servant, or personal employee of G-1 through G-4, and immediate family	Within scope of official duties			998
H-1A	Temporary worker — nurse (statutory authority expired)	Yes	Yes		-
H-1B	Temporary worker — professional speciality occupation	Yes	Yes	65,000 (with certain exceptions)	124,100
H-1B-1	Free trade agreement professional		No	1,400 for Chile; 5,400 for Singapore	274
H-1C	Temporary worker — nurse	Yes	Yes	500	63
H-2A	Temporary worker — agricultural worker	Yes	Yes		31,892
H-2B	Temporary worker — non- agricultural worker	Yes	Yes	66,000	87,492
H-2R	Returning H2B worker				1,643
H-3	Temporary worker — trainee	Yes, as part of the training program		Some restrictions on special education exchange programs	1,763
H-4	Spouse or child of H-1A/B/C, H-2A/B, or H-3	No			70,266
I	Representative of foreign information media, spouse and child	Only as employee of foreign media			16,975

CRS-24

Visa	Class Description	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2005 Issuances
J-1	Cultural exchange visitor	Yes, if program has work component			275,161
J-2	Spouse or child of J-1	Only as approved by DHS			28,661
J-3	Au Pair				NA
K-1	Fiancé(e) of U.S. citizen				33,910
K-2	Child of K-1				5,308
K-3	Spouse of U.S. citizen awaiting LPR visa				11,312
K-4	Child of K-3				3,438
L-1	Intracompany transferee (executive, managerial, and specialized knowledge personnel continuing employment with international firm or corporation)	Yes			65,458
L-2	Spouse or child of L-1	No			57,523
M-1	Vocational student	Only practical training related to degree			5,822
M-2	Spouse of child of M-1	No			153
NATO-1	Principal permanent representative of member nations to NATO, high ranking NATO officials, and immediate family	Within scope of official duties			28

CRS-25

Visa	Class Description	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2005 Issuances
NATO-2	Other representatives of member states to NATO (including any of its subsidiary bodies), and immediate family; dependents of member of a force entering in accordance with provisions of NATO agreements; members of such force if issued visas	Within scope of official duties			5,893
NATO-3	Official clerical staff accompanying a representative of member state to NATO, and immediate family	Within scope of official duties			1
NATO-4	Officials of NATO (other than those classifiable as NATO-1), and immediate family	Within scope of official duties			353
NATO-5	Experts, other than NATO-4 officials, employed in missions on behalf of NATO, and their dependents	Within scope of official duties			69
NATO-6	Civilian employee of a force entering in accordance with the provisions of NATO agreements or attached to NATO headquarters, and their immediate family	Within scope of official duties			201
NATO-7	Attendants, servants, or personal employees of NATO-1 through NATO-6, and immediate family	Within scope of official duties			5
N-8	Parent of certain special immigrants (pertaining to international organizations)	Yes			10
N-9	Child of N-8 or of certain special immigrants (pertaining to international organizations)	Yes			4
O-1	Person with extraordinary ability in the sciences, arts, education, business, or athletics	Yes			6,712
O-2	Person accompanying and assisting in the artistic or athletic performance by O-1	Yes			3,387
O-3	Spouse or child of O-1 or O-2	Only as approved by DHS			1,861

CRS-26

Visa	Class Description	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2005 Issuances
P-1	Internationally recognized athlete or member of an internationally recognized entertainment group and essential support	Yes			23,907
P-2	Artist or entertainer in a reciprocal exchange program and essential support	Yes			125
P-3	Artist or entertainer in a culturally unique program and essential support	Yes			9,611
P-4	Spouse or child of P-1, P-2, or P-3	Only as approved by DHS			1,022
Q-1	International cultural exchange program participant	Yes, with employer approved by program			1,972
Q-2	Irish Peace Process Program participant	Yes, with employer approved by program			6
Q-3	Spouse or child of Q-2	No			0
R-1	Religious worker	Yes			8,538
R-2	Spouse or child of R-1	No			3,267
S-5	Criminal informant	Yes		200	NA
S-6	Terrorist informant	Yes		50	NA
S-7	Spouse or child of S-5 or S-6				NA
T-1	Victim of human trafficking	Yes		5,000	NA
T-2	Immediate family of T-1	Yes			NA

CRS-27

Visa	Class Description	Employment Authorization	Labor Market Test	Annual Numerical Limit	FY2005 Issuances
TN	NAFTA professional	Yes			1,902
TD	Spouse or child of TN				1,941
U-1	Victim or informant of criminal activity	Yes		10,000	NA
U-2	Spouse or child of U-1	Yes			NA
V-1	Spouse of Legal Permanent Resident (LPR) who has petition pending for three years or longer	Yes			911
V-2	Child of LPR who has petition pending for three years or longer	Yes, assuming they meet age requirements			951
V-3	Child of V-1 or V-2	Yes, assuming they meet age requirements			1,165

Source: §101(a)(15), §212, and §214 of the Immigration and Nationality Act and §214 of 8 CFR.

Note: When a cell in the table is blank, it means the law and regulations are silent on the subject.