



UK Trade
& Investment



U.S. Immigration Options For British Companies

UKTI Trade Services

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About the Author

Robert N. Gottfried is a partner at Gottfried & Gottfried, LLP. With more than 30 years of immigration law experience in the New York City area, his practice focuses on obtaining work visas, permanent resident status, and U.S. citizenship for individuals and corporations. Over the course of his career, Bob has obtained permanent residence for world-famous artists, photographers, athletes, scientists, and authors based on their extraordinary abilities in their chosen professions. He currently represents United Nations employees, members of the diplomatic community, and numerous corporations in immigration matters.

Bob has been listed in *The Best Lawyers in America* since 1995 and in *Super Lawyers* since 2006. He also received the highest rating available (AV) from Martindale-Hubbell's peer-rated system, which shows a lawyer has reached the height of professional excellence and is recognized for the highest levels of skill and integrity.

For more information, see Bob's [full biography](#) on gottfried.net.

Introduction

Selecting and applying for the right U.S. visa can be a daunting and confusing process. The aim of this brochure is to outline the various options available to UK businesses, and to offer guidance on whether a non-immigrant or an immigrant visa is appropriate. The information is current as of February 2014 and is accurate to the best of the author's knowledge. It should not, however, be considered a substitute for legal advice.



Immigration Options for UK Nationals

Seeking Non-Immigrant Visas to the United States

Holders of UK passports can enter the United States under the visa waiver program by entering their information into the electronic system for travel authorization ([ESTA](#)), and receiving advance approval to travel to the United States. Visa waivers entrants are limited to 90 days, cannot extend or change their status in the United States, and cannot be employed in the United States. They can come as either business travelers or as tourists. Business entrants are permitted to meet with prospective customers, take orders, and attend board of directors meetings.

Visitors who need more than 90 days in the United States, or who may want to change their status should reply for B-1/B-2 visas. The application is made on form DS-160 and is submitted electronically. Once sent, the applicant must make an appointment to be interviewed by a U.S. consular officer, and be able to prove that he or she has a home in the UK that he or she has no intention of abandoning, that the trip to the United States is for a relatively short duration (six months or less), that the applicant will have sufficient funds to support himself during his trip to the United States, and that the purpose of the trip is a permissible one for B-1/B-2 purposes. In addition to tourism, visiting family, visiting colleges, and seeking medical care are all legitimate B-2 tourist visa activities.

Non-Immigration Visa Categories that Permit British Nationals to be Employed in the United States

H-1B Visa

The most popular employment non-immigrant visa is the H-1B. This visa permits professionals to be employed in the United States for up to six years. To be eligible for H-1B status a foreign national must be offered a position by an American company to be employed in a specialty occupation. An American company for H-1B purposes is a company with a U.S. Tax Identification Number, so a British company with offices in the U.S. could qualify to be an H-1B petitioner. A specialty occupation is defined as an occupation that requires, as a minimum, a bachelor's degree in a specific academic field. Examples are a degree in accounting for an accountant; a degree in architecture for an architect; a degree in economics for an economist. For some occupational categories, there may be more than one academic area that could qualify as a basis for a specialty occupation. For example, degrees in computer science, mathematics, electrical engineering or even physics may be acceptable to work in computer-related H-1B positions.

In addition to requiring that the position be a specialty occupation, the Immigration Service requires that the foreign national hold the requisite degree or the equivalent. There are numerous academic evaluation companies who have university professors affiliated with them who will, for a fee, evaluate a foreign degree to determine if it is equivalent to a U.S. degree, but even more importantly, will combine a degree with work experience to make a determination that the combination of the degree and experience is equivalent to a U.S. degree in a specific field. Normally three years of experience can be substituted for one year of education. For example, if a foreign national has an undergraduate degree in philosophy and six years of progressive experience in computer science, an evaluator will credit the foreign national with two years of education and substitute the six years of computer science experience for the missing two years of education in computer science, to find that the foreign national has the equivalent of a four-year degree in computer science.

A prerequisite for the filing of the H-1B petition is obtaining an approved Labor Condition Application from the U.S. Department of Labor. The Labor Condition Application certifies that the H-1B employer will be paying the higher of the actual wages being paid by the employer to their current workers in the same occupation at the same job site, or the prevailing wage as determined by the U.S. Department of Labor. The employer will also certify that there are no strikes or lockouts, and that the H-1B employee will receive the same working conditions and benefits as U.S. workers of the company. There is currently no fee for the filing of the Labor Condition Application, which is filed electronically by the employer or its lawyer, and approval is received electronically within seven working days.

