

Are you a Business Visitor in the U.S.?

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The B-1 visa is for foreign nationals coming to the United States for a temporary visit to conduct certain limited business activities on behalf of a foreign enterprise.¹ Specifically, to qualify for a B-1 visa, a foreign national must be employed by a foreign-based entity or enterprise, maintain a foreign residence, be paid by a non-U.S. source, (a U.S. source may pay for or reimburse incidental trip expenses), and be coming to the U.S. for a limited duration to perform “limited business activities.”

“Limited business activities” is defined as business activities that are a “necessary incident” to the foreign national’s business abroad. Work that would be considered labor or “work for hire” within the U.S. is not permissible under the B-1 visa category. In those instances, the foreign national would need to obtain a different U.S. visa that authorizes employment.

Examples of commercial and business activities that are clearly permissible under the B-1 visa category include:

- Taking orders/sales for goods manufactured in a foreign country.
- Purchasing goods or materials or placing orders in the U.S. for the foreign entity.
- Soliciting services from U.S. entities on behalf of the foreign entity or enterprise.
- Negotiating and signing contracts with U.S. entities on behalf of the foreign entity or enterprise.
- Installing, servicing or providing training for machinery or equipment manufactured and delivered from a foreign company pursuant to the terms of the contract of sale (for up to one year after the sale).²
- Attending meetings, including board meetings, annual staff meetings, and the like.
- Meeting with clients or business associates.

- Attending or participating in conferences, conventions, trade shows or exhibitions, including setting up and operating booths.
- Exploring investment options and investing in the U.S.
- Setting up a U.S. company, including opening company bank accounts, purchasing or leasing real estate for the business, and interviewing and hiring people within the U.S.³

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¹ All references herein to B-1 visa status apply to foreign 1 All references herein to B-1 visa status apply to foreign nationals who enter the U.S. under the Visa Waiver Program. As part of the Visa Waiver Program, Canadian citizens are exempt from needing to obtain the actual B-1 visa, and can instead enter the U.S. without a visa for the same limited business purposes.

² Under NAFTA, Canadian citizens are not limited by the one-year after sale restriction, and can provide such post-sale services for the life of the product.

³ The above categories by no means address every permissible or impermissible business activity under a B-1 visa. There are also certain permissible activities under the B-1 visa category relating to religious workers, athletes, performers, airline/ship crew, medical students and others.



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Detailed scenarios of business activities within the United States that would be permissible under a B-1 visa:

SCENARIO 1

An employee of a machine manufacturing company outside of the U.S. comes to the U.S. to install or repair a machine purchased by a U.S. customer.

Such activities by the machine company employee are permissible under the B-1 visa as long as the sold machinery was manufactured and distributed from a foreign country. Specifically, under a B-1 visa, a foreign national employee "possessing specialized knowledge essential to the seller's contractual obligation" may perform services or train workers to perform services incidental to the sale of commercial or industrial equipment or machinery manufactured outside the United States. A key element is that the sales contract must contain a requirement that the seller provide such services or training. Further, building or construction work within the U.S. would not be permissible under this example.

SCENARIO 2

A commercial truck driver brings goods from a foreign country into the U.S. and delivers them to a location in the U.S.

This is permissible activity under the B-1 visa as long as the goods being delivered to the U.S. location were picked up in the foreign country. The truck driver may not then pick up goods from a location in the U.S. and then deliver those goods to another location in the U.S.

SCENARIO 3

The commercial truck driver in the example above then picks up goods from a U.S. manufacturer and delivers them to a location in his original foreign country.

This is permissible under the B-1 visa. However, the truck driver could not pick up goods from the U.S. and then deliver them to another foreign country (e.g., a Canadian truck driver cannot pick up goods in the U.S. and then deliver those goods to a location in Mexico). He can only pick them up to bring them back to Canada.

SCENARIO 4

A recent university graduate comes to the U.S. to volunteer for a U.S. employer. The foreign national university graduate does not receive any payment or other compensation from the U.S. entity.

The above is actually NOT permissible under a B-1 visa except in very limited circumstances. Generally, the volunteer activities will still be considered "work for hire" even if an employee is unpaid because the nature of the volunteer activity is indistinguishable from regular paid work.



Two exceptions where unpaid volunteer work would be permissible under a B-1 visa:

Voluntary work for a recognized religious group or non-profit charitable organization - A foreign national may perform volunteer work under an organized volunteer service program benefiting local U.S. communities for a recognized religious or non-profit organization provided that the foreign national is a member of, and has an established commitment to, the recognized religious or charitable organization. An allowance or other reimbursement for incidental expenses associated with the travel and stay in the U.S. may be paid to the volunteer.

Training - Foreign national trainees who merely observe the conduct of business or other professional or vocational activity may be allowed under a B-1 if the U.S. entity does not pay or reimburse expenses. However, the B-1 visa is not appropriate if the trainee will engage in "hands on" training and obtain on-the-job experience. In such a circumstance, the trainee will need to obtain an H-3 Trainee visa.

SCENARIO 5

A foreign national employee of a foreign company comes to the U.S. to open a U.S. office or branch, subsidiary or affiliate of the foreign company, to later apply for an L-1 visa. S/he sets up the U.S. entity and secures premises within the U.S.

The foreign national may come to the U.S. under a B-1 visa to set up a U.S. company and open company bank accounts, purchase or lease real estate for the business, and interview and hire people within the U.S. However, the foreign national may not perform productive labor or actively participate in the management of the business within the U.S. until s/he obtains L-1 visa status.



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