

J-1 VISAS FOR INTERNS AND TRAINEES

THE LITTLE KNOWN WORK VISA AN ALTERNATIVE TO THE H-1B VISA

By Mark Ivener, Attorney



The Department of State administers the J-1 visa program. In order to obtain a J-1 visa for an employee, a company must initiate an application through an approved third-party training sponsor organization.

The first step is to find an appropriate third party training sponsor. There are dozens of organizations that are authorized by the Department of State to act as third-party sponsors of J-1 training programs. These organizations review and approve the application and training program of a proposed U.S. employer and issue a Form DS-2019, which is a Certificate of Eligibility for J-1 training. Each third-party program sponsor has different requirements, filing fees and procedures, but almost all third-party sponsor applications require that the employer submit a detailed training program. The training program must spell out in explicit detail the type and chronology of training which will be accomplished. Third party sponsors generally take about a month to review and approve J-1 applications and training programs.

Once the application is approved, the third-party sponsor sends a Form DS-2019 to the employee abroad. The employee then submits the Form DS-2019 to the U.S. Consulate in his or her home country and obtains the J-1 visa. Processing times are generally from 1 day to 2 weeks, depending on the U.S. Consular post where the visa application is made. Canadians are visa exempt, and are thus not required to obtain the visa at a U.S. Consulate. These visa exempt individuals merely submit Form DS-2019 and proof of nonimmigrant intent to the Immigration officer at the time of admission to the United States.

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1. MINIMUM QUALIFICATIONS

The U.S. Department of State regulations effective July 19, 2007 established a new J-1 Intern category and revised significantly the regulations governing the J-1 Trainee program. The Trainee and Intern programs are designed to allow students and professionals to come to the United States to gain exposure to U.S. culture and receive training and exposure to U.S. business practices in their chosen field. Upon completion of their programs, participants are expected to return to their home countries where they will be able to utilize their newly learned skills and knowledge to advance their careers.

a. The Intern Category

The Intern category was created to allow a learning experience for current post-secondary students and recent graduates. Both the Trainee and the Intern programs must directly relate to the participant's career field of study. The Intern category applies to:

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FOREIGN NATIONALS WHO:

- Are currently enrolled in and pursuing studies at a foreign degree or certificate granting post-secondary academic institution outside the United States, OR
- Graduated from such an institutions no more than 12 months prior to his or her exchange visitor program start date.

Maximum duration in any field is 12 months.

b. The Trainee Category

The Trainee must be a foreign national who has:

- A degree or professional certificate from a foreign post-secondary academic institution outside the United States and at least one year of prior related work experience in his or her occupational field outside the United States, OR

- Five years of work experience in his or her occupational field outside the United States.

Maximum duration remains 18 months except for certain field restrictions:

- Hospitality field training programs have been limited to a maximum of 12 months; all programs longer than six months must have at least three departmental relations. However, management training in hospitality may have a maximum duration of 18 months if categorized under Management field.

2. BENEFITS

The spouse and single children (under 21) of a J-1 principal applicant may come to the United States on J-2 visas for the same period as the J-1 training program. One benefit of the J-1 visa is that the spouse may obtain Employment Authorization through Immigration.

While the employment of the J-1 principal is limited to the employer as set forth in the application made to through the third-party sponsor, the employment authorization offered to a J-2 spouse permits employment in the open market.

Another benefit of the J-1 visa is that J-1 employers are exempt from FICA tax withholding. In general, 7.65% of the earnings of U.S. employees and holders of other nonimmigrant visas are withheld from all earnings for Social Security and Medicare. In addition, the employer pays another 7.65% for a total of 15.3% of the employee's total wages. Therefore, if a trainee is paid \$40,000 per year, the employer and the trainee would each save \$3,060.00 per year just because the trainee is in the U.S. on a J-1 visa rather than an H-1B visa, or \$4,590.00 over the life of the 18 month training program. This would provide a total savings of \$9,180.00 through the use of the J-1 visa.

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