The Immigration and Nationality Act limits the issuance of new H-1B visas for those with undergraduate degrees to 65,000 for each visa year, and 20,000 additional visas for foreign nationals holding advanced degrees from U.S. educational institutions. The visa year starts on October 1st and ends on September 30th. New filings are permitted up to six months prior to the start of the visa year or on April 1st. Over the last 10 years H-1B visa numbers have been exhausted before the visa year ended. For the 2014 visa year which began on October 1, 2013, all of the 85,000 visa numbers have been used. Therefore, H-1B visa petitions can only be filed on April 1, 2014 with an effective date of October 1, 2014. The only exceptions are for petitions on behalf of foreign nationals who had previously obtained H-1B visa status within the past six years and had not been in H-1B visa status in the United States for the full six years permitted, or foreign nationals being petitioned to work for educational institutions, or by U.S. companies with offices on the campus of educational institutions.

Filing fees for H-1B visa beneficiaries are typically paid by the petitioning employer. The base fee is \$325 and there is a required training fee of \$1,500.00 if the petitioner employees 26 or more workers, or \$750.00 if there are fewer than 26 employees, and a onetime fee of \$500.00 to assist the Department of Homeland Security in combating fraud with H-1B program. The training fee and anti-fraud fee must be paid by the petitioner.

L-1 Visas

Another popular visa for British nationals seeking work in the United States is the L-1 visa. Foreign nationals who have been working abroad for at least one of the three years prior to applying for the L-1 visa in an executive, managerial or specialized knowledge capacity who will be coming to the United States to be employed by a U.S. parent, subsidiary or affiliate company in one of the employment categories listed above may be eligible for L-1 visa status. An affiliate is defined as two entities that are owned by the same individuals in approximately the same percentage. The U.S. entity must submit a petition to the USCIS requesting L Classification for the foreign national, and once the petition is approved, the foreign national can either apply for the visa at an American Consulate abroad, or if he or she is already in the United States in valid non-immigrant status, apply to change to L status in the United States.

The L category is divided between L-1A and L-1B. The more desirable category is L-1A, intra-company transferees of managers or executives coming to the United States to work in one of those two capacities. An initial L-1A petition can be approved for up to two years, and can be renewed in two-year increments for up to seven years.

L-1B beneficiaries can enter the United States for two years and can renew their status for up to a total of five years. To qualify for L-1B status the foreign national must have specialized knowledge of the products or procedures of the foreign company and be coming to the United States to use this knowledge in support of the operations of the U.S. entity.

New U.S. companies may petition to bring L-1A or L-1B beneficiaries to the United States for one year, even if the company is not fully operational at the time the petition is filed. In all cases the foreign entity must continue to operate after the L beneficiary is transferred to the United States. The filing fees for the L Classification are \$325.00 for the petition and a one-time anti-fraud fee of \$500.00.

E-Visas

For those entrepreneurs who seek to come to the United States to open a new business unconnected to any existing business abroad, the E Visa category may be the best option. To qualify for E status, at least 50% of the shareholders must hold the nationality of the Treaty Country. UK citizens can qualify for both E-1 and E-2 status.

E-1 visas can be issued to Treaty Traders, where a UK company is doing more than 50% of its trade with the United States. E-1 visas can be issued to principal investors, executives, or key support personnel. The visas are normally issued at the American Consulate in London and can be valid for up to five years. Upon coming to the United States the E visa holder will be granted two years to stay without either departing and reentering or applying for an extension of E visa status to the USCIS.

E-2 visas are issued to treaty investors who make a substantial investment in a U.S. company owned at least 50% by UK nationals. To be issued E-2 visa status the foreign national has to be in the process of investing, so just having money in the bank or owning real estate will not qualify. There must be an active investment which does more than support the individual investor. There is no limit to the number of times an E-2 principal investor can renew his or her visa. E visas should be applied for from abroad, since no prior USCIS petition is required, and any change of status to E approved in the United States will terminate on the E visa holder's departure from the United States. Filing fees of \$270 must be paid to the State Department.

O & P Visas

Artists, athletes, scientists and business people are some of the occupational categories of O and P visa holders. The O visa is for individuals; the P visa is for groups or individuals as members of professional sports teams. O visas are divided into three categories: performing artists, all other artists, and scientists, athletes and business people.

The standards for obtaining the visa are different for each category. Artists, other than performing artists, must be found to be prominent to qualify for O status: Prominent is defined as better than average, and there are six categories in the O regulations to guide petitioners on the standards to be met. The petitioner can be either an employer or an agent, but just as in the other non-immigrant visa categories previously discussed, the petitioner must have a U.S. Tax Identification Number. O visa beneficiaries cannot self-sponsor. All O visa beneficiaries must obtain an advisory opinion from a labor union, or if no union exists, from a peer group.

Performing artists must obtain advisory opinions from both a management organization and a labor union. The qualifications for performing artists and all now artist O visa beneficiaries are virtually the same. The beneficiary must prove that she or he is one of the few individuals that has risen to the top of her or his profession by presenting evidence to meet at least three of six categories in the O regulations. O visa petitions can be approved for up to six years, but only if there are events planned for the beneficiary to cover that entire period of time.

P visas are for groups of performers or athletes such as a dance company, an orchestra or a sports team. Both U.S. major league and minor league professional athletic teams can petition to bring in foreign nationals to join their team by using the P visa. Recently a rugby star from the UK received a P visa to become a member of the New Jersey Jets. P visas are issued for the length of time needed to complete an event. For performing groups, that would mean to complete all of their concert dates; for sports teams, it would be for the length of the contract, up to three years. Like O visa petitions, P visa petitions also require an advisory opinion from a labor union or a peer group. The cost of filing a petition for either O or P visa status is \$325.

Conclusion

The choice of visa will depend entirely on a company's individual situation, current requirements and future plans. It should also be noted that visa fees and policies can change without notice. For more information, companies are advised to review the [United States Citizenship and Immigration Services](#) website and to seek guidance from a qualified immigration attorney.

Other sources of information

UK Trade & Investment

UK Trade & Investment is the Government Department that helps UK-based companies succeed in the global economy. We also help overseas companies bring their high-quality investment to the UK's dynamic economy, acknowledged as Europe's best place from which to succeed in global business. UK Trade & Investment offers expertise and contacts through its extensive network of specialists in the UK, and in British embassies and other diplomatic offices around the world. We provide companies with the tools they require to be competitive on the world stage.

UK Trade & Investment has teams located in the British Embassy in Washington DC and eight British Consulates around the United States.

For more information on our offices, or to locate your nearest International Trade Team in the UK, please visit our website: www.ukti.gov.uk

U.S. States

If you are looking for advice on establishing a presence in the United States, Select USA is a programme under the US Department of Commerce that explains the benefits and puts you in touch with relevant US Economic Development Agency contacts: selectusa.commerce.gov

In addition, many US States maintain offices in the UK or elsewhere in Europe. The US state governments are a good source of advice and information about business conditions in their states. Please visit the Council of the American States in Europe website for more information: www.cas-europe.com

U.S. Lawyers

A list of American attorneys based in the UK is available on the US Embassy website: london.usembassy.gov

The American Bar Association website provides extensive lists of law firms across the United States. You can search by geography, area of practice or just browse the list of law firms to search for ABA-certified lawyers by state and by specialty: apps.americanbar.org/legalservices/lris/directory

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Select U.S. Government Resources

All US federal agencies

www.usa.gov/directory/federal/index.shtml

Alcohol and Tobacco Tax and Trade Bureau (TTB)

www.ttb.gov/index.shtml

Regulates Alcohol & Tobacco

American Embassy, London

london.usembassy.gov

Represents US diplomatic interests abroad

Consumer Product Safety Commission (CPSC)

www.cpsc.gov

Regulates Consumer Products

Customs & Border Protection (CBP)

www.cbp.gov

Regulates and facilitates international trade, collecting import duties, and enforcing US regulations, including trade, customs and immigration

Federal Trade Commission (FTC)

www.ftc.gov

Presides over Dissatisfaction with Business Practices

FedWorld

fedworld.ntis.gov/about.shtml

Online locator service for a comprehensive inventory of information disseminated by the US Federal Government

Food & Drug Administration (FDA)

www.fda.gov

Regulates Cosmetics & Drugs, Food, Medical Devices, Veterinary Medicines & Electronic Product Radiation

Internal Revenue Service (IRS)

www.irs.gov

Responsible for tax collection and tax law enforcement

National Institute of Standards and Technology (NIST)

www.nist.gov

Promotes US innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve quality of life

Occupational Safety & Health Administration (OSHA)

www.osha.gov

Assures safe and healthful working conditions by setting and enforcing standards and by providing training, outreach, education and assistance

Small Business Administration (SBA)

www.sba.gov

Provides support to entrepreneurs and small businesses

United States International Trade Commission (USITC)

www.usitc.gov

Provides international trade statistics and the Harmonised Tariff Schedule

United States Patent and Trademark Office (USPTO)

www.uspto.gov

Issues patents to inventors and businesses for their inventions, and trademark registration for product and intellectual property identification

Solutions for Business

Funded by
UK Government

UK Trade & Investment is responsible for the delivery of the Solutions for Business product “Helping Your Business Grow Internationally.” These “solutions” are available to qualifying businesses, and cover everything from investment and grants through to specialist advice, collaborations and partnerships.

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